

Accident Compensation payment backdated but delay to repay

Legislation	Ombudsmen Act 1975, Accident Compensation Act 1972, Accident Compensation Act 1982
Agency	Accident Compensation Corporation
Ombudsman	Mel Smith
Case number(s)	C7408
Date	2003

ACC claimant originally declined attendant care payment and review of decision found that claimant was entitled to payments and they should be backdated to 1983—ACC accepted review decision but payments not forthcoming. Claimant’s family complained to Ombudsman and ACC explained it was in the process of calculating amount owed and expected negotiations to begin shortly—Ombudsman kept informed on progress—meetings between ACC and claimant’s family occurred with final amount calculated and preparations made for payment to be forwarded upon appointment of claimant’s property manager—Ombudsman discontinued enquiries

A man sustained an injury that was diagnosed as a hernia in 1983. He was admitted to hospital for an operation, during which he suffered a cardiac arrest. Cerebral anoxia occurred and this resulted in permanent brain damage. In July 1985 the Accident Compensation Corporation (ACC) decided the man was entitled to weekly compensation as a result of medical misadventure. A medical certificate was obtained in November that year stating that there had been ‘...no improvement in mental or physical state. He has been unfit for duties from ... October 1983 when he suffered cardiac arrest during general anaesthesia.’ For the next 10 years the man stayed in a hospital psychiatric ward several hours’ drive from his home. He was allowed to go home on weekend leave and this required his wife to make a weekly trip to the hospital to bring him home. In 1995 the family arranged for him to be moved to a home providing supervision and support services.

Various ACC entitlements were paid to the man over the years but none related to attendant care payments. In 2000 a claim was made for this payment and the man underwent a

Comprehensive Needs Assessment. While this found that the man was very seriously injured, ACC did not consider he met the requirements of the Accident Compensation Act 1972 (AC Act 1972) or the Accident Compensation Act 1982 (AC Act 1982) for attendant care, and the claim was declined. The claimant's daughter and agent sought a review of this decision. As a result, the original decision was overturned and it was recommended under section 102(9) of the AC Act 1982 *'that payment of compensation for attendant care be made from the date of [the claimant's] discharge from hospital until the present.'* ACC confirmed its acceptance of the recommendation and advised the claimant that it would now review the files to determine the amount of compensation to be awarded, following which a settlement offer would be made.

However, six months later the claimant had not received any indication as to when payment would be forthcoming. The claimant's family approached the Ombudsman to complain about the failure of ACC to comply with its obligations under both present and past legislation.

The Ombudsman wrote to ACC notifying it of his intention to investigate whether ACC had failed to:

- pay attendant care since the medical misadventure occurred in 1983;
- advise the family of their entitlements to attendant care and reimbursement for various expenses they had incurred to give the claimant appropriate care;
- give an adequate explanation as to why payments for attendant care and other expenses were not made;
- acknowledge the need for 100 percent attendant care which ultimately led to the decision to decline the claim for compensation under section 80(3) of the AC Act 1982; and
- give sufficient information to enable the family to ascertain if the claimant had received all his periodical entitlements.

The Ombudsman sought confirmation as to whether ACC, in accordance with the assurance already given to the family, would now pay the backdated attendant care compensation to the date of the misadventure in 1983.

In response, ACC advised that to qualify for backdated attendant care payment a claimant must meet the strict requirements of section 121(3) of the Accident Compensation Act 1972 or section 80(3) of the Accident Compensation Act 1982. The claimant must be shown to require 'constant personal attention'. The High Court had interpreted this as meaning that a person needs care of a personal nature 24 hours per day. ACC said that, after a careful review of the medical and other information held by ACC, it did not believe that the claimant, although very seriously injured, met this threshold of requiring constant personal attention. As a result, the initial claim made on his behalf was declined. However, the review of this decision saw it overturned and ACC accepted the subsequent recommendation that payment for compensation for attendant care be made from the date of the claimant's discharge from hospital until the present. Part of the recommendation was that ACC enter into negotiations with the family to reach agreement about the amount of compensation to be awarded to the

claimant in accordance with section 80(3) of the 1982 Act. ACC said it was finalising preparations to enter into those discussions with the claimant's family. It accepted that the process had taken longer than necessary but it anticipated that it would be ready to begin negotiations about the nature of any settlement shortly.

The Ombudsman acknowledged this and asked that he be kept informed as to developments so that he could ensure that the family's complaints were being appropriately considered by ACC.

Six weeks later the family confirmed that ACC had been in contact on several occasions and that they had been provided with a detailed calculation of backdated payment for the period from October 1983 to November 2002. This was to be paid to the claimant's property manager once one was appointed under the Protection of Personal and Property Rights Act 1988.

ACC provided the Ombudsman with a supplementary report on the developments and payment of the backdated attendant care. The Ombudsman was satisfied that no further action on his part was required and he discontinued his investigation.

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