

Matthews and Telstra Corporation Limited [2014] AATA 251 (29 April 2014)

Key Points

- Whether a treadmill constituted “medical treatment” obtained in relation to an employee’s compensable injury and, if so, whether use of the treadmill was “reasonable” medical treatment in the circumstances;
- In the alternative, whether it was a compensable “aid” or “appliance” within the meaning of section 39 of the SRC Act.

Background

Mr Matthews had an accepted workers’ compensation claim in respect of the amputation of his right leg, following a truck driving accident on 30 December 1978.

On 22 December 2011, Mr Matthews purchased a treadmill for home use as a result of gaining weight due to his inability to exercise. By determination dated 22 January 2013, Telstra Corporation Limited determined that it was not liable to pay compensation in respect of the treadmill pursuant to section 16 of the SRC Act on the basis that it was not medical treatment.

On 15 March 2013, the determination was affirmed by reviewable decision. Mr Matthews sought review of the reviewable decision in the Administrative Appeals Tribunal.

The Law

Section 4(1) of the SRC Act defines “medical treatment” as “*therapeutic treatment obtained at the direction of a legally qualified medical practitioner*” or “*therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor...*” Section 4(1) further defines “therapeutic treatment” to include “*an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.*”

The meaning of “therapeutic treatment” was considered in the case of *Comcare v Watson* (1997) 73 FCR 273, which stated that its “*purpose or object must be the treatment of the particular activity in question*” and that “*an indicator that a doctor-prescribed activity is intended, relevantly, to be therapeutic will commonly be the adoption of some level of monitoring of it to gauge whether it is appropriately adapted to its purpose or is effective in some degree in realising that purpose.*”

Section 39 of the SRC Act provides where an employee suffers an impairment resulting in an impairment and that employee is undertaking, or has completed, a rehabilitation program, the relevant authority is liable to pay reasonable compensation for “*any aids or appliances for the use of the employee, or the repair or replacement of such aids or appliances*”.

Mr Matthews’ physiotherapist stressed the importance of improving his walking endurance, and advised that she made recommendations about the frequency of using the treadmill. Mr Matthews’

general practitioner advised that it was medically necessary for Mr Matthews to lose weight, and that he would support the treadmill once it was assessed by an occupational therapist with a program for its use developed and approved by a physiotherapist.

Conclusion

Does the treadmill constitute a form of compensable medical treatment?

Telstra contended that the treadmill did not come within the definition of “therapeutic treatment” given that its use was not for the purpose of “treating” the compensable injury, but was for general wellbeing. Additionally, it contended that the treadmill was unsafe until approved by a physiotherapist or occupational physician, and that its use without their supervision was not “reasonable” in the circumstances.

The Tribunal was satisfied that one effect of Mr Matthews compensable injury was to gain weight. In light of *Watson v Comcare*, the Tribunal considered that Mr Matthews’ use of a treadmill to exercise, with the purpose of mitigating or alleviating this consequence of his injury, can properly be regarded as “therapeutic treatment”.

The Tribunal then determined whether Mr Matthews “obtained” the relevant treatment “at the direction of a legally qualified medical practitioner”. Noting the requirement that the treadmill to be assessed and for a plan to be provided before its use, the Tribunal found the treadmill had not been “obtained at the direction of a legally qualified medical practitioner” and held that Mr Matthews’ use of the treadmill did not fit within the definition of “medical treatment”.

Is the treadmill a compensable aid or appliance?

Consistent with section 39 of the SRC Act, the Tribunal considered that an aid or appliance is only compensable in circumstances where *“the employee is undertaking, or has completed a rehabilitation program or has been assessed as not capable of undertaking such a program.”*

In the absence of evidence that Mr Matthews was, or had been, engaged in a rehabilitation program, the Tribunal held that the treadmill could not be regarded as a compensable “aid” or “appliance” within the meaning of section 39 of the SRC Act.

Lessons Learnt

The decision of the Tribunal further provides guidance on what is classified as “medical treatment”, an “aid” or an “appliance” under the SRC Act. In respect of medical treatment, it is clear that the use of therapeutic treatment must be for the purpose or object to treat the compensable injury, and must be obtained at the direction of a legally qualified medical practitioner. If an employee initiates a treatment on their own accord that is beneficial to their compensable injury, it is not compensable as it is not at the direction of a medical practitioner.

Additionally, “aids” and “appliances” are not compensable in the event that an employee has not engaged, or is not currently engaging, in a rehabilitation program.



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