

CITATION: Thomas v Victim Assist Queensland [2014] QCAT 431

PARTIES: Ann Marie Thomas
(Applicant)
v
Victim Assist Queensland
(Respondent)

APPLICATION NUMBER: GAR007-14

MATTER TYPE: General administrative review matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Goodman**

DELIVERED ON: 1 September 2014

DELIVERED AT: Brisbane

ORDERS MADE: **1. The decision of Victim Assist Queensland made on 10 December 2013 is affirmed.**

CATCHWORDS: REVIEW - Victim Assist – whether expenses are payable upfront and in a lump sum – whether Victim Assist should gather evidence on behalf of applicant – whether conditions imposed on a grant of assistance are unduly onerous – whether a grant of assistance is payable for increased rental costs

Victims of Crime Assistance Act 2009 (Qld)
Queensland Civil and Administrative Tribunal Act 2009 (Qld)

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

- [1] On 13 December 2012 Ms Thomas was assaulted by her former partner, who was subsequently convicted of Assault Occasioning Bodily Harm.

- [2] Ms Thomas applied to Victim Assist for financial assistance under the provisions of the *Victims of Crime Assistance Act 2009* (Qld). Ms Thomas is a primary victim of an act of violence, and is therefore eligible for grants of financial assistance.¹
- [3] Ms Thomas's claim was largely accepted by the respondent. I will not revisit those parts of the claim that are agreed upon by the parties. I will address in this decision only the issues that remain in dispute – they are detailed below. This is a fresh hearing on the merits² and I must produce the correct and preferable decision.
- [4] So far as it is relevant, s 39 of the Act provides that assistance may be granted for:
- (a) ...;
 - (b) ...;
 - (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
 - (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73);
 - (e) loss of earnings of up to \$20000 suffered, or reasonably likely to be suffered, by the victim, as a direct result of the act of violence, during a period of up to 2 years after the act of violence;
 - (f) ...;
 - (g) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence;
- Examples of other expenses—*
- relocation expenses
 - costs of securing the victim's place of residence or business
- (h) ...

CAN EXPENSES BE PAID UPFRONT IN A LUMP SUM?

- [5] The respondent has agreed to meet Ms Thomas's travel expenses to attend future counselling sessions.³ Ms Thomas states that the funds should be paid upfront in a lump sum.
- [6] Section 93(2) provides that: *"If the applicant is granted assistance for expenses, the assistance does not become payable until the government assessor receives a copy of an invoice or receipt for the expenses."*⁴
- [7] There is no distinction made between past and future expenses. Both are "expenses" and are only payable upon production of an invoice or receipt.

¹ *Victims of Crime Assistance Act 2009* (Qld) Chapter 3, Part 4.

² QCAT Act s 20.

³ VOCAA s 39(c).

⁴ *Ibid* s 93(2)

- [8] Ms Thomas submits that if the expenses are not paid upfront, she will be disadvantaged and perhaps not be able to afford to incur the expenses. I note that a practical solution has been reached to address this issue – conditions attached to the grant are discussed below.
- [9] There is no scope for the payment of expenses without an invoice or receipt. I will affirm the respondent's decision not to pay anticipated expenses as an upfront lump sum amount.

SHOULD PAYMENTS FOR LOSS OF EARNINGS WHILE ATTENDING FUTURE COUNSELLING BE PAID IN AN UPFRONT LUMP SUM AMOUNT?

- [10] The respondent has agreed to meet the cost of Ms Thomas's loss of earnings while she attends counselling. Payments are to be made on a visit by visit basis. Loss of earnings is not an "expense" that is capable of being quantified by the production of a receipt or invoice.
- [11] Ms Thomas submits that once she has established that she is reasonably likely to incur the future costs, she is entitled to receive the money as a lump sum and spend it as she wishes (and not necessarily on the expenses for which the grant was made).
- [12] Ms Thomas submits that the respondent has taken a paternalistic approach, saying *"the view of the respondent is that victims should be entitled to financial assistance, but only if they spend that money on things Victim Assist are satisfied that they need, and only if they account for that money in a way that Victim Assist dictates as appropriate or achievable"*. I do not accept that submission. Ms Thomas has herself identified outlays she will incur as a direct result of the act of violence, and claims that exceptional circumstances exist. She will receive assistance to meet those outlays if they fall within s39 of the Act. The application is Ms Thomas's to make, and it will be successful if the statutory requirements are satisfied. Victim Assist cannot dictate or take any predetermined stance on what Ms Thomas's needs are. Victim Assist may only consider whether the requirements of the legislation are satisfied by the material available to the assessor.
- [13] Should the money be paid upfront in a lump sum? I note that the objectives of the scheme include *"to help victims of acts of violence to recover from the acts by giving them financial assistance"*.⁵ That objective is met by tailoring the financial assistance to costs and expenses that will help Ms Thomas recover from the acts of violence – in this case by meeting the costs of loss of earnings so that she is able to attend counselling.
- [14] Ms Thomas points out that a further objective of the scheme is *"for primary victims, to give the victims amounts representing a symbolic expression by*

⁵

Ibid s 3(2)(a).

*the State of the community's recognition of the injuries suffered by them.*⁶

This does not mean that primary victims are entitled to lump sum payments to use on unrelated spending. It is a recognition that the payment of expenses and the meeting of other costs cannot undo the crime or realistically hope to erase all impacts of the crime - in that sense the scheme must be symbolic.

- [15] I am satisfied that the decision to pay the costs of loss of earnings on a visit by visit basis is appropriate and I will affirm that decision.

ARE THE GRANT CONDITIONS IMPOSED UNDULY ONEROUS?

- [16] In relation to incidental travel expenses to attend counselling, and loss of earnings while attending counselling, the respondent has imposed a condition that before amounts are payable Ms Thomas is to provide the respondent with a schedule of appointments, and following the session the psychologist is to provide proof of attendance (such as an invoice).
- [17] Section 89 of the Act empowers the respondent to attach conditions to a grant of assistance.
- [18] Ms Thomas submits that the requirements are onerous. I do not accept that submission. The evidence gathering is a nuisance and is somewhat time consuming but I do not accept that the requirement is unduly onerous. I note that the psychologist will in any event be invoicing the respondent directly for counselling sessions and so there is no additional work involved.
- [19] As noted above, it is intended that assistance is directed to meeting costs that will assist Ms Thomas to recover from the act of violence. These conditions assist in ensuring that intention is met. I will affirm the respondent's decision to impose the conditions on the grants of assistance.

ARE INCREASED RENTAL COSTS AN "EXCEPTIONAL CIRCUMSTANCE"?

- [20] Following the assault Ms Thomas moved from Charleville to Dalby, moving away from the home and town in which she was assaulted. The respondent granted financial assistance to meet removal costs, accepting that the move was likely to significantly aid in her recovery. Ms Thomas is now making a higher rental payment. She submits that the increase in rent is an exceptional circumstance because it is part of the cost of moving and should be met by the respondent for a period of two years.
- [21] A grant of assistance may be made as follows *"if exceptional circumstances exist for the victim... other expenses incurred, or*

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Ibid s 3(2)(b)

reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence".⁷

- [22] "*Exceptional circumstances*" are established for Ms Thomas if, because of her circumstances or the nature of the act, the act has had "*an unusual, special or out of the ordinary effect*" on her.⁸
- [23] Ms Thomas submits that the exceptional circumstances are that she was unable to cope emotionally with remaining in the same town and the same house where she was assaulted.
- [24] Ms Thomas states that the increased rental costs are part of the costs of moving and is an expense directly incurred for the purpose of aiding in recovery from the act of violence. Ms Thomas says that the chance to take up new employment in a area where she was unknown, and the chance to make a fresh start, were also motivating factors in her move.
- [25] The respondent submits that "exceptional circumstances" are not established, as rent is not an expense directly incurred for the purpose of significantly aiding Ms Thomas's recovery from the act of violence, because rent is an everyday living expense that is incurred irrespective of the act of violence.
- [26] It is agreed that Ms Thomas's move away from her former town will significantly help her recover from the act of violence. Ms Thomas says that average rent in Dalby is higher than in Charleville. On the evidence available, I do not accept that the move *unavoidably and necessarily* resulted in an increase in rental payments. For example, there is no evidence before me as to whether accommodation in Dalby was available at the rental cost previously paid by Ms Thomas and whether, for example, sharehousing or hospital accommodation was available, or whether or not those options were suitable. I am unable to compare the type of housing Ms Thomas lived in prior to the assault with her current accommodation, except that both have two bedrooms. It may be, for example, that she is now living in more modern accommodation with better facilities or accommodation closer to her employment which reduces travel costs to and from work. It may be that the accommodation which Ms Thomas now lives in is the only type available or suitable for her needs. I have no evidence on those issues.
- [27] I have no evidence that the new home will "significantly help" Ms Thomas to recover from the act of violence. Ms Thomas's submission that the rental payments would significantly aid in her recovery is not sufficient without evidence to support that submission. For those reasons, I will affirm the decision not to grant a claim to cover the increased cost of rent.

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Ibid s 39(g).

⁸

Ibid s 28.

SHOULD FINANCIAL ASSISTANCE BE GRANTED TO MEET THE EXPENSES OF VISITING FAMILY MEMBERS IN FAR WESTERN QUEENSLAND? IF SO, SHOULD THE AMOUNT BE PAID UPFRONT?

- [28] Ms Thomas requests a grant of assistance to cover the expense of past and future trips to Cunnamulla to visit with her family. The respondent has refused to assess the claim on the basis that insufficient evidence has been provided.
- [29] The respondent has requested that Ms Thomas provide:
- a) A letter from her doctor or counsellor explaining how spending time with her family has and would significantly aid her to recover from an injury arising directly from the act of violence; and
 - b) Evidence of the dates travelled and the expenses incurred (e.g. fuel receipts).
- [30] Ms Thomas submits that the respondent has ignored the significance of community and kinship networks in the healing process for Aboriginal victims of violence.
- [31] Ms Thomas submits that she should not be required to produce expert medical or psychological evidence. She argues that Aboriginal and Torres Strait Islander victims of crime should not have to prove that spending time with family will assist them in the healing process by commissioning a psychological or medical report. She proposes that the respondent should use its powers under Part 12 to gather evidence to establish the grant.
- [32] Ms Thomas has provided verbal and written evidence (a letter) regarding her desire to visit family and has provided bank statements to show how often and when she travelled to Cunnamulla to visit family. She did not retain fuel receipts as she was unaware they would be required.
- [33] Ms Thomas submits that if she is not paid the costs of visiting her family upfront, it will impact on her capacity to visit them, particularly given the large distances involved in travelling through regional Queensland.
- [34] The claim is made under s39(g), the provisions of which are discussed above. In the absence of evidence such as a letter from a doctor or psychologist I cannot be satisfied that the travel will *significantly help Ms Thomas recover from the act of violence*. I am not satisfied that there is any obligation on the respondent to seek out that evidence on Ms Thomas's behalf. There is no presumption that family visits for any particular ethnic or other group falls within the terms of the legislation. Ms Thomas is receiving counselling and it is not unreasonable to expect that the counsellor will be in a position to provide evidence about the significance of community and kinship networks in the healing process for Ms Thomas, and also provide evidence as to whether visiting family will significantly help Ms Thomas recover from an act of violence.

[35] In the absence of such evidence, I affirm the decision not to assess this component of the claim.