

Physiotherapy and massage considered to be “treats”, not
treatment
A win for proponents of the limitations of physiotherapy and
related treatment
Bhat and Comcare [2018] AATA 2094

Key Points

- Tribunal was asked to determine ongoing liability and, importantly, whether ongoing physiotherapy treatment was reasonably required to treat chronic back pain
- Held: ongoing physiotherapy was not reasonable medical treatment and the low back condition no longer resulted in a requirement for medical treatment or caused incapacity for work

Background

Shashi Bhat, a Customer Service Representative employed by the Australian Taxation Office (**the ATO**), suffered a compensable “*lumbar sprain*” on 18 December 2009 when his work chair collapsed. From that date until early 2016, Mr Bhat obtained 67 sessions of physiotherapy and 44 sessions of massage therapy. Mr Bhat also received compensation for intermittent periods of incapacity he attributed to ‘flare ups’ in pain.

In December 2015, the ATO arranged for a Clinical Panel Review to be undertaken into Mr Bhat’s ongoing requirement for physiotherapy and massage treatment. This Review referred to the Clinical Framework for the Delivery of Health Services (**the Clinical Framework**) in its assessment and, having consulted with Mr Bhat’s treating Physiotherapist, concluded that further physiotherapy and massage treatment was no longer reasonably required.

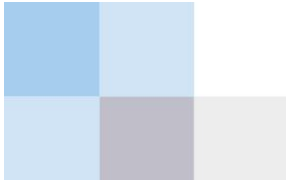
Based on the Clinical Panel Review, the ATO denied liability to pay compensation on 21 January 2016 pursuant to section 16 of the *Safety, Rehabilitation and Compensation Act 1985* (Cth) (**the SRC Act**) in respect of physiotherapy and massage treatment. The determination was affirmed by reviewable decision dated 16 March 2016.

Then on 14 September 2016, the ATO determined that Mr Bhat had no present entitlement to compensation in respect of medical treatment or incapacity benefits pursuant to sections 16 and 19 of the SRC Act. The determination was affirmed by reviewable decision dated 21 November 2016.

The Law

Section 16 of the SRC Act provides that medical treatment is compensable if it is reasonably required in relation to a compensable injury and is **reasonable to obtain** in the circumstances.

The Clinical Framework outlines a set of guiding principles for allied health professionals which are intended to support these professionals in their treatment of an injury. The principles require:

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- an ongoing assessment of the effectiveness of treatment;
 - evidence that a biophysical approach has been adopted;
 - that the injured person has been empowered to manage their injury;
 - that goals are implemented focussing on optimising function, participation and return to work; and finally
 - evidence that the treatment is based on the best available research.

These principles are not binding and do not form part of the SRC Act.

Conclusion

Mr Bhat presented evidence from his treating Physiotherapist and Orthopaedic Surgeon, who were both advocates of ongoing physiotherapy and massage treatment in relation to his low back condition.

Both said that the treatment was beneficial and may in fact resolve many of his issues. Apparently, without it Mr Bhat's condition was likely to decline.


The ATO obtained evidence from Associate Professor Neil McGill (Consultant Rheumatologist), who concluded that further massage, physiotherapy or similar treatments were in fact counter-productive. Further, A/Prof McGill concluded that the applicant had developed fear avoidance behaviour and that there was no therapeutic benefit to be obtained from ongoing massage or physiotherapy treatment as these treatments were **'treats, not treatment'**.

Senior Member Poljack accepted that Mr Bhat continued to suffer from a low back condition characterised as "*chronic low back injury*". However, in determining the efficacy of ongoing physiotherapy and massage treatment to treat this condition, Senior Member Poljack gave regard to the principles of the Clinical Framework and the comments of A/Prof McGill to determine that ongoing physiotherapy and massage treatment was no longer reasonably required.

In addition to the above, Senior Member Poljack felt that the applicant had not taken an active role in the independent management of his injury and that **further passive treatment would only prove detrimental to his long-term health and recovery.** She determined that there was no indication for any medical treatment other than self-directed exercise and weight loss, and also concluded that the evidence did not support the contention that the applicant suffered incapacity from employment as a result of his low back injury.

Lessons Learnt

The decision is a huge win for proponents of a limit being placed on passive treatment and is also a ringing endorsement for the Clinical Framework. Caution should be taken in relying on the Clinical Framework given that it is not a legislative instrument, however its principles are useful in assessing the ongoing efficacy and reasonableness of treatment. Watch out for claims where the treatment is more of a "treat" than treatment.





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