REHABILITATION – AN INSURER'S OBLIGATION TO PROVIDE REHABILITATION UNDER THE *MOTOR ACCIDENT INSURANCE ACT* 1994 – SOME RECENT CASE STUDIES

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Introduction

While the obligation of a CTP Insurer to provide rehabilitation to a claimant is nothing new, the scope of that duty and its application on a case by case basis has been highlighted by some recent decisions in Queensland Courts.

The common law damages that an insurer is obliged to pay to a claimant have been reasonably well defined by both case law and statute[1], but the scope of a CTP Insurer's liability for damages does not necessarily define the extent of the statutory obligation to provide rehabilitation. This paper will attempt to provide a number of functions, including giving a brief overview of the insurer's obligation to provide "reasonable and appropriate" rehabilitation within the *Motor Accident Insurance Act 1994 (Qld)*, addressing the potential monetary overlap of that obligation, and distinction with, common law damages, and detail a number of recent cases to illustrate the manner in which a CTP insurer's obligation to provide rehabilitation has been construed.

[1] Including the *Civil Liability Act 2002* (Qld).

The Act

One of the objects of the MAIA is to "promote and encourage, as far as practicable, the rehabilitation of claimants who sustained personal injury because of motor vehicle accidents".[2]

The Act defines "rehabilitation" in a way that seems innocuous enough at first, but closer examination suggests the definition to be of a wider scope than was perhaps first anticipated by insurers and claimants alike. The term is defined in section 4 of the MAIA as -

> ***"Rehabilitation"*** means the use of medical, psychological, physical, social, educational and vocational measures (individually or in combination -
>
> (a) to restore, as far as reasonably possible, physical or mental functions lost or impaired through personal injury; and
>
> (b) to optimise, as far as reasonably possible, the quality of life of a person who suffers the loss of impairment of physical or mental functions through personal injury.

By way of comparison, the definition under the MAIA is of far greater breadth than appears in similar legislation, such as the *Workers' Compensation & Rehabilitation Act 2003*, which defines "rehabilitation" in section 40 as -

> **40 Meaning of rehabilitation**
>
> (1) Rehabilitation, of a worker, is a process designed to--
>
> (a) ensure the worker's earliest possible return to work; or
>
> (b) maximise the worker's independent functioning.
>
> (2) Rehabilitation includes--
>
> (a) necessary and reasonable--
>
> (i) suitable duties programs; or
>
> (ii) services provided by a registered person; or
>
> (iii) services approved by an insurer; or
>
> (b) the provision of necessary and reasonable aids or equipment to the worker.

(3) The purpose of rehabilitation is--

(a) to return the worker to the worker's pre-injury duties; or

(b) if it is not feasible to return the worker to the worker's pre-injury duties--to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer; or

(c) if paragraph (b) is not feasible--to return the worker, either temporarily or permanently, to other suitable duties with another employer; or

(d) if paragraphs (a), (b) and (c) are not feasible--to maximise the worker's independent functioning.

An insurer's obligation to provide rehabilitation is imposed by section 51 of the MAIA, which provides:-

Obligation to provide rehabilitation services

(1) An insurer may make rehabilitation services available to a claimant on the insurer's own initiative or at the claimant's request.

(2) An insurer that makes rehabilitation services available to a claimant before admitting or denying liability on the claim must not be taken, for that reason, to have admitted liability.

(3) Once liability has been admitted on a claim, or the insurer has agreed to fund rehabilitation services without making an admission of liability, the insurer must, at the claimant's request, ensure that reasonable and appropriate rehabilitation services are made available to the claimant.

(4) If the insurer intends to ask the court to take the cost of rehabilitation services into account in the assessment of damages, the insurer must, before providing the rehabilitation services, give the claimant a written estimate of the cost of the rehabilitation services and a statement explaining how, and to what extent, the assessment of damages is likely to be affected by the provision of the rehabilitation services.

(5) The claimant may, if not satisfied that the rehabilitation services made available under this section are reasonable and appropriate—

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[2] See: Section 3(d) MAIA.

(a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or

(b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate.

(5A) …

(5B) …

(5C) An application may be made to the court under subsection (5)(b) whether or not there has been an earlier attempt to resolve the questions between the claimant and the insurer by mediation.

(5D) On an application under subsection (5)(b), the court may decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate and make consequential orders and directions.

(6) The insurer must bear (or reimburse) the cost of providing rehabilitation services under this section unless the insurer's liability is reduced--

(a) by agreement with the claimant; or

(b) by order of the court under subsection (8).

(7) The insurer may, if of the opinion that the cost of rehabilitation services is unreasonable--

(a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or

(b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate or to decide to what extent the insurer should contribute to the cost of rehabilitation services.

(7A) An application for appointment of a mediator under subsection (7)(a) must--

(a) be made in writing; and

(b) give details of any attempts made by the applicant to resolve the matter in dispute.

(7B) The fees and expenses of a mediator appointed under subsection (7)(a) are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

(7C) An application may be made to the court under subsection (7)(b) whether or not there has been an earlier attempt to resolve the questions between the insurer and the claimant by mediation.

(8) On an application under subsection (7)(b), the court may decide the questions raised on the application and make consequential orders and directions.

(9) The cost to the insurer of providing rehabilitation services under this section is to be taken into account in the assessment of damages on the claim if (and only if) the insurer gave a statement to the claimant, as required under subsection (4), explaining how and to what extent the assessment of damages was likely to be affected by the provision of the rehabilitation services.

(9A) If the cost of rehabilitation services is to be taken into account in the assessment of damages, the cost is taken into account as follows--
(a) the claimant's damages are first assessed (without reduction for contributory negligence) on the assumption that the claimant has incurred the cost of the rehabilitation services as a result of the injury suffered in the accident;
(b) any reduction to be made on account of contributory negligence is then made;
(c) the total cost of rehabilitation services is then set-off against the amount assessed.
Example--
Suppose that responsibility for a motor vehicle accident is apportioned equally between the claimant and the insurer. Damages (exclusive of the cost of rehabilitation) before apportionment are fixed at $20000. The insurer has spent $5000 on rehabilitation services. In this case, the claimant's damages will be assessed under paragraph (a) at $25000 (that is, as if the claimant had incurred the $5000 rehabilitation expense) and reduced to $12500 under paragraph (b), and the $5000 spent by the insurer on rehabilitation will be set off against this amount, resulting in a final award of $7500.

(10) An insurer who is induced by a claimant's fraud to provide rehabilitation services for the claimant may recover the cost to the insurer of providing the services, as a debt, from the claimant.

An insurer may make rehabilitation services available to a claimant at its own initiative and prior to an admission of liability[3], but if that occurs, the provision of those services cannot be construed as an admission of liability.[4] However, the insurer is burdened with a mandatory obligation to provide rehabilitation upon the satisfaction of two elements - firstly, an admission of liability, or having agreed to fund rehabilitation services without an admission of liability and, secondly, a request by the claimant for the provision of that service.[5]

History

Shortly after the Act commenced, Moynihan J (as his Honour then was) was called upon to interpret the rehabilitation provisions in *Re Walker*[6]. His Honour observed[7] -

> "It may be accepted that the Act, and particularly s 51(5), is to be construed beneficially from the perspective of the claimants.
>
> …
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> As I read the legislation, the applicant's remedy remains damages designed to restore him, so far as money is able, to his pre-accident condition and to satisfy, again in so far as money can, needs caused by his injury; see for example *Van Gurvan v Fenton* (1992) 175 CLR 327; 17 MVR 29. The present case is concerned with interim measures with the overall consequences of the applicant's injuries to be assessed later.
>
> Section 51(5) provides a test in broad terms. The elements would seem to be "the circumstances of the case", "reasonable" and "appropriate". "Reasonable" would appear to connote no more than its usual meaning as

[3] See: section 51(1) of the MAIA.
[4] See: section 51(2) of the MAIA.
[5] See: section 51(3) of the MAIA.
[6] See: (1995) 22 MVR 245.
[7] See: ibid, pages 247, 248.

> founded on reason as distinct from arbitrary or capricious. "Appropriate" would appear to connote "suitable or fitting for a particular purpose" in this case "rehabilitation" as defined.
>
> Subsection (5) appears to require the court to form its own opinion.
> Although there may be a role for the expert opinion in some aspects of applications under subs (5), that should be limited by the nature of the jurisdiction and to evidence of expert opinion properly defined. The court must make up its own mind at an interim stage in a broad rather than refined way."

After that statement emphasising a beneficial interpretation of the provision in favour of claimants, and confirmed by the decision of Byrne J (as His Honour then was) in *McMullen v Suhr*[8], it is of some surprise that it took so long for another decision to be reported concerning the extent of an insurer's obligation to provide rehabilitation services. *Delaney v AAMI Insurance Limited*[9] concerned an applicant who had suffered serious organic brain damage and other injuries in a motor cycle accident. M. A. Wilson J determined that, within reason, the claimant was entitled to choose his own rehabilitation provider.

It must be kept in mind, however, as it must generally in analysing authority, that each case will turn upon their own facts and whilst the decisions referred to provide some guidance of the application of the section generally, each case must necessarily be decided by the facts giving rise to the claim.

In Queensland, a licensed insurer in the CTP Insurance sector is bound by the provisions of the "industry deed"[10], a document of statutory force and which provides -

> "(1) A licensed insurer is bound by the industry deed.
> (2) The industry deed may –
> …

[8] See: (1998) 2 Qd R 406.
[9] See: [2007] QSC 174.
[10] See: section 65 of the MAIA.

(e) provide direction and guidance for licensed Insurer's about initiating, managing, monitoring and measuring the effectiveness of, the provision of rehabilitation services for injured claimants.
..."

The industry deed imposes an obligation on an insurer to deal with claims "as quickly as possible" and requires insurers to ensure that their procedures where dealing with claims are "efficient and cost effective".[11]

In January 2007, and in conformity with clause 4 of the industry deed, the Motor Accident Insurance Commission published the *Rehabilitation Standards for CTP Insurer's*, in effect Standards which outline a claimant's obligation to co-operate with the insurer, and the corresponding obligation on an insurer to ensure that reasonable and appropriate rehabilitation services are made available to a claimant. The Standards articulate the obligations on insurers in a way that is perhaps intended to highlight the extent of the obligations by making it clear that it is not the insurer's role to develop treatment and rehabilitation plans but, rather, to facilitate the rehabilitation process[12].

However, the principles of the necessity for co-operation between a claimant and an insurer are not new.[13]

Chapter 2 of the Standards, which deals with the Principles of Rehabilitation in the CTP Insurance scheme, provides[14] -

"A distinction needs to be made between (i) the rehabilitation process, which is about optimising the injured person's recovery, and (ii) the medico-legal process, which comes later in the life of a claim when the overall consequences of the person's injuries are assessed by medico-legal experts and used in formulating the damages likely to be recovered."

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[11] See: Industry deed found in schedule 5 to the Motor Accident Insurance Regulation 2004 ("the MAIR"), clause 3.
[12] See: chapter 3 ("Role of Stakeholders"), standards.
[13] See: *McMullen v Suhr* (supra).
[14] See: paragraph 7.

The Standards also provide in section (c)[15] that -

> "claimants are informed of their ability to exercise choice in the selection of an appropriately qualified and experienced service provider whose intervention is supported by the medical evidence."

In *Delaney*[16], M. A. Wilson J was critical of the approach of the CTP Insurer in attempting to impose conditions on the provisions of rehabilitation such that it would only fund the cost of services provided by the treatment providers it proposed. Her Honour said[17] -

> "The applicant's rehabilitation needs seem to have been overshadowed by the respondent's intransigent attitude that it will meet the costs only if the rehabilitation services are provided by persons it selects.
>
> This dictatorial attitude is inconsistent with the Legislature's expressed intention to promote and encourage rehabilitation of injured persons and with the express provision in the Rehabilitation Standards which are binding on it that claimants be informed of their ability to exercise choice in the selection of an appropriately qualified and experienced service provider whose intervention is supported by the medical evidence. Ultimately it is in the mutual interests of the applicant and the respondent that these issues be dealt with calmly and dispassionately, in spirit of co-operation and good will."

The principles are not difficult to apply when dealing with the entitlement of a claimant to various forms of medical or paramedical treatment but can become problematic when the claimant requests "rehabilitation", not in the form of treatment, but rather in matters such as a modified vehicle, or housing modifications or, more significantly, re-housing in purpose built facilities. By common law principles an insurer might only be obliged to meet the additional costs incurred by a claimant in constructing a modified home, or modifying a standard vehicle, but what if the claimant seeks, by way of "rehabilitation",

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[15] See: Concerning the facilitation of access to appropriate rehabilitation services for injured claimants.
[16] See: (supra).
[17] See: At paragraph [16].

something that goes beyond what would be recoverable as “damages” in the claim proper?

The damages overlap

The principles arising from the recent decisions to which we refer below, and the extent of rehabilitation ordered by the Court in each case, must be seen in the context of the injuries sustained by each claimant, their background circumstances and the intention of the rehabilitation provisions “to restore, as far as reasonably possible” the physical or mental functions of an injured person, or being “to optimise as far as reasonably possible, the quality of life” of an injured person.

The cases referred to commonly involve wheelchair-bound claimants. It is an exaggeration to suggest that every claimant who suffers a soft-tissue cervical spine injury should call on the insurer, in a case where liability has been admitted, to fund the construction of a house, or modify an existing house.

The example, however, provokes the analysis of the temporal limits of the insurer’s obligations to provide rehabilitation where it is required by section 51 MAIA.

In the first instance, analysis needs to be given to the terms of the section. Both limbs of section 51(3) import the qualifying term that the insurer’s obligation to provide medical, psychological, physical, social, educational and vocational measures to restore the physical or mental functions lost as a consequence of the injury, or to optimise the quality of life of a person who

suffers loss or impairment of physical or mental function through personal injury, is in each case only “as far as reasonably possible.”

It is not a criteria which implies an obligation to restore or to optimise those features at any cost and by whatever means – it is an outcome desired to be achieved “as far as reasonably possible” and a function to be utilised in the advance of the determination of damages. It is a test requiring a comparison between the cost on the one hand, and the benefits to be achieved on the other.[18]

The shorter Oxford dictionary defines “reasonable” as:

> “2. In accordance with reason; not irrational or absurd.
> 3. Proportionate.
> 4. Having sound judgment; ready to listen to reason, sensible. Also, not asking for too much.
> 5. Within the limits of reason: not greatly less or more than might be thought likely or appropriate; moderate in *spec* in price…of a fair, average or considerable amount, size etc.”

See, also, *Arthur Robinson (Grafton) Pty Ltd v Carter* (1968) 122 CLR 649.

What each of the cases under reference omits express regard to, however, is that in each of the desired objects of section 51(3) of the MAIA, there must necessarily be a limit on the extent to which the services offered or engaged by an insurer will achieve that outcome – that is, the desire is to “rehabilitate”

the injured person necessarily implies that sooner or later the injured claimant's position will reach the point where their recovery will plateau and that no further improvement is expected. Also, the expectation is that there will be settlement or a trial, at which time an insurer's liability crystallises.

There is also the need to recognise that a distinction is to be drawn between an insurer's obligation to provide "rehabilitation" on the one hand, and the assessment of a claimant's common law damages on the other. That is the manner in which the MAIA is structured. As was made plain by Applegarth J in *Aldridge v Allianz Australia Insurance Limited*[19]:

> "... the expected outcome of the personal injuries action is a relevant consideration in deciding what is "reasonable and appropriate" in the circumstances of the case. However a distinction exists under the Act between "rehabilitation" which is concerned with measures to optimise, as far as reasonably possible, the quality of life of a claimant, and the assessment of damages in a legal proceeding."

An obvious example is the ambit of the insurer's obligation to provide "rehabilitation" in the form of housing modifications. The liability in the ultimate proceeding for damages on the part of the insurer is to pay for such modifications as are necessary to accommodate the plaintiff's disability. It is not an obligation on the insurer to provide, by way of "rehabilitation", for an injured claimant's long-term optimum accommodation requirements. The emphasis in the application of the section must be on the words "reasonable and appropriate" and, necessarily, "rehabilitation".

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[18] See *Sharman v Evans* (1977) 138 CLR 563 at 573.

As a starting point, it is well established that, exceptional circumstances aside, on an assessment of common law damages, an injured plaintiff is not entitled to damages for the capital cost of the acquisition of land, or the cost of erection of a new house.[20] There is no common law obligation on an insurer to purchase property by way of common law damages.

An insurer's obligation to a claimant in respect of rehabilitation can never exceed the liability of the insured to the claimant[21]. That is so whether the expenditure is by way of rehabilitation expense, or settlement or judgment of the full amount of the claim to which the claimant is entitled.[22] Whilst reference is made in the footnote below to the Schedule Policy of Insurance, although a Schedule does not in fact issue as a matter of fact, the legislation provides for such a schedule and which has the effect of limiting an insurer's liability.

It necessarily follows from the provisions of the statutory insurance scheme that an insurer is not liable for, and cannot be ordered to pay, an amount beyond the limit of the insured's common law liability. Of course at a practical level, the cost to an insurer of meeting modifications as a rehabilitation expense, may be greater than its exposure in a damages claim because of the application of the punitive 5% discount tables, the add on cost of rehabilitation consultants during the rehab process, and the "unforeseen

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19 [2009] QSC 257 at [47].

20 See: *Lynch v Lynch and Anor* (1991) Aust Torts Report 81-117 per Grove J at 69,099; *Moriarty v McArthy* [1978] 2 All ER 213 at 219, 220; Luntz*, The Assessment of Damages*, para 4.1.7.

21 See: sections 5 and 51 *MAIA*; Schedule Policy of Insurance.

22 Section 51(4) *MAIA.*

surprises" that inevitably seem to arise whenever any construction work is undertaken.

The provision as to what constitutes "rehabilitation" must be interpreted by the insurer's obligation to provide "reasonable and appropriate" rehabilitation services; it does not extend to meet, as a rehabilitation expense, an applicant's long-term housing needs.[23] In that regard, an example satisfying the recent application of that principle was in *Waller v McGrath & Anor* [2009] QSC 158 per Martin J.[24] That case is one of the more recent examples of the common law damages of a plaintiff who had sustained significant personal injuries as a consequence of a motor vehicle accident. The claim was not advanced, and nor could it as a matter of principle, for the injured plaintiff's long-term housing needs. Rather, the claim was advanced, as a head of damage as opposed to rehabilitation (because some modifications had already been undertaken by the insurer) for the cost of additional requirements for the modification of a project home as being one of the plaintiff's long-term accommodation needs. Except in an unusual case where the short-term need may have the effect of also, perhaps unintentionally, of also satisfying the long-term housing needs, that could never have been assessed as "rehabilitation".

The point of focus must be what is reasonable and what constitutes "rehabilitation" in the circumstances of each case[25]. In some instances, a

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23 See: *Aldridge* at [46].

24 See appeal allowed on case management issue: [2010] QCA 17; see, also, *Hills v State of Queensland* [2006] QSC 244 at [116].

25 Also, see: Luntz, *The Assessment of Damages for Personal Injury and Death*, para 4.1.7.

hydrotherapy pool may be allowed as "rehabilitation"[26] and in other cases that claim has been rejected on the basis that it is nothing more than a recreational aid.[27] As we have tried to emphasise, it is a question of fact in each case.

Recent case law

McKay v Suncorp Metway Insurance Limited[28].

In *McKay*, the claimant suffered a severe brain injury as a result of a motor cycle accident. She was a pillion passenger on the bike being driven by the first respondent, her husband. Such was the extent of her injuries that although she had insight into her condition, she was unable to speak, feed herself or walk, and her means of communication were limited to eye and facial movement and, at times, moving a yes or no card in response to simple questions.

The applicant and her husband lived in an old double storey home at the Glasshouse Mountains. It had an upstairs kitchen, narrow corridors and was unsuitable to be navigated in a wheel-chair. The applicant's condition was such that she had involuntary movements and it was suggested that she would require two full-time carers and that she could only be transferred by means of a hoist.

The applicant's family wanted the claimant to be cared for at home rather than in a State government facility and proposed that Suncorp (who had admitted liability on the claim) should provide a purpose built home care facility on the basis that it was impractical (or at least not cost effective) to modify the existing home, and consequently demolition and re-building would be required. The proposed residence required sufficient space for carers as well as all of the usual modifications that would be needed by a person with care needs of that nature. In addition, the claimant wanted a vehicle to be

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26 See: *Munzer v Johnstone and Anor* [2009 QCA 190.

27 *Hines v Commonwealth of Australia* (1995) Aust. Torts Report 81-338 at 62,368.

purchased and modified and to be of a type that could accommodate her (after modification) in the front passenger seat as opposed to being forced to ride in a wheelchair in the back of the vehicle.

Perhaps not surprisingly, Suncorp opposed the application.

Ultimately, the application was heard by Atkinson J on 23 March 2009. After lengthy argument, Her Honour indicated to Counsel for the applicant that "the merits are all on your side" but wanted more evidence regarding some of the architectural issues. The transcript reflects Her Honour's views[29] -

> **Her Honour:** No, please don't interrupt me while I'm trying to speak – that to construe the act beneficially from the perspective of the claimants and informed as one ought to be by the international convention, to restore her as far as money is able to to her pre-accident condition and satisfy as far as money can the needs caused by her injury, she needs – it's uncontested that she needs to be back in her own home and it seems to me incontrovertible , so long as the cost is not excessive, that that can be achieved better in a new home than by retro-fitting the old home, but to make an order which just gives carte blanche to the building of a new home with any number of features of any size of any condition, I just – I don't think I have the power to do that, and nor would I want to. So, that's the difficulty you have put me in.

After the exchanges, the matter was adjourned and the parties negotiated the terms of an order, which were ultimately made by consent[30]. The order was in the following terms:-

> 1. It be declared that in the circumstances of the case it would be reasonable and appropriate to make the following rehabilitation services available to the applicant:

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[28]See: Unreported, Queensland Supreme Court, No. 2097/2009, per Atkinson J, 23 March 2009.

[29] See: T1-36 at [33].

[30] See: Consent in the sense that the parties reached agreement as to the terms of an order after Her Honour had indicated her views on the application.

(a) The funding of the demolition of the residence presently located on the property owned by the applicant and the first respondent as joint tenants and situate at premises at 224 Johnston Road, Glass House Mountains in Queensland, and the construction upon the property of a new dwelling purpose built to accommodate the applicant's disabilities, limited to an amount of $425,000.00;

(b) The funding of the provision of a new, specially modified motor vehicle, for example, a Mercedes Benz Viano van of the kind described in Exhibits TS2, TS3 and TS16 to the affidavit of Travis Schultz filed 20 March, 2009, limited to an amount of $100,000.00.

2. The second respondent pay the applicant's costs of and incidental to the application, as agreed or, failing agreement, to be assessed.

3. Liberty to apply.

Aldridge v Allianz Australia Insurance Ltd[31]

Following *McKay*, *Aldridge v Allianz Australia Insurance Limited* concerned a similar application determined by Applegarth J and which concerned a claimant who, once again, was a motor cyclist struck by a motor vehicle insured by the second respondent. She was a single mother with 3 teenage daughters who lived in a two storey home at Pacific Paradise on the Sunshine Coast. The applicant was rendered a paraplegic as a result of serious spinal injuries and unable to access the second floor of her home. Although the insurer agreed to make (and did make) some modifications to the downstairs area to facilitate the claimant's release from hospital, and agreement had been reached to install a lift in the home to permit the claimant to access the upstairs portion of the house, and for other modifications such as widening corridors and doorways, raising bench heights in the kitchen etc.

The claimant had requested, and agreed to those modifications, but then determined that it was simply unsuitable to attempt to modify her existing home. One of her teenage daughters suffered badly from asthma and would

periodically suffer severe asthma attacks. Such were the severity of some attacks that she could be hospitalised and the attacks could be potentially fatal. Amongst the claimant's concerns was that if her daughter had such an attack it would take her close to ten minutes to transfer to her chair, get to and into the lift, take the lift to the upper floor and then attempt to render any possible assistance. It was common ground between all of the occupational therapists that a single storey home was best suited to the claimant given her confinement to a wheel-chair.

The claimant brought an application for an order that the CTP Insurer either acquire a block of land for her and build her a purpose built home or alternatively, that it acquire an existing single storey home in the same locality and modify it to suit the claimant's accident-related needs. Allianz however argued that its obligation was to either continue with the modifications that had been proposed (including the installation of a lift) or, alternatively, rent her some short term accommodation in the area and modify it so that it was temporarily suitable until her claim was resolved or determined by a Court.

After a hearing, Applegarth J ordered the insurer to acquire an existing single storey home in the locality and modify it to the claimant's accident-related needs. His Honour concluded[32] -

> In conclusion, the fourth option is a reasonable and appropriate rehabilitation service, and the most suitable option in the circumstances. It meets both short-term and long-term accommodation needs that were caused by the accident, and which should be met to optimise, as far as reasonably possible, the quality of the applicant's life. The option is reasonable and appropriate because any capital gain that the applicant receives above that required to meet her accident-related needs, and which the respondent proves at trial, may be brought into account according to well-established principles governing the assessment of compensation, provided a notice is given under s 51(4). The respondent's legitimate interests will be protected by the terms of the order to be submitted.

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[31] See: [2009] QSC 259.

Raymonde Ann Michael v Transport Accident Commission[33]

Hot on the heels of *Aldridge* was another decision dealing with a CTP insurer's obligations to provide rehabilitation under the MAIA. *Raymonde Ann Michael v Transport Accident Commission* concerned a plaintiff was a nurse and who had suffered personal injuries in a head-on motor vehicle accident. Her significant injuries included a severe lower limb and knee injury, as well as symptoms of PTSD. As a result of her injuries, she had not been able to return to her employment and her financial resources had been depleted to the point that she was unable to afford to meet her mortgage and she had relocated to reside with her mother who lived in a rural hinterland town. It was clear that she was going to be required to undertake long term rehabilitation which would preclude her from returning to work for many months and probably never as a nurse but perhaps in a newer role or position that was less physically demanding.

She sought an order that the insurer provide a rehabilitation co-ordinator of her choice to co-ordinate her rehabilitation, an order that the insurer reimburse a number of out-of pocket expenses that she had incurred (including the cost of some supplements and protein bars that had been used on advice of her treating practitioners), and, perhaps most significantly to her, an order that the CTP insurer provide taxi vouchers so that she was able to not only attend doctors and medical appointments, but so that she could get to any places that she reasonably wished to go whether for treatment, social visits or even retail therapy.

The insurer, however, suggested that:-

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[32] See: (supra) at [90].
[33] See: *Raymonde Ann Michael v Transport Accident Commission*, Unreported, Supreme Court of Queensland, No.245/2010, per M. A. Wilson J, 19 January 2010.

- it would appoint its own internal rehabilitation co-ordinator who is based in Victoria;
- would reimburse some of the expenses but not others unless medical evidence could be produced to show the need for the expense was created solely by the injury; and
- it would agree to provide a limited number of taxi vouchers but on the basis that they could only be used to attend medical appointments and not otherwise. The evidence was that the applicant lived three kilometres from the nearest bus station, she could not walk that far and there was no public transport in her immediate locality. She could not use public transport because of her injuries and being on crutches and she could not afford to take taxis because she simply did not have any funds now that she was unable to work, reliant on Centrelink benefits and unable to meet her mortgage commitments.

In the end, Justice Wilson made orders in the following terms:-

1. It be declared that in the circumstances of the case it would be reasonable and appropriate to make the following rehabilitation services available to the applicant:
   (a) The appointment of Ms Suzanne Cox of *Edge Rehabilitation* to be the applicant's rehabilitation co-ordinator;
   (b) The funding of the initiatives described in Section 1.0 ("Initial rehabilitation needs assessment"), except for paragraph 1.2.9, and Section 2.0 ("Initial rehabilitation report"), except for paragraph 2.2.1, of the report of *Edge Rehabilitation* (Ms Suzanne Cox) dated 8 January, 2010, being Exhibit TS1 to the affidavit of Travis Schultz filed 13 January, 2010.
   (c) The funding of the applicant's reasonable transport needs by the respondent's provision of books of taxi vouchers requested from time to time by the applicant, the first of which books of vouchers is to be provided no later than 22 January, 2010, subject to the applicant accounting in writing to the respondent,

upon the use of each $250.00 worth of such vouchers, with respect to particulars of the taxi journeys involved, by reference to the date and purpose of each journey.

(d) The reimbursement to the applicant, no later than 22 January, 2010, of $1,000.00 on account of the expenses listed in the letters of Schultz Toomey O'Brien to the respondent dated 18 November, 2009 and 14 December, 2009, being Exhibits TS3 and TS17 respectively to the affidavit of Travis Schultz filed 8 January, 2010.

2. The respondent pay the applicant's costs of and incidental to the application, as agreed or, failing agreement, to be assessed.

3. Liberty to apply.

Conclusion

Each case is a question of fact which must be looked at against its own circumstances, and the particular injuries sustained by a claimant, in order to determine what is "reasonable and appropriate" "rehabilitation" to any particular claimant. Each case will necessarily differ and involve competing considerations as to questions of reasonableness in order to achieve the desired outcome of the MAIA. Necessarily, as the MAIA and the *Rehabilitation Standards for CTP Insurers* published by the Motor Accident Insurance Commissions promote, there must be co-operation between insurers on the one hand and claimants on the other in order to achieve the desired outcome. Obviously it requires a common-sense approach to achieve that outcome without resorting to litigation for a determination of what constitutes rehabilitation within the circumstances of each case. Whilst the principles from the relatively few cases thus far give some guidance as to the beneficial interpretation of the section to claimants, it is far from "open slather" for a claimant to demand and expect to receive what it considers it should have in an ideal world.