

Short term gain for long term pain: reasonable physiotherapy treatment

Yeats and Comcare [2017] AATA 80 (27 January 2017)
Oliver and Comcare [2017] AATA 252 (28 February 2017)

Key Points

- In both cases, the Tribunal was required to consider whether physiotherapy treatment constituted reasonable medical treatment pursuant to section 16 of the SRC Act.
- The lesson to be learnt from the cases is that whether physiotherapy should be considered to be reasonable medical treatment depends on the facts and circumstances of each case.

Background

In *Yeats*, Ms Yeats applied to the Tribunal for review of a decision concerning her entitlement to compensation for medical treatments, being prolotherapy (an alternative therapy which involves the injection of an irritant into affected areas) and physiotherapy, in connection with injuries suffered during her employment. Ms Yeats stated that she found physiotherapy treatment to be particularly beneficial to improve function and movement of the upper limbs, shoulders and neck. The evidence before the Tribunal showed that Ms Yeats had visited the physiotherapist six times in 2013, five times in 2014 and did not visit the physiotherapist in 2015. Ms Yeats' physiotherapist gave evidence that the treatment provided in 2013 had led to improvement or gains in Ms Yeats' function.

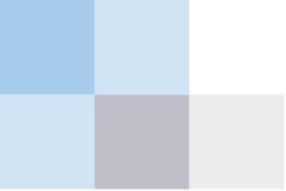
In *Oliver*, Ms Oliver suffered from chronic pain and had received regular physiotherapy treatment over 30 years to help with pain management. The evidence before the Tribunal was that the physiotherapy treatment was only effective as short term relief of Ms Oliver's pain and did not help to manage or improve her condition. The evidence also indicated that Ms Oliver was reliant on the physiotherapy treatment.

The Law

Section 16 of the *Safety Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**), provides that Comcare is obliged to pay compensation for medical treatment obtained in relation to a compensable condition, being treatment that was reasonable for the employee to obtain in the circumstances.

Section 4(1) of the SRC Act provides that therapeutic treatment undertaken by a physiotherapist will constitute medical treatment for the purposes of the SRC Act.

The Tribunal noted the authority of *Re Popovic and Comcare*, which states that if physiotherapy affords



some degree of short-term pain relief, but this is outweighed by a counterproductive effect of dependency, then the physiotherapy will not be considered reasonable treatment in the circumstances.

Conclusion

Ms Yeats benefitted from the treatment and only used physiotherapy treatment sporadically. Ms Yeats' physiotherapist also ensured that she was not over-treated for her injuries. Member Taglieri concluded that, given the benefit to Ms Yeats and the frequency of treatment, physiotherapy in that case constituted reasonable medical treatment for the purposes of section 16 of the SRC Act, and that up to six physiotherapy sessions per annum would be considered reasonable in the circumstances.

In comparison, Ms Oliver was consistently treated by a physiotherapist and only received short-term pain relief from the treatment. Deputy President Humphries considered that the open-ended programme of physiotherapy which Ms Oliver had undertaken had made her dependent on it and discouraged exploration of less costly alternatives. Deputy President Humphries found that, in the circumstances, physiotherapy did not constitute reasonable medical treatment for the purposes section 16.

Lessons Learnt

Where an injured worker is attempting to claim compensation for physiotherapy treatment, an employer should look at the frequency of treatment and the benefit, if any, obtained by an injured worker in response to the treatment. Ongoing, persistent physiotherapy which does not help to treat or manage symptoms may be considered unreasonable and therefore non-compensable under section 16.

Contact:

Brett Ablong
Partner
Direct: +61 (0) 8 9265 6001
brett.ablong@hbalegal.com

Claire Tota
Associate
Direct: +61 (0) 8 9265 6011
claire.tota@hbalegal.com

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