

Daniel Heffernan v Comcare [2012] AATA 581

Key Points

- Modified motor vehicle held to constitute an “aid”
- The Administrative Appeals Tribunal has taken an expansive approach when determining what can constitute an “aid” pursuant to the definition of medical treatment under the SRC Act.
- This decision of Senior Member Britton establishes that a modified motor vehicle can constitute an aid for the purposes of section 4(1)(f) of the SRC Act.

Background

Section 4(1)(f) of the SRC Act states:

“medical treatment” means:

- (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance; (*emphasis added*)

This decision follows on from a previous decision, *Re: Heffernan v Comcare [2012] AATA 371*, in which Senior Member Britton decided that a modified motor vehicle did not constitute a “curative apparatus” within the definition of medical treatment pursuant to the SRC Act. In that decision, Senior Member Britton raised the question of whether a modified motor vehicle could be regarded as an “aid or appliance” for the purposes of the definition of medical treatment.

Mr Heffernan suffered chronic back pain and associated complications as a result of an injury for which Comcare had accepted liability. As a result of this injury, Mr Heffernan found transporting himself from point to point difficult. Mr Heffernan required a vehicle to get to work because he could not use public transport, which, in any event, was limited in his area.

Mr Heffernan contended that Comcare should be responsible for purchasing and modifying a suitable vehicle to allow him to transport himself with greater ease. Due to Mr Heffernan’s height, only a limited number of vehicles were considered suitable for his use.

Comcare argued that no motor vehicle, whether modified or not, could constitute medical treatment. Alternatively, if a modified vehicle could satisfy the statutory definition of medical treatment, those circumstances could not be found in this case. Further, Comcare argued that it was not reasonable for Mr Heffernan to obtain the modified vehicle at Comcare’s expense, given that a vehicle had previously been modified for Mr Heffernan’s use. In 2006 Comcare had accepted liability for the cost of modifying Mr Heffernan’s 1996 Toyota Land Cruiser. These modifications cost approximately \$1,800 and included the installation of an appropriate car seat. Three years later, Mr

Heffernan replaced the Land Cruiser with a 2004 Nissan Patrol. He reasoned that, due to its age, the Land Cruiser was prohibitively expensive to maintain.

The Law

Senior Member Britton defined an aid as something that provided assistance to an injured person and concluded that a modified motor vehicle may be considered a form of “medical, surgical or other similar aid or appliance”, because it could provide a means of mobility otherwise denied to a disabled person. Senior Member Britton likened the modified motor vehicle to a walking stick, crutch or prosthesis.

Senior Member Britton then turned to the question of whether this aid was reasonable to obtain in the circumstances and noted Mr Heffernan’s preference for a new vehicle, but considered that a second-hand vehicle suitably modified would provide the same benefit.

Conclusion

The Tribunal ordered that Comcare purchase a suitable second-hand vehicle that met the essential features required, of a similar age and condition to Mr Heffernan’s previous vehicle, and that modifications be undertaken on that vehicle to make it suitable for Mr Heffernan’s use.

Lessons Learnt

Based on this decision, when considering a claim for an aid or appliance decision makers should consider two key issues:

1. Is the claimed treatment an aid or an appliance?
2. Was the aid or appliance reasonable to obtain in the circumstances?

For more information on this article, please contact:

Naomi Adams
Associate
Email: naomi.adams@hbslegal.com
Direct Line: (08) 9265 6015

Nathan Hepple
Partner
Email: Nathan.hepple@hbalegal.com
Direct Line: 08 8257 3320

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