

When a medical clinic submits summons compliance expenses, what's reasonable?

Stekovic and Comcare [2021] AATA 2230 (9 July 2021)

Key Points

- The Tribunal was asked to consider the reasonableness of expenses claimed by a medical clinic for compliance with a summons.
- The Tribunal found that the medical clinic had not provided sufficient evidence to support the costs claimed.
- The Tribunal applied the authority in *Bestt and Military Rehabilitation and Compensation Commission* [2017] AATA 1235 and found that the medical clinic was entitled to \$376.05 plus GST rather than the \$1,215.28 claimed.

Background

Ms Stekovic filed an Application for review at the Administrative Appeals Tribunal in respect of a claim for workers' compensation. In the course of the proceedings, a summons was issued to Queanbeyan GP Super Clinic (**the Clinic**) on 17 September 2020 for the production of medical records. The Clinic issued an invoice claiming the costs of producing the records in the amount of just over \$1,215, which was comprised of around \$1,104 for the photocopying of 795 pages, plus GST.

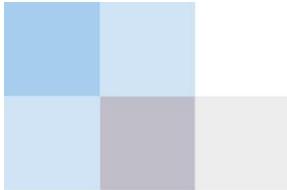
Negotiations took place between the clinic and Comcare, with Comcare offering to pay less than the Clinic claimed. On 23 April 2021, the clinic informed the Tribunal that its initial invoice in the amount of \$1,215.28 remained outstanding. It rejected a request by Comcare made on 30 April 2021 to amend its invoice, and stated that if the invoice remained unpaid it would be forwarded to Ms Stekovic to pay.

Comcare requested that the Tribunal determine the reasonable expenses for complying with the summons. The clinic submitted that Comcare's offer was not reasonable, as it did not reflect the actual costs incurred in complying with the summons. The clinic submitted that its reasonable costs were comprised of an administration fee of \$38, photocopying fee of \$0.90 per page, delivery costs of \$17.65 and GST of 10% of the total invoice.

The Tribunal was required to consider the expenses claimed for complying with the summons.

The Law

Section 40A of the *Administrative Appeals Tribunal Act 1975* (**AAT Act**) provides power for the Tribunal



to require a person to give evidence or produce documents in a proceeding before the Tribunal. If a person is required to comply with such a summons, section 67 of the AAT Act allows for payment for compliance in line with regulations.

Regulation 13(6) of the *Administrative Appeals Tribunal Regulations 2015* (the **AATR**) provides for payment to a person for reasonable expenses incurred in producing documents under a summons request pursuant to section 40A of the AAT Act. Regulation 13(7) of the AATR provides that only the party to which the summons is directed may apply to the Tribunal for a review of the reasonable expenses payable for compliance with the summons.

In *Bestt and Military Rehabilitation and Compensation Commission* [2017] AATA 1235, it was considered that “reasonable expenses” for the purposes of regulation 13(6) of the AATR should not exceed the costs incurred by the summoned party in meeting the requirement for production.

In *X Pty Ltd and Ors & Merhi (No 2)* [2015] FamCA 862 it was found that a summoned party could recover costs actually incurred but they were not entitled to a profit.

In *Moorehead Nominees Pty Ltd & Others v Barclays Australia Securities Ltd & Others* VG63 of 1989 (Unreported, 17 May 1991) it was noted that such costs must be reasonably incurred.

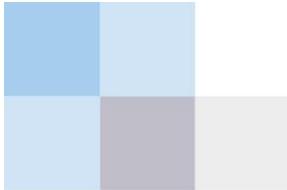
Conclusion

The Tribunal did not accept the clinic’s submission that its reasonable costs for compliance amounted to \$0.90 per page because it did not provide a sufficient explanation or evidence to support this claim. The Tribunal considered that it was up to the clinic to establish its reasonable costs incurred in complying with the summons and found that, in the absence of it doing so, a comparison with the *Bestt* decision was appropriate as a starting point. In that case, \$0.60 per page was found to be a reasonable expense for photocopying.

The Tribunal ultimately accepted Comcare’s submission that the reasonable costs for photocopying were \$0.70 per page, reflecting the \$0.60 per page amount in the decision of *Bestt*. The Tribunal allowed a further \$0.10 to account for indexation of 8.5% since the 2017 decision, and the work involved in complying with the summons outside of ordinary working hours. In reaching this conclusion, the Tribunal considered whether the expenses were moderate, not excessive and a reasonable estimation of the costs incurred by the clinic.

The Tribunal also found that an administrative fee of \$35 was reasonable, not excessive and moderate because it reflected work of 20 minutes at a rate of \$11 per six-minute block. It left open the possibility of this fee being adjusted to reflect circumstances in which a medical practitioner is involved with compliance or the documents produced are indexed or paginated. The Tribunal also accepted that the clinic likely incurred \$17.65 for posting the five-kilogram envelope.

While the clinic claimed \$1,215.28 in costs incurred in complying with the summons, the Tribunal found that \$376.05 plus GST was payable.



Lessons Learnt

Only a summonsed party has the right to request that the Tribunal determine the reasonableness of claimed expenses in complying with a summons, but the summonsed party can provide its consent for the summoning party to make such a request.

It is necessary for the summonsed party to provide evidence or a sufficient explanation that supports a finding that its claimed costs were actually and reasonably incurred and, in the absence of it doing so the Tribunal may consider comparable cases as a starting point.

The Tribunal will consider whether an expense is “*reasonable*” and “*not excessive*” in determining whether it is appropriate in the circumstances.

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