



Everyday costs – Lessons from the AAT

A recent case before the AAT – Michael Deayton and the NDIS – gives us some interesting insights into what are ‘reasonable and necessary’ NDIS supports and what are considered ‘everyday costs’.

It also offers insights into the interpretation of the intergovernmental agreement that people with pre-existing disability supports should not be disadvantaged in transitioning to the NDIS.

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

The case

Michael Deayton is an NDIS participant who joined the scheme in early 2018; however, he declined to use the supports funded in his plan due to concerns about his transition from a Victorian Disability Services Individual Support Package (ISP).

Mr Deayton suffers from a rare, genetic disorder called Nemaline Myopathy, which causes muscle weakness and affects his mobility. He is dependent on a wheelchair and has a vehicle fitted with a wheelchair lift. His goals are to maintain his current level of mobility and independence, to maintain and enhance his social networks, and to have more opportunities to access community activities and participate in sporting and recreational activities.

The NDIA had declined to include in his plan a number of supports that had been funded by previous systems, including his Individual Support Package, on the basis that they were everyday expenses incurred by all Australians, or otherwise did not meet the requirements of the NDIS Act.

These supports were:

- **An RACV Total Care Package**
Mr Deayton contended that the costs of roadside assistance and car insurance are more expensive for a vehicle with a hydraulic wheelchair lift.
- **Electricity costs**
Mr Deayton needs to run his air conditioner/heater and tumble dryer more as a result of his disability.
- **Disability specific accommodation and airline tickets for a companion**
This was requested for a support person to join him when driving or travelling long distances.
- **Part payment of a Foxtel subscription**
Mr Deayton’s hobby is horse racing and he is a member of a syndicate, and has good friendships and social networks in the sport – he cannot always attend the races in person because of his disability.
- **Internet connection**
Mr Deayton spends a large part of his day online and socialising via Facebook – this is helpful for his wellbeing as his capacity to travel outdoors and integrate with the community is restricted.



In his argument, Mr Deayton stated:

'All items declined on my NDIS plan were previously approved on my state funded ISP... as there was an agreement between the Federal and State Governments to "ensure that people with disability are not disadvantaged by the transition to the full roll out of the NDIS", then there is no need to go through all the information that has already been decided upon under relevant legislation.'

He also stated that 'people with a disability have the same right as other members of society to determine their own best interests, and to exercise choice and control.'

Mr Deayton relied on these points and did not offer clear evidence showing that the requested supports relate to his disability or meet the 'reasonable and necessary' criteria.

The decision

In this case, the AAT ruled in favour of the NDIS – the requested supports will not be included in Mr Deayton's plan at this time.

However, this was not *necessarily* because the tribunal thought these supports should not be funded, but largely because it did not accept Mr Deayton's argument that previously-state-funded supports should be automatically included in an NDIS plan.

The tribunal stated that 'the absence of a robust evidence base overall has left important matters unable to be resolved to an appropriate standard of satisfaction.'

What can we learn from this case?

Mr Deayton essentially argued that the Intergovernmental Agreement principle of 'no disadvantage' means that individual supports previously funded by state governments should be included in an NDIS plan without the need for new evidence showing that they meet section 34 of the NDIS Act.

The NDIA submitted in response that the concept of no disadvantage 'did not have statutory force, and that any such concept would not apply to individual supports, but to assessing the whole package of supports'. That is, it argued that the NDIS is not obliged to fund specific supports previously funded by a state.

From this we can learn two things:

- The NDIS is unlikely to provide a specific support simply because it has been provided in the past.
- When requesting a support to be included in a plan, sufficient evidence must be offered to show the underlying need for the support, as well as that it meets the 'reasonable and necessary' criteria – especially if it could be viewed as an everyday cost.

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