

STANDING COMMITTEE ON LAW AND JUSTICE

THIRD REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE LIFETIME CARE AND SUPPORT AUTHORITY AND THE LIFETIME CARE AND SUPPORT ADVISORY COUNCIL

QUESTIONS ON NOTICE ARISING FROM THE PUBLIC HEARINGS

QUESTION 1

The Hon. JOHN AJAKA: In relation to disputes about medical and clinical decision, will you indicate what options exist for participants who want to dispute a decision about a medical or clinical issue made by the LTCSA? What is the procedure involved?

RESPONSE

Participants who do not agree with a decision made by the Authority about their treatment and care needs can request the Authority to reconsider its decision, i.e. an internal review by another staff member. The participant may also lodge a dispute which is referred to an external dispute assessor. The Authority's dispute assessors are medical and allied health professionals who are not employees of the Authority and are individually appointed to this role under the Act.

The Authority has developed brochures about resolving disputes, copies of which have been attached for the Committee. These are provided to participants and are available on the Authority's website.

Disputes about eligibility to the Scheme (whether the injury criteria are met) are referred to a panel of three independent dispute assessors who form an Assessment Panel. There are review mechanisms in the Act in relation to the decision of an Assessment Panel. If grounds for review within the Act are met, the dispute is referred to a Review Panel of another three independent dispute assessors.

Disputes about a participant's treatment and care needs (i.e. decisions about medical and clinical issues) are referred to an external dispute assessor with the relevant health or medical expertise. For example, a dispute about a participant's physiotherapy treatment would be referred to a physiotherapist.

The Authority's dispute assessors are employed in a wide range of medical, health and rehabilitation settings in public and private organisations and their current clinical expertise is vital for the Scheme's population group. The Authority considers that it is vital that disputes about treatment and care needs are resolved by experienced professionals, independent of the Authority, with the relevant health or medical background.

QUESTION 2

The Hon. JOHN AJAKA: I usually call them appeals, so in these appeals in relation to disputes do you have an indication of how many are successful compared to those that are unsuccessful?

RESPONSE

Disputes about eligibility

The Authority has received four disputes about eligibility to the Scheme, which occurred after the Authority's decision that the injured person was not eligible for lifetime participation. Two of these disputes have been resolved, with two disputes still in progress. All disputes have related to the injured person's FIM score.

In the first dispute, the Assessment Panel found that the injured person met the injury criteria and was eligible for participation in the Scheme. This was not in accordance with the Authority's original decision about eligibility. The Authority has now accepted the injured person as a lifetime participant.

In the second dispute, the Assessment Panel found that the injured person was not eligible for lifetime participation, which was in agreement with the Authority's original decision. This means that from the two disputes about eligibility that have been resolved, one dispute confirmed the Authority's decision and the other dispute overturned the decision.

Disputes about treatment and care needs

The Authority has resolved nine disputes about participants' treatment and care needs by referral to an external dispute assessor. These disputes about treatment and care needs were in relation to the following issues:

- attendant care - the level of attendant care that is reasonable and necessary and the level of attendant care related to the motor accident;
- hydrotherapy treatment;
- equipment (footwear, bicycle, sporting wheelchair);
- vocational courses;
- home modifications; and
- surgery- whether proposed surgery was related to the motor accident.

The outcomes of these disputes were:

- In 3 out of 9 disputes no treatment was allowed, which means that the requested item or service was not considered to be reasonable and necessary or that the item was not related to the motor vehicle accident. This indicates the dispute assessor's determination was in agreement with the Authority's decision not to approve the requested item or service.
- In 1 dispute the dispute assessor's determination was that some, but not all, of the treatment in dispute was found to be reasonable and necessary.
- In 4 out of 9 disputes resolved, the decision of the dispute assessor was that the item was reasonable and necessary, which overturned the Authority's decision not to approve the requested item or service.

In most cases where the Authority's decision was overturned, the dispute assessor obtained additional information such as an external opinion or assessment. This information would have altered the Authority's original decision about approval of the item or service had that information been available to the Authority at the time of the decision.

The Committee should note that disputes are resolved on a case by case basis and issues are often managed informally with participants and their treating health teams so as to maintain relationships. For example, in situations where the Authority has not approved an item or service on the basis that the supporting information was not provided by the service provider submitting the request, the Authority has assisted in obtaining the information or assessments on occasion to ensure that the participant is not disadvantaged.

QUESTION 3

The Hon. JOHN AJAKA: If a participant is successful in their appeal are their legal costs fully recoverable? Is there a provision for costs?

RESPONSE

Legal costs are recoverable for disputes about legal issues, that is, whether a motor accident or motor vehicle is covered by the Scheme. Legal costs are not recoverable for other types of disputes because sections 18 and 29 of the *Motor Accidents Lifetime Care and Support Act 2006* state that legal costs are not payable by the Authority for disputes about eligibility and disputes about treatment and care needs. These are decisions about medical or clinical issues, not legal issues. For example, has the injured person sustained a brain injury that meets the eligibility criteria, whether the injured person has a permanent neurological deficit, or whether a participant requires physiotherapy.

QUESTION 4

The Hon. JOHN AJAKA: If a participant wants to instruct lawyers to assist, he or she must meet their own costs?

RESPONSE

See response to question 3 above. Participants are welcome to instruct lawyers to assist with disputes however the Authority is only able to pay costs for disputes about legal issues (whether a motor accident or motor vehicle is covered by the Scheme). For participants who have a CTP claim, their legal representative may be involved in assisting with their CTP claim entitlements.

One of the two disputes about eligibility to the Scheme that has been resolved was received from a participant with a brain injury who did not have legal representation. This participant also declined the assistance of an independent advocate or any other form of assistance or support during the process of dispute resolution when this was offered to him. Feedback from this participant during the disputes process

was that he found the process easy to follow and he stated that he found the Authority's letters and phone calls about the dispute easy to understand.

QUESTION 5

The Hon. DAVID CLARKE: Are there circumstances where they may require legal assistance because of the complexity of the appeal?

RESPONSE

The Authority's experience is that disputes about treatment and care needs do not require legal assistance due to their complexity. Whilst every situation is different, generally the Authority does not consider it necessary for a participant to seek legal assistance and pay legal costs for a dispute about hydrotherapy or speech therapy, for example, which can be resolved without legal assistance.

Regardless of the type of dispute, the Authority provides individualised assistance to participants throughout the disputes process, in the form of letters, phone calls and face to face meetings (as required) so that the participant knows the steps involved in the disputes process and what will happen next. The Authority also encourages participants to contact an independent advocate.

Disputes about eligibility to the Scheme are about whether an injured person meets the injury eligibility criteria. These disputes have the potential to be complex. However, the Authority is able to provide individualised assistance about the process as outlined above.