

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CASTLEDINE AND NATIONAL DISABILITY INSURANCE AGENCY [2019] AATA 4240

Administrative Appeals Tribunal, Member K Parker, 16 October 2019

An NDIS Plan dispute about therapy hours, hours of practice coaching and transport costs.

Key words: NDIS, Federal, Review, Therapy, Transport, Practice Coach

1. Mr Jake Castledine, the applicant, in his late twenties, had many severe disabilities requiring multi-faceted, ongoing and extensive support. He had successive plans approved by the NDIA since 2016 with multiple internal reviews. The dispute about the plan mainly concerned hours of therapists and the method of coordination of the extensive care.

2. The NDIA Argued (at [67]):

Ms Parsons adopts an approach based upon what is considered best practice, advocating for an interdisciplinary approach to Jake's support where "the group of professionals from diverse fields work in a coordinated fashion toward a common goal for Jake". In her opinion, a funding model overseen by a qualified positive behavioural support practitioner (i.e. Guidestar) provides flexibility in administering the plan, directing funds to where they are best used after the coordination of Jake's supports have been worked out. If increases in funding are needed, there is scope for a review in future. On the other hand, as developed below, the recommendations of Ms Cohen and Ms Greiner are neither coordinated nor integrated. The recommendations, therefore, have the potential to contain inefficiencies (including 'doubling up') and to replicate past failures.

3. Mr Castledine's position was (at [68]):

The Agency's position in this proceeding involves a premature and dramatic reduction/removal of key support planks for this Applicant (i.e. 144 therapy hours reduced to 100 hours, 520 hours of Practice Coaching support cut down to 76 hours). The Applicant submits that the Agency's position should be rejected as it undermines the clinical efficacy of the integrated model of supports. It forces the therapists and other professionals directly involved in the care of Jake to substantially modify and compromise their strategies and implementation with a negative flow on effect on Jake and his well-being.

4. The court summarised the position of the parties and the issues requiring its decision at the close of their evidence as:

(a) better coordination was required of the various therapeutic and carer supports provided to Mr Castledine on a day-to-day basis;

(b) the delivery of those supports should be led (in the clinical sense) by a suitably qualified PBS practitioner, which they agreed should be Guidestar, or more specifically, Mr Castledine's supervising psychologist;

(c) Mr Castledine required ongoing therapeutic support by an occupational therapist and speech therapist;

(d) the various therapeutic and support carer interventions should be delivered in accordance with a BSP tailored to Mr Castledine's needs; and

(e) that Mr Castledine should be provided with funding as a support for his disability-related travel costs.

5. However, the parties did not agree as to the appropriate level of funding that should be approved for the various therapeutic interventions, practice coaching and in relation to the rate at which Mr Castledine's agreed disability-related transport costs should be calculated.

Issues for determination

6. At the conclusion of the hearing, the issues remaining between the parties requiring determination by the Tribunal were (at [73]-[74]):

(a) how many hours of therapeutic intervention was a reasonable and necessary support for Mr Castledine, and how the funding for those supports should be structured;

(b) how many hours of practice coaching was a reasonable and necessary support for Mr Castledine and how the funding for this support should be structured; and

(c) whether Mr Castledine should receive funding for his travel costs and if so, how that funding should be calculated.

Hours of Therapy

7. The Tribunal heard extensive evidence about the therapeutic interventions and made a decision to increase the hours. The Tribunal was satisfied that the requirements under s 34(1)(a), s 34(1)(b) and s 34(1)(c) of the NDIS Act were met. Section 34(1) of the NDIS Act provides as follows:

8. For the purposes of specifying, in a statement of participant supports, the general supports that will be provided, and the reasonable and necessary supports that will be funded, the CEO must be satisfied of all of the following in relation to the funding or provision of each such support:

(a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;

(b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;

(c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;

9. The Tribunal did agree that the NDIA funding should form part of a combined support for Mr Castledine, together with the other therapies to be provided to him. This would allow the clinical practice leader to determine, in consultation with the relevant treating occupational and speech therapists, how that funding was to be applied over the course of the plan as particular circumstances and needs may varied from time to time.

Hours of Practice Coaching

10. The Tribunal decided “that the provision of funding for 45-minute sessions for practice coaching to be provided to fortnightly to eight-weekday support staff and monthly to two-weekend staff, for 48 weeks of the year, is a reasonable and necessary support for Mr Castledine that will benefit him (albeit indirectly through building the capacity and resilience of his support staff)” (at [321]).
11. The Tribunal rejected that a “buffer” of eight hours should be added as a further support for “incident response” in case something happened during the “off-weeks”. Further, it rejected that it was more appropriate that the applicant’s mother provide reflective practice opportunities for her support staff as part of her role as “employer”. It was found that she was not sufficiently qualified to do so, and would require significant training to take on such a role.

Transport

12. The parties agreed that Mr Castledine should be funded under the NDIS for his travel costs for trips made from Monday to Friday, inclusive of journeys by private vehicle to and from Ms Castledine’s house to the Department of Health and Human Services Victoria Unit and any trips to and from the Department of Health and Human Services Victoria Unit to places in the community.
13. There was a further dispute about how the travel costs should be calculated due to a difference of opinion about what rate per kilometre should be applied. The Tribunal decided the issue by adopting the rate prescribed by the Australian Taxation Office from time to time, for the purpose of calculating an individual’s tax deductions relating to travel in a private vehicle.

IMPLICATIONS



Some issues of note in this decision are:

1. Reports by qualified therapists who have interacted with the participant are better evidence of reasonable and necessary supports than a number of hours allocated by the NDIA;
2. That practice coaching which is specifically aimed at building the capacity of (the participant’s) support staff so they may provide their support care for him in an informed and consistent way to improve (his) ability

to “co-regulate” his emotions and to minimise his behaviours of concern may be a reasonable and necessary support.

3. That in some instances funding all the participant’s travel is reasonable and necessary.

VIEW THE CASE



This case may be viewed at https://www-westlaw-com-au.ezp01.library.qut.edu.au/maf/wlau/ext/app/document?docguid=18a806b10f16a11e9a18be9fe4d8c34f5&tocDs=ANZ_CASES_TOC&isTocNav=true&startChunk=1&endChunk=1

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: January 2020

Number of case: 2019-85

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: 

[This work is licenced under a Creative Attribution 4.0 International Non Commercial and No Derivatives licence \(CC BY-NC-ND 4.0\).](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns