

Cantone and Telstra Corporation Limited [2015] AATA 534

Key Points

- Telstra denied liability to reimburse travel costs incurred in receiving medical treatment as it was held that the applicant could receive the same treatment closer to home.
- The Tribunal held that Telstra was not liable to reimburse travel costs of up to 75 kilometres when there were practitioners available within a 25 kilometre radius of the applicant's home.

Background

Mr Cantone suffered an intracerebral haemorrhage at work on 28 October 2004, which resulted in right spastic hemiparesis and severe aphasia.

Since 14 July 2006, Mr Cantone, who lives in Wallan, received reimbursement of travel costs arising from his weekly remedial massage treatment.

Mr Cantone's treating remedial masseur, Mr Sam Papaleo had been providing this therapy in Whittlesea but moved his practice to South Morang in late 2013. Following this, Mr Cantone began to undertake a 74 kilometre round trip in order to continue treatment at Mr Papaleo's practice.

On 18 August 2014, Telstra issued a determination that it was not liable to pay compensation for the travel costs associated with the massage treatment in South Morang as Mr Cantone could receive this treatment in Whittlesea with another practitioner.

The determination was affirmed, and Mr Cantone sought further review with the Tribunal.

The Law

The relevant sections under the *SRC Act* are ss 16(6), 16(7) and 16(8) provide:

16 Compensation in respect of medical expenses etc.

...
(6) *Subject to subsection (7), if:*

(a) compensation in respect of the cost of medical treatment is payable; and

(b) the employee reasonably incurs expenditure in doing either or both of the following:

(i) making a necessary journey for the purpose of obtaining that medical treatment;

... Comcare is liable to pay compensation to the employee:

(c) in respect of the journey ...

numbers of kilometres travelled means the number of whole kilometres Comcare determines to have been the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey).

(7) Comcare is not liable to pay compensation under subsection (6) unless:

(a) the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey) exceeded 50 kilometres; or

...

(8) The matters to which Comcare shall have regard in deciding questions arising under subsections (6) and (7) include:

(a) the place or places where appropriate medical treatment was available to the employee;...

Telstra relied on the decisions in *Stevens and Comcare* [1995] AATA 310, *Corfield and Australian Postal Corporation* [2000] AATA 533 and *Mecke and Comcare* [2006] AATA 593. In all three decisions, the Tribunal found it was not reasonable for the applicant to incur travel costs when treatment was available much closer to home.

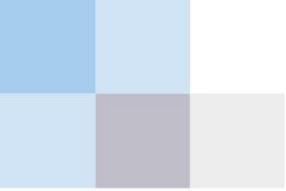
The Tribunal noted that on a factual basis, *Mecke* was the most relevant to Mr Cantone's circumstances in that it involved the treatment by a particular chiropractor providing massage therapy of the Bowen variety and manipulative mobilising techniques found to be readily available from numerous practitioners in the area. The choice of the particular treating chiropractor was a personal preference of the applicant.

Conclusion

The evidence before the Tribunal was that the therapeutic massage, while providing no accepted scientific benefit to Mr Cantone, was functionally beneficial. This functional improvement had only been achieved by Mr Papaleo and not by other masseurs who had treated Mr Cantone in the past. The Tribunal noted that Mr Papaleo and Mr Cantone had developed an excellent clinical relationship.

The Tribunal was made aware of the fact that Mr Papaleo did not have any specialist training, knowledge or experience in the treatment of hemiplegic patients who had suffered intracerebral haemorrhages.

Mr Papaleo and Mr Cantone's treating General Practitioner, Dr Griffiths, were unable to recommend any other masseurs in the Wallan area that could provide the level of treatment and develop the rapport that exists between Mr Cantone and Mr Papaleo. Dr Griffiths did note however that there were numerous masseurs practicing in Wallan and nearby as well as three excellent physiotherapists available in Wallan who could undertake remedial massage.



The Tribunal was of the view that the three local physiotherapists should be able to provide appropriate, if not identical treatment, in order to maintain Mr Cantone's functional levels. The Tribunal commented:

“There is no scientific or clinical evidence before the Tribunal that similar massage therapy aimed at reducing hypertonicity, hyper-reflexia and contracture formation cannot be achieved by a physiotherapist situated closer to Mr Cantone’s home.”

On this basis, the Tribunal affirmed the decision under review.

Lessons Learnt

The decision confirms that while treatment may in itself be reasonable, a licensee is not liable to pay for unreasonable travel costs associated with such treatment.

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