Blackwell and Comcare (Compensation) [2015] AATA 911 (27 November 2015)

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| Division | GENERAL DIVISION |
| File Number | 2015/1964 |
| Re | Kym Blackwell |
|  | APPLICANT |
| And | Comcare |
|  | RESPONDENT |

# Decision

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| Tribunal | **Deputy President PE Hack SC** |
| Date | **27 November 2015** |
| Place | **Brisbane** |

The decision under review is affirmed.

.................................[Sgd].......................................

**Deputy President PE Hack SC**

**CATCHWORDS**

COMPENSATION – household services – what is reasonably required – respondent accepts liability for household services – extent of entitlement in issue – circumstances of other members of household relevant – reasonable to expect those members to contribute to household – decision under review affirmed.

**LEGISLATION**

Safety, Rehabilitation and Compensation Act 1988 (Cth), s 29

# REASONS FOR DECISION

**Deputy President PE Hack SC**

**27 November 2015**

1. Mrs Kym Blackwell has various physical ailments that have been accepted as compensable conditions under the *Safety, Rehabilitation and Compensation Act 1988* (Cth). Comcare thus accepts that it is liable to pay Mrs Blackwell compensation, in accordance with the Act, in respect of those conditions.
2. Comcare also accepts that it is liable to pay Mrs Blackwell compensation for household services pursuant to s 29(1) of the Act. The issue in the present case is the extent of her entitlement to that compensation. In the decision in issue in these proceedings, Comcare decided that the household services that Mrs Blackwell reasonably required were:
* Cleaning services for 2.5 hours per week;
* Ironing for one hour per week;
* Window cleaning for two hours every four months.

Mrs Blackwell takes no issue with the time allowed for window cleaning; she says though that five hours per week (rather than 3.5 hours per week) should be allowed for cleaning and ironing.

1. Comcare’s liability to pay compensation for household services is set out in s 29 of the Act in these terms:

Compensation for household services and attendant care services

(1) Subject to subsection (5), where, as a result of an injury to an employee, the employee obtains household services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances, being not less than 50% of the amount per week paid or payable by the employee for those services nor more than $200.

(2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare shall, in making such a determination, have regard to the following matters:

* 1. the extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date;
	2. the number of persons living with the employee as members of his or her household, their ages and their need for household services;
	3. the extent to which household services were provided by the persons referred to in paragraph (b) before the injury;
	4. the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury;
	5. the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

1. The background to the matter appears clearly enough from the material. Mrs Blackwell now lives in a two bedroom, two bathroom apartment with her partner. Her partner’s teenage son lives with them on alternate weeks.
2. Mrs Blackwell first made a claim for household services in September 2010. She claimed to require two to three hours assistance twice weekly for washing and drying, two hours assistance weekly for cleaning and two hours assistance twice weekly for ironing and folding.[[1]](#footnote-1) The application identified Glittering Cleaning Service as her provider. It was supported by an endorsement by Dr John Maguire, orthopaedic surgeon, who suggested the services would be required for three to four months following surgery, then anticipated on 6 November 2010. It is unclear from the material whether the claim was accepted but nothing seems to turn on that.
3. Then, in January 2011, Mrs Blackwell lodged another claim for household services. On this occasion she sought two to three hours assistance twice weekly for washing, two hours assistance each week for cleaning and two hours assistance each week for ironing and folding.[[2]](#footnote-2) This claim was endorsed by Dr Michael Likely, her treating psychiatrist. Dr Likely expressed the view that the household services would be required by Mrs Blackwell indefinitely. At the time of this claim Mrs Blackwell was living alone.
4. On 25 March 2011, Comcare approved four hours per week of household services up to 31 July 2011.
5. Mrs Blackwell next applied for compensation for household services in February 2013.[[3]](#footnote-3) By then her partner was living with her and the partner’s son, then aged 13 years, was living with them on alternate weeks. The application was endorsed by Mrs Blackwell’s general practitioner, Dr Glenda McDonald. Dr McDonald concluded that Mrs Blackwell required three hours of cleaning weekly, two hours of ironing weekly and two hours of window cleaning monthly as a consequence of her neck, shoulder, elbows and wrists injuries. She considered that the need for household services was indefinite in duration as the injuries were permanent and ongoing.
6. In response to this claim Comcare arranged for Mr Nathan Dawes, an occupational therapist, to visit Mrs Blackwell’s apartment and undertake an assessment of her needs. On the basis of Mr Dawes’ report,[[4]](#footnote-4) Comcare determined on 8 November 2013 to provide compensation for household services of 3.5 hours per fortnight up to and including 31 January 2014 and a one-off spring clean (four hours).[[5]](#footnote-5)
7. Then, on 6 December 2013, Mrs Blackwell made a further claim for compensation for household services. Again, it was endorsed by Dr McDonald who recommended three hours weekly for “household services” (not otherwise specified), two hours weekly for ironing and two hours monthly for window cleaning and similar tasks.[[6]](#footnote-6)
8. On 24 January 2014, Comcare determined that Mrs Blackwell was entitled to compensation for household services for 3.5 hours per fortnight up to and including 28 February 2014.[[7]](#footnote-7) The 3.5 hours included 30 minutes for ironing.
9. On 27 March 2014, Comcare reconsidered its determination of 8 November 2013. The compensation for household services was varied to three hours per fortnight for household cleaning, 1.5 hours per week of ironing assistance and a one-off spring clean up to a maximum of four hours.[[8]](#footnote-8)
10. The decision in issue in these proceedings commenced with a claim submitted by Mrs Blackwell on 3 June 2014.[[9]](#footnote-9) The claim was accompanied by a letter from Glittering Cleaning Service. The letter sets out times for various tasks and, whilst the letter does not say so explicitly, I assume it records the opinion of the provider of the time necessary to complete the nominated tasks. On that basis, two hours per week was sought for house cleaning, two hours per month for window cleaning, two hours per week for ironing and one hour per week for cleaning windows, blinds and suchlike.
11. On 24 June 2014, Comcare determined on the basis of Mr Dawes’ report of 16 September 2013 that Mrs Blackwell was entitled to household services of three hours per fortnight and 1.5 hours per week for ironing, both up to and including 30 September 2014 and a one-off four-hour spring clean.
12. Subsequently, arrangements were made for Mrs Blackwell’s needs to be re-assessed, on this occasion by Ms Sarah Hanrahan who saw Mrs Blackwell at her residence in August 2014. Ms Hanrahan produced a report dated 4 September 2014. That report is at the heart of the present case and I will need to return to it in due course. It will suffice for present purposes to note that Ms Hanrahan recommended that Comcare provide 2.5 hours per week for cleaning, one hour per week for ironing and two hours for window cleaning every four months. Comcare determined, on 8 December 2014, that Mrs Blackwell was entitled to compensation for household services in these terms up to and including 8 December 2015.
13. On 3 January 2015, Mrs Blackwell sought reconsideration of the decision. It was affirmed on 20 February 2015 and these proceedings were commenced on 21 April 2015.
14. Comcare submits that its decision ought be affirmed. The level of household services determined is reasonable having regard to the matters that the Act requires be taken into account. The only evidence is the report of Ms Hanrahan and while there may have been, and may continue to be, errors in her report they are not on matters of substance. Ms Hanrahan’s conclusions, it is said, are logical and not contradicted by any other evidence.
15. It was more difficult to discern Mrs Blackwell’s case. At the core of it seemed to lie the proposition that Ms Hanrahan’s report was so affected by errors that it ought be rejected; but, where there is no other evidence that would suggest a more favourable result, it is difficult to see how rejecting Ms Hanrahan’s report could possibly assist Mrs Blackwell.
16. There are, I accept, errors in Ms Hanrahan’s report but they are in my view, trifling. They may point, at the highest, to a lack of attention to detail on the part of Ms Hanrahan in compiling the report, a task she agreed she performed under pressure. Thus, apparently, the claim numbers on the title page of the report, the date of injury and some other non-contentious matters are wrong. But I was not able to discern any disagreement by Mrs Blackwell with the substance of Ms Hanrahan’s findings about her then current presentation.
17. I should also say that Mrs Blackwell wanted to call evidence from Dr Likely, Dr McDonald and Mr Paul Parker, her physiotherapist. I ruled that the evidence it was suggested they would give was irrelevant given that Comcare had accepted Mrs Blackwell’s entitlement to compensation under s 29 of the Act and that what remained in issue was the extent of that entitlement.
18. As it seems to me the matter is capable of simple resolution. Mrs Blackwell’s claim, as articulated in the letter from her service provider, was for:
* Two hours per week for cleaning;
* One hour per week for door and blind cleaning;
* Two hours per week for ironing;
* Two hours per month for window cleaning.

Comcare has determined that the amount of household services reasonably required is:

* 2.5 hours per week for cleaning;
* One hour per week for ironing;
* Two hours every four months for window cleaning.

Thus, there is a reduction in the time claimed for cleaning (generally, and doors and blinds) from three hours per week to 2.5 hours per week, for ironing from two hours per week to one hour per week and for window cleaning from one hour per week to two hours every four months.

1. The Act requires Comcare to have regard to the circumstances of the other members of the employee’s household, the matters set out in paragraphs (b) to (e) of s 29(2) of the Act. Mrs Blackwell lives in a two bedroom, two bathroom apartment. The cleaning necessary for one bedroom and one bathroom is attributable to others in the household, not Mrs Blackwell. It is, in my view, reasonable to expect those others to make the relatively modest contribution imposed by reducing the claimed three hours per week to 2.5 hours per week given that what is to be compensated is the cost of obtaining household services that the employee reasonably requires. There will be no substantial disruption to the activities of the other household members as a result.
2. The same conclusion is reached in relation to ironing. Mrs Blackwell’s claim indicated that her partner performed this task both before and after her surgery. There seems no reason why that ought be changed, all the more so since some of the ironing required is attributable to other family members.
3. The claim for two hours per month for window cleaning seems extravagant and not reasonable. I accept Ms Hanrahan’s estimate of a reasonable time for that task. In that regard, I note that Mrs Blackwell’s partner, who conducted the hearing on her behalf, took no issue with the time allowed for this task.
4. It follows that the decision under review was correct. It will be affirmed.

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| I certify that the preceding 25 (twenty -five) paragraphs are a true copy of the reasons for the decision herein of Deputy President PE Hack SC |

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Associate

Dated 27 November 2015

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| Date of hearing | **12 November 2015** |
| Advocate for the Applicant | **Mr M Surman**  |
| Counsel for the Respondent | **Ms M Brennan QC** |
| Solicitors for the Respondent | **Australian Government Solicitor** |

1. Exhibit 1, page 58. [↑](#footnote-ref-1)
2. Exhibit 1, page 60. [↑](#footnote-ref-2)
3. Exhibit 1, pages 64 – 67. [↑](#footnote-ref-3)
4. Exhibit 1, pages 79 – 91. [↑](#footnote-ref-4)
5. Exhibit 1, page 69. [↑](#footnote-ref-5)
6. Exhibit 1, page 75. [↑](#footnote-ref-6)
7. Exhibit 1, pages 92 – 93. [↑](#footnote-ref-7)
8. Exhibit 1, pages 94 – 98. [↑](#footnote-ref-8)
9. Exhibit 1, pages 101 – 102. [↑](#footnote-ref-9)