

Ministry of Health unreasonably disallowed visiting Australian resident access to publicly funded health services

Legislation	Ombudsmen Act 1975, Health Benefits (Reciprocity with Australia) Act 1999
Agency	Ministry of Health
Ombudsman	Leo Donnelly
Case number(s)	458017
Date	March 2018

Whether the Ministry of Health was unreasonable to determine that medical treatment obtained by a visitor to New Zealand was not ‘immediately necessary’ and therefore not covered by reciprocal health agreement with Australia – Ombudsman considered the Ministry of Health erred – complaint sustained

The complainant was an Australian resident and temporary visitor to New Zealand when he sought emergency medical treatment. Funding for this was declined by the Ministry of Health (the Ministry) which considered that the complainant was not eligible for publicly funded health services in New Zealand. The determination was made under New Zealand’s reciprocal health agreement with Australia, as enacted in the Health Benefits (Reciprocity with Australia) Act 1999. This provided that Australian residents on a temporary visit are entitled to ‘*such medical treatment as is clinically necessary for the diagnosis, alleviation or care of the condition requiring treatment, on terms no less favourable*’ than a resident, where in the ‘*opinion of the provider of [that] medical treatment,*’ immediately necessary medical treatment is required.

It falls to the medical provider to determine whether the treatment provided was immediately necessary. In this case, the clinician who provided the treatment did not state a view as to whether he considered the treatment to be immediately necessary. In this situation, the circumstances in which the complainant presented to the Emergency Department were relevant to determining whether the treatment was immediately necessary.

The Ombudsman was of the view that the information available supported a conclusion that the medical treatment the complainant received appeared more likely than not to have been immediately necessary. It was clear that the complainant had a medical condition requiring

alleviation (hypertension), had been without medication for this condition for several days, and that his blood pressure reading was high. The complainant had consulted a chemist, who advised that he should seek immediate medical attention as he was at risk of having a heart attack or stroke. Consequently, the complainant considered he was at serious risk and sought medical intervention. While the outcome of this visit was for the complainant to receive a repeat prescription, in the absence of a record of the medical provider's opinion as to whether the treatment was immediately necessary, it was the Ombudsman's view that the circumstances suggested that it was.

The Ministry of Health accepted the Ombudsman's view that the complainant's medical treatment was more likely than not to have been immediately necessary. The Ministry advised the complainant that it had reconsidered its decision on his eligibility and considered that the treatment he received met the criteria for public funding under the reciprocal agreement.

Given that the Ministry revised its decision on the complainant's eligibility for public funding, the Ombudsman did not make any recommendations. The Ministry advised the Ombudsman that it intended to engage with healthAlliance (a Government agency working in partnership with DHBs) to discuss the application of the reciprocal agreement in light of the Ombudsman's recent decisions in this regard.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.