



Commonly used items – Lessons from the AAT

A recent case before the AAT – Ronald Rooney and the NDIS – sheds light on the concept of ‘substantially reduced capacity’ as it relates to ‘commonly used’ assistive equipment.

You can [read the full description of the case](#) online; we have provided a summary below.

The case

Ronald Rooney suffered a very bad knee injury, requiring 11 weeks in hospital, and resulting in a permanently compromised knee. He applied to the NDIS, requesting a motorised mobility scooter to enable him to travel, shop and play golf. He was declined access and applied to the AAT to review this decision.

Mr Rooney is able to:

- Walk between 5 and 15 metres unaided
- Walk up to 369 metres in 13 minutes using elbow crutches
- Drive for up to one hour
- Play nine holes of golf (using a golf buggy)
- Undertake a reasonable exercise program at the gym
- Move around his house and carry out the tasks of daily life largely unassisted.

An interesting aspect of this ruling is the unpacking of section 5.8 of the ‘Becoming a Participant’ rules, and the question of ‘When does an impairment result in substantially reduced functional capacity?’, which is one of the criteria for entry to the NDIS.

Section 5.8 states that ‘An impairment results in a substantially reduced functional capacity to undertake one or more of the relevant activities ... if the result is that the person is unable to participate effectively or completely in the activity ... without assistive technology, equipment (other than commonly used items such as glasses) or home modifications’.

Mr Rooney contends that his crutches should not be considered ‘commonly used items’ as they are used by less than 1% of the population.

The AAT concluded that whether an item is ‘commonly used’ is contextual to the disability concerned, and should also take into account whether the item:

- Is generally accessible
- Can be used without the need for complex or specialised customisation or installation
- Is relatively simple to use
- Is relatively inexpensive.



The decision referred to the example of glasses. Glasses are dispensed only with a prescription, and many people needing glasses are significantly handicapped when not wearing them. Therefore, the fact that one relies heavily on an assistive item is not enough to demonstrate significantly reduced functional capacity.

The AAT concluded that Mr Rooney's crutches should be considered a commonly used item because they :

- Are relatively inexpensive (around \$80 a pair)
- Are readily available to purchase
- Require no particular customisation
- Are widely used by people requiring additional support with their mobility.

The tribunal also went into some detail about what constitutes functional capacity to mobilise, quoting a [previous AAT ruling](#): 'A person has functional capacity if they can move about their home, get in and out of a bed or a chair, and mobilise in the community'. Movement in the home does not need to be achieved by walking; it does not need to be far (50 metres is noted as a reasonable distance); and one does not need to be able to access local services to be considered mobile – as this would differ depending on where one lives. Driving a car indicates an ability to mobilise in the community.

Using his crutches and his car, Mr Rooney is able to undertake all activities identified by him (e.g. socialising at golf) without assistance from his wife or a support worker, albeit with greater difficulty than before his injury.

Therefore, the AAT concluded that Mr Rooney's impairment does not result in 'substantially reduced functional capacity'.

Furthermore, the AAT concluded that the Mr Rooney is unlikely to require support under the NDIS for his lifetime, because there are other mechanisms more appropriate than the NDIS for providing him the support he needs, e.g. the Victorian Aids and Equipment Program, and the Australian Government Aged Care 'Home Care Package'.

What can we learn from this case?

This case provides further clarification on when an impairment may be considered to lead to substantially reduced functional capacity.

If a person can participate to some extent in most activities – even if this is achieved by using an assistive aid – they are unlikely to be able to access the NDIS.

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