

Provision of assistive equipment could prevent ongoing claims for compensation

Scuderi and Comcare [2015] AATA 921

Key Points

- The Tribunal considered whether Ms Scuderi was entitled to receive compensation for household services, including leg waxing, toe nail clipping and delivery of groceries.

Background

Ms Scuderi was 43 years old at the time of the proceedings. She had commenced work with the Commonwealth Bank of Australia on leaving school in year 10. She remained employed by the Bank until she was retrenched on 15 September 2012.

On 1 May 1990 Ms Scuderi injured her back while lifting a bag of coins. Liability for the injury was accepted pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).

Ms Scuderi's evidence was that due to her injury, she remained restricted as to the activities she could perform. Ms Scuderi sought compensation from Comcare, pursuant to section 29 of the SRC Act, for the cost of assistance with the activities which she claimed she had difficulty doing.

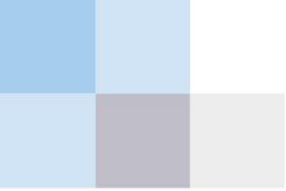
Ms Scuderi sought review of three decisions, two of which related to section 29 of the SRC Act - firstly, whether she was entitled to compensation for household services; and secondly, whether she was entitled to receive compensation for household and attendant care services (toenail cutting, leg waxing and the delivery of groceries).

The Law

Section 29(1) of the SRC Act states that where, as a result of injury, an employee has established that they require assistance with household services, Comcare is liable to pay reasonable compensation for those services. Pursuant to section 29(2) and (4), Comcare should have regard to matters such as the degree of the employee's injury and the extent to which these services were provided to the person prior to the injury.

Conclusion

Expert evidence provided to the Tribunal suggested that Ms Scuderi could manage chores with the use of assistive equipment which had already been provided by Comcare, with help



from her husband and by pacing herself. The Tribunal found that Mrs Scuderi did not satisfy the factors in s 29(2) and was not entitled to compensation.

Ms Scuderi claimed that she was not able to cut her toenails due to her injury. Comcare had previously approved the purchase of a long-handled toe nail cutter to assist. Expert evidence suggested that she was capable of performing the task using the tool. The Tribunal therefore affirmed the decision of Comcare.

Ms Scuderi claimed that waxing her own legs was difficult. The expert evidence indicated that it was difficult because of the difficulty she had in flexing forward. The Tribunal varied the decision of Comcare and decided that she should be provided with money for laser treatment for her legs.

Due to Ms Scuderi's injury, it was recommended by her doctor that she only lift weight to a maximum of 10 kilograms. The Tribunal affirmed the decision of Comcare, reasoning that Ms Scuderi could manage her shopping with the assistance of her children, by shopping at regular intervals or by paying for delivery herself.

Lessons Learnt

When considering a claim under section 29, the relevant circumstances of the applicant should be taken into account before a decision is made. In certain circumstances, the provision of assistive aids may be sufficient, thus preventing the need for the costly, ongoing provision of household or attendant services.

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