# Case note: Hargreaves and Hargreaves [2017] FCCA 33[[1]](#footnote-1)

This case concerned an adult child maintenance order. The adult child was a 19-year-old woman who could not speak, was incontinent and used nappies, and had a developmental age of three months.

Her mother (Victoria Legal Aid client) was the adult child’s full time carer. The mother received Centrelink benefits.

Her father was in full time paid employment with an income above average weekly earnings. He had remarried and his new wife was also in paid employment. The father paid child support for a younger sibling of the adult child.

Adult child maintenance orders are made pursuant to section 66L of the *Family Law Act 1975*. Applications are determined following the scheme set out in Part VII, Division 7 of the *Family Law Act*.

The relevant legal issues to be resolved were:

* 1. Did the child have a mental or physical disability?
  2. Had the mother established a need for the maintenance in the amount claimed?
  3. Was it proper that the father be required to pay maintenance?

The court had no difficulty finding that the adult child had a mental and physical disability.

The court also was satisfied that the adult child needed financial support. The mother’s expenditures were not extravagant and there was an obvious short fall of income over spending.

The adult child was registered with the National Disability Insurance Scheme (NDIS) on account of her disability. Her NDIS plan provided her with significant financial support, in the region of $185,000 but it was all to be paid directly to support providers. This last point was significant as the court was satisfied that the adult child still required financial support over and above what NDIS provided.

The father did not impress the court as a creditable witness. He was found to be a controlling bully who made various claims in his defence, including:

* The child was soon to be living in residential care permanently.
* He had a contemporaneous application before the Victorian Civil and Administrative Tribunal for the appointment of a public advocate to take over responsibility for the child’s medical and financial affairs.
* The mother could get paid work or already had it.
* Previous financial orders between the parties (property settlement) barred the application.
* The mother was not caring for the child properly.

The father’s many claims were rejected by the court, which found that the father had a clear capacity to pay maintenance towards the adult child.

Child support as assessed by the Department of Human Services (Child Support) ends when a child turns 18. It is not the norm for the court to make the paying parent pay retrospectively. In this case, the court refused to backdate maintenance payments because our client delayed in pursuing maintenance. Final orders were pronounced only in December 2016. This case illustrates that adult child maintenance applications should be filed in a timely manner before or upon the child turning 18 and that negotiations should not be prolonged or lengthy before issuing proceedings.

1. <http://www.austlii.edu.au/au/cases/cth/FCCA/2017/33.html> [↑](#footnote-ref-1)