

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *NR v Department of Justice and Attorney-General* [2020]
QCAT 18

PARTIES: **NR**
(applicant)

v

**DEPARTMENT OF JUSTICE AND ATTORNEY-
GENERAL, VICTIM ASSIST QUEENSLAND**
(respondent)

APPLICATION NO/S: GAR046-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 22 January 2020

HEARING DATE: 20 January 2020

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS:

- 1. The decision of the Department of Justice and Attorney-General, Victim Assist Queensland made 21 December 2018 is confirmed.**
- 2. The publication of any information in these proceedings that could identify the applicant is prohibited.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – general
administrative review – where the applicant was granted
financial assistance under the *Victims of Crime Assistance
Act 2009* (Qld) – where the applicant sought a review of
grant decisions made by Victim Assist Queensland –
where the applicant sought an adjournment but
complained about delay – where the hearing proceeded in
the absence of the applicant – where the applicant had
failed to access funds allocated to her

Victims of Crime Assistance Act 2009 (Qld) s 37, s 39,
s 131, s 132

APPEARANCES &

REPRESENTATION:

Applicant: Self-represented
Respondent: B James, Legal Counsel of Victim Assist Queensland

REASONS FOR DECISION

- [1] Over the period 2016 through to mid-2017 NR suffered serious domestic violence at the hands of her former partner. They were living in a regional town at the time. It ended with serious violence with police attending.
- [2] NR moved into a woman's shelter and then on 20 September 2017 travelled to another city in another state and went to stay at a woman's refuge there.
- [3] On 13 October 2017 she applied for assistance from the Department of Justice and Attorney-General, Victim Assist Queensland (VAQ) under the provisions of the *Victims of Crime Assistance Act 2009 (Qld)* ('VCA Act'). NR was a primary victim of an act of violence and therefore eligible for grants of financial assistance.¹
- [4] Initially there was a grant of interim assistance made on 17 November 2017. It included paying for counselling fees to a value of \$1,200.00, costs of relocation and storage \$683.00, the replacement of a mobile telephone \$369.00 and security expenses (CCTV) of \$3,700.00.
- [5] On 28 February 2018 a general assessment of assistance was made. Special assistance of \$3,500.00 was granted, future counselling of \$5,000 allowed, the cost of past counselling payable in the sum of \$370.40, medical expenses of \$68.30, costs of relocation in the amount of \$192.87, storage costs of \$480.00 and legal expenses incurred, totalling \$500.00.
- [6] In June 2018 NR moved from the refuge to a house.
- [7] On 27 July 2018 an amended grant was made providing for additional costs of storage of \$873 and the cost for an alarm system of \$2,200.00.
- [8] On 14 November 2018 there was a further amended grant made providing special assistance of \$6,500.00, further counselling fees of \$5,000.00, medical expenses of \$3,800.00, relocation costs paid including crisis accommodation totalling \$4,400.00, payment for furniture to a value of \$7,000.00 and crockery and other minor items costing \$89.90.
- [9] NR was dissatisfied with that. She applied for internal review of the grant.
- [10] The internal review decision made 21 December 2018 confirmed the assessment to that date and concluded that no additional grants of financial assistance should be made. NR has applied to the tribunal for external review of the internal review decision.

¹ *Victims of Crime Assistance Act 2009* s 37.

- [11] As at 3 January 2019 the total amount of financial assistance granted NR was \$46,426.16.²
- [12] On 29 January 2019 NR applied to the tribunal for external review of the VAQ decision of 21 December 2018.
- [13] Her application is not entirely clear as to the issues about the grant she raises in dispute, however the following appear to be the matters she contests:
- (a) Counselling fees.
 - (b) Payment of motel receipts.
 - (c) Payment for myotherapy massage.
 - (d) Replacement cost of a laptop computer and printer.
 - (e) Clothing replacement.
 - (f) Payment of storage fees.

Hearing

- [14] The matter came on for hearing before me on 20 January 2020. NR had been directed to file material in support of her application before the hearing but failed to do so. At hearing she was contacted by telephone. She was of course residing interstate at the time. She stated that she wanted to adjourn the hearing. She said she was not fit to join in the proceedings. She also advised however that she might never be set to take part in a hearing. She most volubly complained about excessive delay on the part of VAQ in providing her with assistance to date.
- [15] Given she claimed delay in the matter of her grant was deeply distressing to her, given she had failed to file evidence in the matter to date, and given she was unable to say when or if she would ever be able to participate in a hearing, NR's application for adjournment was refused. NR refused to further participate in the hearing however and disconnected her telephone call. I continued the hearing in her absence.
- [16] VAQ filed a Statement of Reasons ('SOR') for the internal review decision. The SOR set out the reasons for the internal review decision and also provided a significant amount of documentation associated with the internal review decision and the decisions made previous to that. The SOR provided copies of correspondence received from NR.
- [17] The VAQ representatives were asked to comment upon the issues raised by NR in her application. They did. Relying on the issues discernible in the initiating application, and the material in the SOR together with the explanations offered by the representatives for VAQ, I determine the issues in complaint as follows.

Counselling fees

- [18] In her application NR refers to a support letter from her psychologist "*outlining appropriate level of funding for counselling according to her expert opinion.*" There is a letter attached to the application on letterhead from the psychologist dated 29 May 2018. In that letter the psychologist recommends treatment for post-traumatic

² Statement of Reasons at p. 247.

stress disorder ('PTSD'). She says in the correspondence that she is not aware of how many VAQ funded sessions had been used by NR. She also makes reference to a lack of funding for counselling sessions approved by VAQ and recommended additional psychological sessions.

- [19] She also recommended that NR receive funding for an initial assessment with a private psychiatrist and approximately four (4) follow-up sessions with a psychiatrist in 2018 and another four (4) in 2019.
- [20] By s 131 of the VCA Act the chief executive of VAQ may make and publish guidelines about the performance of the function or exercise of a power by assessors under the VCA Act. By s 132 the chief executive may approve a table of costs payable under the scheme.
- [21] Guideline 1 made and published by the chief executive pursuant to s 131 effective 1 December 2009 provides for the grant of financial assistance for counselling expenses. Item 5 of the Guideline states that VAQ supports an applicant's ability to choose a preferred counsellor and receive financial assistance in accordance with the published VAQ table of costs where the counsellor has the appropriate qualifications.
- [22] The chief executive has published a table of costs for the scheme effective 1 December 2009. Amongst other things, the guideline sets out the reasonable costs for counselling services and medical treatment. The table of costs provides that VAQ will reimburse the costs of medical treatment and counselling services for an eligible applicant at the current rate specified in the WorkCover Queensland schedule of fees.
- [23] NR has been granted counselling to the value of \$11,570.40. According to VAQ she has used less than half that grant and there is yet available an amount of \$8,950.00 for counselling. That grant is open and the funds accessible until 2023.
- [24] According to VAQ a grant of \$2,500.00 for medical assistance has also been made to cover the cost of a psychiatrist. This was based in part on the recommendations of the psychologist. It appears this grant has not as yet been utilised. It expires on 14 November 2020. It should be utilised.
- [25] The issue here perhaps is not so much the amount of the grant or that the grant did or did not extend to the cost of psychiatric services, but NR accessing the grant. Accessing the grant however remains a matter for NR to attend to. It is not part of the legislated responsibilities of VAQ to arrange for appointments.
- [26] The current grants seem more than adequate in the circumstances.

Payment of motel receipts

- [27] NR's complaint is that she submitted receipts for the cost of motel accommodation in the other State on 28 December 2018 totalling \$3,000.00 and they have not been paid. I note that was after the date of the internal review decision on 21 December 2018.
- [28] On 29 January 2019 VAQ paid NR \$2,811.00 for the costs of motel accommodation which was the total of all the receipts submitted by her to that date. There does not appear to be any other outstanding motel expenses.
- [29] No further payment for motel accommodation costs is due or warranted.

Payment for myotherapy massage

- [30] NR wants the costs for myotherapy massage paid by VAQ. She maintains her general practitioner has advised her to have that treatment. She says myotherapy is an appropriate treatment for PTSD, from which she suffers.
- [31] One issue raised by VAQ to resist payment for myotherapy massage is that VAQ maintains it lacks evidence of a medical or scientific basis and is therefore not a medical treatment able to be covered under a grant. The chief executive's Guideline 2 provides that medical treatment will be funded but it must be generally accepted as having a medical or scientific basis and should be supported by the applicant's treating health practitioner as treatments necessary as a direct result of the act of violence.³
- [32] NR says⁴ PTSD causes such significant stress that the body develops muscle pain called myofascial pain which can be treated with massage. She suggests myotherapists "*train via a Diploma or degree level*". On 1 November 2018 NR's treating general practitioner wrote that she suffered from severe PTSD with myofascial pain and that she would benefit medically from myotherapy sessions.
- [33] Regardless of the issue of scientific credibility, VAQ says it is bound by the limitations imposed by its table of costs guidelines. Those guidelines provide that VAQ will reimburse the costs of medical treatment and counselling services for an eligible applicant at the current rate specified in the WorkCover Queensland schedule of fees.
- [34] VAQ point out there is no allowance made for myotherapy in the WorkCover Queensland schedule of fees. I accept that.
- [35] I find that the refusal by VAQ to pay for myotherapy massage is in accordance with the guideline limitations set by the VAQ table of costs and any payment for such, even on the basis of medical advice, falls outside the scheme of the Act.

Replacement cost of a laptop computer and printer

- [36] NR complains that VAQ refuses to pay the cost of replacing a laptop computer and printer.
- [37] The laptop computer and printer have apparently been damaged after moving inter-State. NR does not clearly explain what happened to them. According to the representatives of VAQ there has never been any suggestion that they were damaged during an incident of domestic violence.
- [38] By s 39 of the VCA Act assistance may be granted to a primary victim of an act of violence to pay for one or more stipulated types of expense. By s 39(g), if exceptional circumstances exist for the victim, other reasonable expenses incurred or likely to be incurred may also be paid "*to significantly help the victim recover from the act of violence*". Two examples are given in the VCA Act of such other reasonable expenses: relocation expenses and the costs of securing the victim's place of residence or business.

³ item 4

⁴ SOR p 174 email dated 16 November 2018

- [39] VAQ say the cost of replacing a laptop computer and printer is a matter of compensation for a loss suffered and not a payment which will significantly help NR recover from the acts of violence she experienced.
- [40] I accept that the scheme under the VCA Act is not intended to recompense generally for material losses sustained, but rather to make payments in aid of recovery from injuries sustained in the acts of violence giving rise to the grants available under the VCA Act.
- [41] The claim for the cost of replacing the laptop computer and printer cannot be allowed.

Clothing replacement

- [42] Under s 39(f) of the VCA Act, expenses incurred by the victim for loss or damage to clothing the victim was wearing when the act of violence happened may be recompensed.
- [43] VAQ have asked NR to particularise clothing she was wearing when an act of violence occurred in her previous relationship and which should be replaced. She has not done that. She maintains she had to leave behind her entire wardrobe because all of it was tainted by association with the acts of violence perpetrated by her former partner.
- [44] Guideline 5 provides an assessor should request an applicant to provide a description of the item of clothing, including the make, year of purchase (if known) or approximate age and a description of the nature of the damage sustained and a receipt or estimate of the items value in order to make a grant.
- [45] VAQ advised at the hearing that an amount of \$129.00 had in fact been paid for damaged clothing on 21 January 2019. Again, that was after the date of the internal review decision. I accept that payment was made.
- [46] If there are further items of clothing identified as clothing worn and damaged by an act of violence that occurred in NR's relationship with her abusive partner, they can also be claimed in the future, subject to the Guideline 5 requirements set out above being complied with.
- [47] This item of claim appears to have been appropriately addressed in the information made available by NR.

Payment of storage fees

- [48] Finally there is the matter of payment of storage fees.
- [49] NR complains in her application that she has incurred storage fees in excess of the "allowable limit" caused by a delay in funding her storage and relocation costs.
- [50] This complaint appears to refer to delay on the part of VAQ in paying for costs of storage and costs of removal of relocating her inter-State.
- [51] In fact however, according to the representatives for VAQ, storage fees have been paid from July 2017 when she left her home through to 16 September 2018. Then an amount of \$4,400.00 was paid to move the possessions inter-State.
- [52] The representatives for VAQ advised at hearing that there was a delay in moving NR's possessions inter-State because she had indicated in discussions with officers

of VAQ from time to time that she might return to Queensland. When she ultimately indicated she would not be returning to Queensland, her goods were moved inter-State. According to VAQ all costs of storage until she made the decision not to move back to Queensland have been paid for by VAQ.

[53] The usual period VAQ allows for storage is six months. NR has been reimbursed for far longer costs of storage than most victims awarded grants under the VCA Act.

[54] I conclude all storage and removal costs have been paid by VAQ.

Conclusion

[55] The complaints made by NR have not been substantiated. I observe that NR's difficulty appears rather to be utilising the grants made rather than the sufficiency of grants or the efficiency of decision making associated with grants.

[56] NR would be well advised to consult her medical practitioner about accessing the available counselling and medical grants which remain extant. NR would be well advised to provide her health practitioner with these reasons for decision.

[57] The internal review decision of 21 December 2018 is confirmed.

[58] There should be de-identification of the applicant in these reasons for decision and prohibition of publication of any information in the proceedings which could identify the applicant.