

# AAT Ruling — Reasonable and necessary supports, related to the disability considered

In order for a support to be funded under an NDIS plan, it must meet the 'reasonable and necessary' criteria in relation to the disability that the person used to gain access to the NDIS.

A recent case before the Administrative Appeals Tribunal (AAT) – [VXDY and the National Disability Insurance Agency \(the NDIA\)](#) – helps us to understand how requests for funding supports within a plan are considered in line with the reasonable and necessary criteria.

## The case

VXDY, an NDIS participant with psychosocial disability, applied to the tribunal for a review of the NDIS decision regarding funding for some of his requested supports.

The applicant represented himself and gave evidence at the hearing regarding his five requested supports, namely:

- Access to a sex worker
- Physiotherapy
- Podiatry
- Remedial massage therapy
- Domestic cleaning and yard maintenance

During the review process, the applicant also requested access to a dietician, physiotherapy for a shoulder injury and self-management of his support coordination. During the AAT proceedings, he withdrew his claim for domestic cleaning and yard maintenance, and his plan was remitted to include self-management for support coordination and access to a dietician. The subsequent hearing, therefore, considered four requested supports: access to a sex worker, podiatry, remedial massage and physiotherapy.

VXDY had identified the following goals in his 2022 plan:

- Short term: to attend appointments and manage his overall health and wellbeing and improve his capacity to engage in social and recreational activities with support*
- Medium to long term: to 'experience sexual expression, in the form of using escorts and sex workers to enable better sexual experiences.'*

## The evidence

VXDY's statement of lived experience indicated that he lived with a range of health and mental health conditions in addition to difficulties maintaining intimate relationships. He does not have any informal supports and struggles to cook and take care of his home. To cope with his mental health issues, he has turned to food, and as a result, has issues with his weight.

In the hearing, VXDY confirmed that he uses disability-friendly sex workers on average three times per week, taking Viagra prior to the visits.

In relation to the podiatry, monthly visits were his preferred option, as he preferred a professional, rather than a support worker, to cut his nails given the problems he had experienced in the past.



Medical witnesses included a forensic psychologist and a consultant forensic psychiatrist, who provided conflicting diagnoses and indicated that there was no evidence of specific or enduring sexual dysfunction in VXDY, and that clinical guidelines do not support the use of sexual services for any mental condition. In relation to the podiatry, it had been included in VXDY's mental health care plan since 2018 as a preventative measure for his diabetes.

The medical evidence for remedial massage related to muscle soreness from exercise for maintaining diabetes control. However, it was later amended to emphasise exercise for maintaining mental health. Additionally, podiatry was deemed necessary to support exercise and contribute to VXDY's overall mental well-being.

Finally, a report from 2023 stated that physiotherapy would be beneficial for a long-standing shoulder injury.

## The ruling

When delivering their findings, the ATT noted rule 5.1 in the [Supports for Participants Rules](#), which states that:

A support will not be provided or funded under the NDIS if it is not related to the participant's disability, or it relates to day-to-day living costs that are not attributable to a participant's disability support needs.

Further, the AAT considered the following rules to decide if a support should be funded:

- rule 7.17: that the NDIS is responsible for support needs *"additional to the needs of all Australians and specifically required as a result of a person's functional impairment"*
- rule 7.4: the NDIS will be responsible for supports delivered by health practitioners, where they are *"directly related to a functional impairment and integrally linked to the care and support a person needs to live in the community and participate in education and employment"*
- rule 7.5: the NDIS will not be responsible for *"clinical treatment of health conditions, including ongoing or chronic health conditions"*

In the summary, the AAT ruled that the following requested supports would not be funded:

- Podiatry, stating that there was no evidence that VXDY had a disability of any kind related directly to his diabetes or his feet
- Remedial massage, stating that there was limited evidence on the need, or benefits arising from remedial massage, which was not related to VXDY's disability
- Physiotherapy, stating that shoulder injury does not cause any disability, and that rule 7.5 excludes funding for clinical treatments of ongoing health conditions
- Sex worker, stating that mixed evidence was provided on the nature, origin and character of VXDY's sexual functioning.

## What can we learn from this case?

Although it is an NDIS objective to fund supports to allow people with disability to meet their stated goals, they must still demonstrate that the requested supports meet all of the reasonable and necessary criteria. The NDIS won't pay for supports not directly related to people's disability or for those supports that should be otherwise met by the health system.

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