

Senate Community Affairs Legislation Committee

SUPPLEMENTARY ESTIMATES - 18 OCTOBER 2012 ANSWER TO QUESTION ON NOTICE

Human Services Portfolio

Topic: Child Support - Treatment of Superannuation Payments

Question reference number: HS 139

Senator: McKenzie

Type of question: Written

Date set by the committee for the return of answer: 7 December 2012

Number of pages: 2

Question:

A couple of constituents have sought my advice in relation to situations where following the cessation of an abusive relationship, the abusive partner gains access to their ex's superannuation as the custody holder of the children - when in both cases the abusive partner gained custody only because the other partner was left with such mental and physical injuries from the abuse that they were no longer able to care for their own children. Having to then pay the abusive ex from what was already only a meagre superannuation payment only adds to the pain of these women and their families. Can you comment on situations like these? How does the CSA handle superannuation payments to ex partners?

Answer:

The issue of family violence, custody of children and superannuation splitting (property settlement) is the responsibility of the Family Court and Federal Magistrates Court. Accordingly, questions relating to these issues are best addressed by the Attorney General's Department.

In terms of how the Department treats superannuation in the context of child support, the following applies.

As a general rule, superannuation that is split and paid to a person in the context of a property settlement proceeding is not physically accessible by that person until a later time as permitted by relevant legislation. As such, it is not considered to be a financial resource that is available to that person and a change (increase) to the assessed child support liability would not be made if it were sought on that basis alone.

However, if a person was able to access those payments, it is possible that the other parent could seek a change to their assessment on the basis that the parent had access to monies that increased their capacity to pay child support. Whether a change would be made depends on many factors, including whether it would be 'just and equitable' to make that decision. The Department is guided by specific legislation and policy when making these decisions.

It is more likely that such monies are not available to a person, so are not factored into the child support assessment.

If a person had access to monies that arose from the splitting of superannuation, and those monies constituted 'taxable income' and were disclosed in the relevant income tax return, the taxable income as reported by the Australian Taxation Office would form the basis of determining that person's 'adjusted taxable income' which is a central feature of the child support formula. In other words, the inclusion of those payments could have the effect of increasing a child support customer's income and therefore increase the share of the costs of the child/ren they are required to meet. This would result in either a reduction or increase in the liability depending on the role the customer has.

If a person considers that they have been assessed to pay child support on too high an income, they may apply for a change to their assessment. There are ten reasons under which a person can apply for a change to their assessment and a person might apply under any one or more of those. The most common reason relied on is that an assessment is unfair because of their, or the other parent's, income, property and financial resources. Alternatively, a person may claim that, notwithstanding their ATO assessed income, their actual capacity to pay child support is reduced by other factors such as the costs of maintaining contact with the child, necessary self-support costs, or their legal duty to maintain another person. A Senior Case Officer will assess such a claim taking into account all the evidence, and then, if it is also just, equitable and otherwise proper for the assessment to be changed, will do so. If a person is unhappy with the decision, they may apply for an internal review of that decision and then, if still dissatisfied, seek further review by the Social Security Appeals Tribunal.