

Passive treatment a limited fix – but is it reasonable? *Church and Comcare* [2019] AATA 673 (9 April 2019)

Key Points

- The Tribunal was asked to consider whether chiropractic treatment was reasonable medical treatment to obtain in respect of a low back injury.
- The Tribunal found in favour of Comcare.

Background

Dianne Church submitted a claim for workers' compensation in relation to a back injury she sustained on 19 June 1986 while carrying a box of documents. Compensation was paid for medical treatment, in the form of visits to a Chiropractor. The treatment had not been prescribed by any medical practitioner but was undertaken on her own initiative. This treatment was paid for from 1986 up until Comcare denied liability for such treatment on 2 March 2018.

Liability to pay for chiropractic treatment was denied for two reasons:

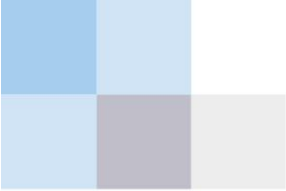
- a) Because the original injury had resolved and as a result it could not be said that treatment was being provided in relation to the accepted back injury as required under section 16 of the *Safety, Rehabilitation and Compensation Act 1988*; and
- b) Chiropractic treatment was no longer reasonable treatment for Ms Church to obtain in her circumstances and by current best practice as it was “*costly, unlimited in duration, ineffective and passive*”.

In June 2012 the *Clinical Framework for the Delivery of Health Services* (the Clinical Framework) was published by the Victorian Transport Accident Commission and Worksafe Victoria. The aim of the document was to optimise treatment to achieve the best possible outcome for injured people. The Clinical Framework sets out how injured people should be encouraged to take control of their recovery by using strategies that support self-management and independence and that passive treatments that require intervention by healthcare workers should decrease. Comcare endorsed the Clinical Framework.

By letter dated 17 January 2018, Comcare advised Ms Church that any treatment claims after 25 August 2018 would need to be accompanied by further supporting evidence from her treating doctor and assessment of claims would be in line with the Clinical Framework.

The Decision

There was some contention over the nature of the exact injury that Ms Church suffered in 1986 and whether or not she had sustained a disc prolapse. The Tribunal came to the conclusion that the correct original diagnosis should have been “*non-specific lower back pain*”.



In terms of treatment, the Tribunal noted that Ms Church turned to complementary therapies despite being advised against them by her specialist. The Tribunal referred to the development and evolution of medical treatment over time and to the Clinical Framework and how it was reasonable to follow the principles set out in that document, including the avoidance of passive treatment.

As Ms Church was only receiving limited relief from the chiropractic treatment, and because it did not promote self-management, it was not consistent with the principles in the Clinical Framework. Chiropractic treatment was seen to encourage dependency and the benefits were not measurable. The Tribunal found that the treatment did not meet the test of being financially cost effective and therefore was not a justifiable expenditure of public funds.

The Tribunal concluded that the original back injury had resolved, and therefore the chiropractic treatment could not be said to be provided in relation to the compensable condition, and that the treatment was no longer considered best practice according to the Clinical Framework.

Lessons Learnt

The general acceptance by the Tribunal of the Clinical Framework marks a step forward in the treatment of work-related injuries, which espouses the avoidance of passive methods, such as chiropractic treatment, to be replaced with more active treatment, that can be self-managed by the patient.

Medical treatment that does not accord with the principles of the Clinical Framework may not be considered reasonable in the compensation arena.

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