

Alamos v Comcare [2014] AATA 629 (14 August 2014)

Key Points

- Whether palliative physiotherapy constitutes reasonable treatment pursuant to section 16 of the SRC Act.

Background

Mrs Alamos was employed by the Department of Defence to inspect packages received by the Department. She suffered an “*aggravation of lumbosacral (joint) (ligament) strain*” and made a claim for compensation. Liability was accepted for treatment expenses in December 2000.

From 2000 to 2006, Mrs Alamos had regular massage therapy. In mid-2006, she commenced weekly physiotherapy sessions and the cost of this was met until 10 February 2014.

On 17 January 2014, Comcare issued a determination which reduced her physiotherapy sessions from weekly to nil over the course of three months. The determination was affirmed on review and Mrs Alamos sought further review at the AAT.

The Tribunal was required to consider whether the physiotherapy treatment received by Mrs Alamos constituted “*medical treatment*” and if so, whether it was “*reasonable for the employee to obtain in the circumstances*” pursuant to section 16 of the SRC Act.

The Law

Section 16 (1) of the SRC Act provides that Comcare is liable to pay for medical treatment obtained in respect of a compensable injury if it is treatment that is reasonable for the employee to obtain in the circumstances.

Medical treatment is defined in subsection 4(1) to mean, in part “... *therapeutic treatment by ... a physiotherapist ... registered under the law of a State or Territory providing for the registration of physiotherapists.*” Therapeutic treatment “*includes ... treatment given for the purpose of alleviating an injury*”: s.4

In coming to its decision, the Tribunal referred to decision of *Re Popovic and Comcare* [2000] AATA 264, in which it was held:

In relation to the applicant’s claim for physiotherapy treatment expenses, in our view there is no role for passive physiotherapy in the applicant’s current treatment regime. The physiotherapy he was having could not improve him in the long term, has limited, if any, short-term benefit, and may in fact be contra-indicated. Any therapeutic benefit he received was small and short-lived. We accept that pain relief, even short-term relief or reduction in pain, can be therapeutic. However in this case any benefit is outweighed by the counter-productive effect with leading the applicant to a dependent state, inhibiting his ability to learn to cope, and embark on pain management programs to assist him with that object.

Conclusion

In considering whether physiotherapy was “*treatment given for the purpose of alleviating injury*” and therefore “*therapeutic treatment*” within the definition of “*medical treatment*”, the Tribunal referred to the ordinary meanings of the word “*alleviate*”, which were “*to make easier to be endured, lessen, mitigate, e.g. to alleviate pain*” (Macquarie Dictionary Online) and “*To make (pain, suffering etc.) less severe, to relieve, to ease, reduce*” (Oxford English Dictionary Online).

The Tribunal was satisfied that Mrs Alamos’ weekly physiotherapy treatments were given for the purpose of relieving the pain suffered as a result of the injury and therefore fell within section 16(1) of the SRC Act.

In relation to whether the treatment was “*reasonable for the employee to obtain in the circumstances*”, the Tribunal stated that it was necessary to consider all of the circumstances, and not only the beneficial effects experienced by Mrs Alamos.

The Tribunal provided examples of considerations, being:

- the benefit of the treatment to the injured worker;
- the long-term effect of the treatment;
- whether the treatment is likely to cure the injury or significantly reduce its effects;
- whether the treatment maintains the status quo; and
- the cost of ongoing treatment.

Both consultant orthopaedic surgeon, Dr Pillemer and consultant physiotherapist, Mr Papagoras, gave evidence that ongoing physiotherapy was not necessary as Mrs Alamos had experienced little improvement and as such, long term physiotherapy was unlikely to be of any benefit. They both recommended self-managed home exercise to improve her mobility.

Consequently, the Tribunal found that there was sufficient evidence that long-term physiotherapy was not in the best interest of Mrs Alamos, noting that Mrs Alamos had already undertaken 300 sessions of physiotherapy which suggested only a short term alleviation of symptoms.

In light of the above, the Tribunal affirmed Comcare’s decision to cease funding physiotherapy expenses.

Lessons Learnt

This decision suggests that palliative physiotherapy is not considered reasonable for the employee to obtain on a long term basis as it results in only a short term alleviation of symptoms. There are also a number of considerations provided by the Tribunal which should be taken into account when considering whether a treatment is “*reasonable for an employee to obtain in the circumstances*”.

For more information on this article, please contact:

Lori Lim
Solicitor
Email: lori.lim@hbalegal.com
Direct Line: (08) 9265 6007

Brett Ablong
Partner
Email: brett.ablong@hbalegal.com
Direct Line: (08) 9265 6001

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.