

IN THE CIVIL AND ADMINISTRATIVE TRIBUNAL

2018

(Applicant)

(Respondent)

Applicant's Document which identifies those aspects of the complaint which relate solely to Provider

1. On date 2018 the Tribunal ordered me to file this document which identifies those aspects of the complaint which relate solely to Provider.
2. I am the applicant. I have multiple congenital disabling conditions including spastic diplegia, severely dislocated hips, ataxia and related conditions.
3. I have been a participant in the National Disability Insurance Scheme (NDIS) since September 2015.
4. I have had NDIS Plans in 2015(\$39,678) and 2016(\$67,518) which were facilitated by planners from the National Disability Insurance Agency (NDIA). Those plans provided inadequate 'reasonable and necessary supports'. Just because these funds were allocated did not mean that they reached me. The extra \$23,000 allocated as part of assistive technology in my 2016 plan miraculously appeared and then just as miraculously disappeared again some time later.
5. I understand that around 29 May 2017 the NDIA contracted Provider to undertake LAC (Local Area Co-ordination) functions, including conducting NDIS Plan interviews* in City . Refer to attachment A for an explanation of LAC functions.
6. Around 9 September 2017 I was contacted by worker from Provider about my telephone interview for my 2017-2018 Plan. She asked me what I did with the funding in my previous Plan.
7. At the time I was in very poor health: still recovering from a three week severe bout of the flu caught in August, in addition to impending major painful left hip revision surgery. I was very concerned that I was still so weak from this bout of flu that I could not go ahead with the urgently required hip surgery.
8. As far as I can recall, during the conversation, I told Worker that I was about to have major painful surgery on my left hip and that I was not feeling well. I was completely taken aback by Worker's first question about what I had spent my funds on. I felt that Worker was reading from a pre-designed script, which was directed to achieving certain responses in order to decrease my overall funding and also remove my previously allocated automated transport funds (\$160pf)
9. I told Worker that I was trying to be as independent as possible to save the NDIS money. I drive so that I don't have to use taxis which are unaffordable for me on the DSP. I also do my own cooking, shopping and washing, which also saves the NDIS money. Requiring domestic assistance with these tasks would cost the Ndis several hundred dollars a week.
10. My poverty makes it impossible to pay the significant costs of running my car and occasional taxi use (when I am unable to drive myself for example to the doctor, dentist appointments etc., especially since I have been on the Disability Support Pension since February 1997. I did not feel that Worker understood the implications of this for my disabilities/transport support funding and that my poor financial situation is solely the result of my disabilities.

11. Worker then asked me if I had made new friends. I felt this question was personally offensive and inappropriate as well as an invasion of my privacy and humiliating and degrading. It appeared to me that Worker's question reflected a still widely held negative view of people with disabilities as being socially inept, lacking in social skills, unintelligent and so having no or few friends. The image of someone with cerebral palsy, with unintelligible speech, drooling in a wheelchair comes to mind.

It is critical for able bodied people, especially those in the Ndis, to examine their own negative hatreds, judgements and beliefs about disability, something which they fear.(Why????)

Critical reflection, critical thinking is an essential skill taught in allied health/medical training.

Question: Would you like to have a disability? If not, then why not? (hint: what would that actually mean for your life?)

12. I asked Worker about the automated transport allowance I had been receiving since September 2015 (\$160 per fortnight) and she replied that the NDIS does not provide for transport at all. This was extremely disturbing as this was evidence of Worker's complete ignorance, lack of knowledge about the most important basic facts about the Ndis : funding supports, type of supports funded, ..its legislation, functions, funding, guidelines...

13. I asked her what her qualifications were, and she said that she did not have to tell me. I found this extremely disturbing. It is my right to know 1) exactly what role /function Worker had been assigned to perform: was she performing the role of a planner? If so, was she appropriately qualified to do so?

14. I expressed my shock at her questions, and she said I could appeal if I wasn't happy.

15. I could not cope with any more of Worker's questions as I was in pain and very stressed about having to have painful surgery in the following two weeks.

Throughout this interview, from the commencement onwards, it became more and more apparent that I was dealing with an unqualified, quite uneducated young person, untrained in how to deal correctly with vulnerable people with disabilities, lacking in any knowledge about the reality of the lives of people with disabilities, and lacking even the most basic knowledge about the Ndis and who appeared to be acting in a planner role- a role that requires formal qualifications/lived experience of a disability.

16. I believe that Worker treated me unfavourably because of my disabilities in how she questioned me and responded to me in the Planning interview. I believe that I was treated unfavourably because Worker appeared to understand very little about my disabilities and my disability related support needs. I perceived her to have a negative and accusatory attitude to me from what she said and the tone of her voice.

17. I also believe that Worker failed to make reasonable adjustments for the fact that I was in pain during the interview. Worker did not offer to pace the interview or provide any breaks or to reschedule the interview.

18. Following this interview with Worker I received my new Plan around 18 September 2017 which provided very minimal funding of \$11,048 in total ,with no automated Transport Allowance which I had previously received from Sept 2015-Sept 2016and Sept 2016-Sept 2017. No

transparency of decision making, no acceptable explanations given. I was not given the chance, opportunity to see a draft of this plan.

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19. I am an educated and intelligent person who has a law degree and a partially completed Master's degree in Social Work.

20. Given this, I am certain that I far more qualified and capable than any Provider employee regarding 1) knowledge about my own disabilities and 2) what my disability related supports needs are 3) knowledge of the Ndis legislation, policies, guidelines 4) Human rights legislation, both local and international, with which the NDIS Act, guidelines, policies comply .

21. Therefore I know that I do not need an intermediary such as Provider , less capable, less educated less knowledgeable than me to "help me navigate the NDIS," especially given their lack of basic knowledge about the Ndis legislation, functions, operating policies and guidelines, recent court rulings...

22. I have refused to have any more contact with Provider since receiving this plan on 15 Sept 2017 for the reasons above.

Attachment A

Attachment- notes to assist with understanding the role of Provider, LAC, Ndis legislation, policies, guidelines in relation to transport.

Numbers refer to the relevant point in my statement.

5. LAC functions.

<https://www.feroscare.com.au/feros-stories/articles/feros-care-officially-launches-City-ndis-office>

"In partnership with the National Disability Insurance Agency, the role of Provider Local Area Coordinators is to link people with disability to the NDIS, provide information about community and mainstream supports available in the region and build the capacity of the community to be inclusive of people with disability.

Local Area Coordinators are appointed by the NDIA to assist participants in applying for the NDIS; building their plans, providing detailed information about their plan, how to access and spend their funds; connecting them to mainstream and community supports; connecting participants to local services; and hosting regular information sessions."

The LAC is also responsible for building capacity in the community to include people with disabilities.

11. No Disadvantage and the NDIS - National Disability Insurance Scheme

https://www.ndis.gov.au/html/sites/default/files/documents/factsheet_no_disadvantage_and_the_NDIS_easy_english_text_only.pdf

www.ndis.gov.au/document/mobility-allowance-and-ndis

11." Disadvantage means to make worse off. You might start to get disability support from the NDIS soon. Your new disability services might be different from your old disability services. No disadvantage means the NDIS will make sure you are no worse off. This fact sheet is also about reasonable and necessary supports.

Loss of my Mobility Allowance

Legislation The Mobility Allowance and the Ndis:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd046

" a flat rate of Mobility Allowance is inconsistent with the individualised approach of the NDIS. Where people were entitled to a funded package in the NDIS, they would not be eligible for the Mobility Allowance, but instead would have their reasonable assessed mobility needs met by the NDIS (but they would retain the health care card were they to meet the Mobility Allowance eligibility criteria). This change would provide more funding for necessary transport requirements. Others outside the NDIS would still get the Mobility Allowance if they were eligible for it." [23]

Federal Court ruling on transport funding by the NDIS

" the NDIS Act does not refer to contributions from the participant towards the cost of supports."
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Judge Mortimer's reasoning included that the imperative language of the NDIS Act (specifically, the words 'will be funded' in s. 33(2)(b)) pointed to the fact the scheme intends that supports will be fully funded – and that the Act does not refer to contributions from the participant towards the cost of supports.

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The Federal Court has today ruled that laws governing the National Disability Insurance Scheme (NDIS) do not allow the government to only partially fund the supports that people with a disability need to help them lead ordinary lives.

Not fully funding NDIS supports shifts the burden onto families and undermines the intention of the scheme.'

10. 'People with a disability, their families and carers should not be forced to bear a financial burden because of the way the National Disability Insurance Agency makes funding decisions.'

The NDIS was introduced on the promise that people wouldn't be "worse off"

Dan Nicholson, Executive Director Civil Justice, Access and Equity:

"We also made a submission to the Productivity Commission's inquiry into NDIS costs. In that submission, we said that not all participants are benefiting from the scheme and that this is eroding the intentions of scheme.

We encourage participants to appeal against the Agency's stance when we believe it conflicts with the spirit of the legislation.

Internal policy documents at the NDIA, put before the tribunal, said transport was to be capped at \$6,000, and said all decisions should be made with an eye to the financial sustainability of the fund.

It may still be incumbent on participants, with the support of service providers, to challenge the NDIA if they are not receiving full funding for transport. This is why, as we have said before at DSC, it is absolutely essential that all service providers keep up to date with the AAT rulings. They are constantly encouraging us to reset our expectations."

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Although the phrase "reasonable and necessary supports" is used throughout the legislative scheme, including in the objects and principles provisions, it is not defined. Its meaning can be derived from the context in which it is used, especially in my opinion s 4(11), which sets out what reasonable and necessary supports should enable and empower people with a disability to do, read with s 14 which sets out the purposes for which funding for reasonable and necessary supports is provided. [para 41]"

12. The Transport Development and Solutions Alliance (TDSA)

www.tdsa.org.au/wp-content/uploads/2011/06/TDSA-submission-and-cover-Certified-1-for-printing.pdf

"NDIS participants entering into the scheme are not appropriately informed of and funded for transport enabling components of their reasonable and necessary supports in their NDIS plans," the submission said.

My experience-the loss of transport funds after my planning review interview with Worker.

The adverse impact of this :

"This denies and restricts participants' access to the community, work, education, medical appointments... curtails their independence, increases their social isolation and significantly impacts on their quality of life."

The submission outlined how inequitable NDIS transport funding was having a critically negative effect on participants as well as the overall success of the scheme.

transport was the key enabler for NDIS participant's goals.

"I think transport is essential to the achievement of the NDIS's fundamental aim – which is consumer choice and control and setting [personal] life goals," Leigh said.

"People aren't really aware that there is an ability to discuss transport associated with any core supports and also additional access to transport money to achieve core support [listed activities]," she said.

"I think the National Disability Insurance Agency has their way of handling it, but it's a policy area for them that's inconsistent in terms of its decision making and it's inconsistent in terms of how assessors deal with it on an individual by individual basis.

Leigh said participants were having to "do more with less", noting that people received less under the current model than they did under the previous Centrelink mobility allowance system.

"They're actually paying out of their own pocket, having to sometimes pick up the cost of transport. Surely that's part of getting to an activity?" she said.

TDSA's submission said that if an NDIS participant did not specifically ask for transport costs to be included as a component of funded core supports, then NDIA planners accepted no responsibility to inform, educate or guide participants on their rights for it to be considered.

"In some instances it was not made clear to participants and their carers that the transport services currently received would not be automatically ongoing and that their transport needs would have to be included in their plans," the submission said.

TDSA said that the current lack of awareness around transport funding options meant that all NDIS promises enshrined in its legislation were not being fulfilled.

"NDIS participants entering into the scheme are not appropriately informed of and funded for transport enabling components of their reasonable and necessary supports in their NDIS plans," the submission said.

"This denies and restricts participants' access to the community, work, education, medical appointments... curtails their independence, increases their social isolation and significantly impacts on their quality of life.

NDIS Operational guideline transport

<https://www.ndis.gov.au/Operational-Guideline/including-12.html>

Before including any transport support in a participant's plan, the NDIA must also be satisfied that the support will assist the participant to pursue their goals, objectives and aspirations.

In addition, the NDIA must take into account what is reasonable for families, carers, informal networks and the community to provide. In relation to transport, this threshold consideration may be different for participants who are children as compared to participants who are adults.

When considering whether a proposed transport support represents value for money, the NDIA will compare the costs of transport to the overall costs of alternative supports which may provide a similar level of independence or reduce a participant's future needs for supports.

12. <http://www.tdsa.org.au/wp-content/uploads/2018/08/Manifesto-final-1.pdf>

Submission for Consistent, Fair and Equitable Transport ... - ...

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“The Australian Parliament’s Joint Standing Committee on the NDIS has previously taken in evidence of real-life examples of NDIS participants’ experiences with NDIS many of these examples are illustrative of the inconsistency, unfairness and inequity of transport funding in core supports funded within NDIS plans resulting in denial, restriction or impossibility of NDIS participants’ access to and participation in social and economic opportunities.

There is extreme variability in NDIA planner’s knowledge of the NDIS legislation, rules, and NDIA policies and operating guidelines in order to make consistent fair and equitable decisions on transport as enabler of core supports in NDIS participants’ plans. Some NDIA planners are well-versed and experienced but many NDIA planners fall well short of being consistent, fair and equitable in their decisions. The most notable of these inconsistencies, unfairness and inequities is that NDIS participants are not provided with any/sufficient information on their legal rights to transport costs of enabling core supports.”

Transport THE enabler for NDIS participant’s goals

Issues

1. NDIS participants are losing out on choice and control of their goals and plans.
2. Inflexible and inconsistent application of national policy determination that transport included in core supports can be used flexibly by the participant
3. Disparity both across Australia and within a NDIA region over time in how ‘transport’ is ‘handled’ within the participant planning meeting and subsequently when implementing the plan.

Joint Senate Standing Committee NDIS Submission 47

TDSA April 2018

<http://www.tdsa.org.au/wp-content/uploads/2011/06/TDSA-submission-and-cover-Certified-1-for-printing.pdf>

“the enabling role of transport to be included in participants’ NDIS plans and goals for full and IN THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

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“The Australian Parliament’s Joint Standing Committee on the NDIS has previously taken in evidence of real-life examples of NDIS participants’ experiences with NDIS many of these examples are illustrative of the inconsistency, unfairness and inequity of transport funding in core supports funded within NDIS plans resulting in denial, restriction or impossibility of NDIS participants’ access to and participation in social and economic opportunities.

There is **extreme variability** in NDIA planner’s knowledge of the NDIS legislation, rules, and NDIA policies and operating guidelines in order to make consistent fair and equitable decisions on transport as enabler of core supports in NDIS participants’ plans. Some NDIA planners are well-versed and experienced but many NDIA planners fall well short of being consistent, fair and equitable in their decisions. The most notable of these inconsistencies, unfairness and inequities is that NDIS participants are not provided with any/sufficient information on **their legal rights to transport costs of enabling core supports.**”

Transport THE enabler for NDIS participant’s goals

Issues

1. NDIS participants are losing out on choice and control of their goals and plans.
2. Inflexible and inconsistent application of national policy determination that transport included in core supports can be used flexibly by the participant
3. Disparity both across Australia and within a NDIA region over time in how 'transport' is 'handled' within the participant planning meeting and subsequently when implementing the plan.

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<http://www.tdsa.org.au/wp-content/uploads/2011/06/TDSA-submission-and-cover-Certified-1-for-printing.pdf>

“the enabling role of transport to be included in participants’ NDIS plans and goals for full and effective participation and inclusion in society be immediately and specifically mandated in all NDIA operating guidelines, on-line and other communications, staff training, participants’ plan meetings, and participants’ funded plans.”

My summary

Breaches of your own legislation: failure to pay me automated transport funds fortnightly as legislated *(see below)

I used to receive the Mobility Allowance as an automated fortnightly payment before transitioning to the NDIS in Sept 2015.

I am unable to use public transport- see Medical evidence below.

Your own fact sheet states:

“Your NDIS plan will include any supports that the NDIS will fund, including any reasonable and necessary transport related funded supports.”.

My discriminatory NDIS plan breaches the NDIS legislation, makes a mockery of the stated aims and objectives of the NDIS it does NOT achieve ANY of the intended goals, outcomes for me.

Breaches of:

1)the NDIA’s promise/guarantee “that no participant will be worse off after joining the Scheme” but now I am financially worse off: however, now I am \$162pf out of pocket, financially worse off.

2) Ndis Fact sheet statement: :” We will call Centrelink and cancel your mobility allowance. This means you will not

get a mobility allowance anymore. The NDIS will pay for your mobility support.

“https://www.ndis.gov.au/html/sites/default/files/documents/factsheet_mobility_allowance_easy_english_text_only_august_2016.pdf

3) Legislation The Mobility Allowance and the Ndis:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd046 see below

- 4) of my human rights (DDA and UNCRPD,
- 5) my disability related need for transport assistance

1. The NDIS states that no participant will be worse off after joining the Scheme but now I am financially worse off: however, now I am \$162pf out of pocket, financially worse off.

When I joined the NDIS in September 2015, my mobility allowance from Centrelink was cut, but I received \$162 transport allowance from the Ndis as an automated payment.* see below

I continued to receive this from Sept 2016-Sept 2017.

In my new plan (5 December 2017) I receive no automated transported payments (162pf) as in my previous two plans. This is contrary to legislation:

*This is legislated:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd046

The Statement of Compatibility with Human Rights for the Bill further noted:

The changes in the current Bill were foreshadowed in the 2016–17 Budget measure to ‘provide continuity of support for recipients of the Mobility Allowance as the National Disability Insurance Scheme is rolled out and to revise the eligibility requirements’.[29]

The amendment to the mobility allowance provisions, so that an NDIS participant who, before joining the scheme, was receiving a mobility allowance is no longer eligible, is made on the basis that they will be receiving this level of support as part of their plan. This ensures the more efficient allocation of resources and, in some cases, there will be more funding allocated for NDIS participants who require assistance with transportation.[28]

1. Failure to provide me in my new plan 15 Sept 2017 and reviewed plan (5 Dec 2017) and with the same automated transport funds I had received in my previous two plans (Sept15-Sept 16) and Sept 16-Sept 17)

2. Incorrect decision that my car is not a disability related need-my planner yet again ignored my medical evidence that : due to my multiple disabling medical conditions I cannot use public transport nor afford taxis due to being on welfare(DSP) This makes me totally reliant on driving my car to undertake all activities outside my home: socio-economic and community participation, attending medical/dental appointments...

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