

Annexure 1: AAT and Federal Court Appeal Cases and Meaning of ‘Reasonable and Necessary Support’ (s 34)

Year	Case	AAT or FCA	Matter under appeal	Outcome	Reason for Outcome
2017	<p><i>McGarrigle v National Disability Insurance Agency</i> [2017] FCA 308 (currently on appeal Full Federal Court).</p> <p>This is an appeal from the original AAT decision in favour of the NDIA and partial funding: <i>McGarrigle and National Disability Insurance Agency</i> [2016] AATA 498 (15 July 2016)</p>	FCA	<p>Can reasonable and necessary support under s 34 be partially funded?</p> <p>When s 34 uses the word ‘funded’ or ‘funding’ does that mean full funding of each reasonable and necessary expense or could the words be construed to extend/include partial funding of a reasonable and necessary expense?</p> <p>Reduction of transport funding to 75% of estimated cost.</p>	Applicant	Construction of s 34 Reasonable and Necessary Support miscarried. S 34 does not authorise a partial funding of a reasonable and necessary support. Remitted to AAT for determination of reasonable and necessary support in plan according to law
2017	<p><i>King and National Disability Insurance Agency</i> [2017] AATA 643 (May 2017)</p>	AAT	Whether additional physiotherapy (Bobath therapy) and gym membership reasonable and necessary?	Applicant	<p>Additional Bobath therapy and gym membership on evidence (not ultimately disputed or contradicted by NDIA at AAT) met the definition of reasonable and necessary in s 34.</p> <p>Significant concessions made by NDIA at hearing and prior to decision on funding; no medical evidence lead by the NDIA at AAT.</p>
2017	<p><i>Young and National Disability Insurance Agency</i> [2017] AATA 407 (31 March 2017)</p>	AAT	Whether Turny swivel seat (\$12 056) recommended by OTs to allow applicant with Limb Girdle Muscular Dystrophy to get in and out of husband’s Landcruiser reasonable and necessary?	NDIA	Turny seat not shown to be value for money as compared to other options (s 34(1) (c)); accepted OT evidence that Turny seat would be effective and beneficial but held may be more cost effective solutions which would also be good practice (s 34(1) (d)); Not unreasonable to expect husband to assist with support

					such as moving alternative folding step design (s 34 (1) (e)). Current plan includes option to further investigate options.
2016	<i>JQJT and National Disability Insurance Agency</i> [2016] AATA 478 (6 July 2016)	AAT	<p>Whether transport funding for community access for 13 year child with severe autism, intellectual disability, intellectual disability, language delay, ADHD, reasonable and necessary?</p> <p>Whether parents should provide transport under s 34 (1) (e), Rule 3.4, NDIA Policy?</p> <p>Also raises issue of whether decision technically reviewable given replacement of plan under appeal with new plan (substantially similar)</p>	Applicant/NDIA	<p>Transport funding for weekend community access reasonable and necessary – not reasonable for parents to provide given additional burden included risk to their well-being .</p> <p>Transport for school holiday community access support not reasonable and necessary as parents relieved of normal school transport responsibilities during this time cost of transport during school holiday likely incurred by any parent, longer blocks of community access time will allow parents some respite even with transport.</p>
2015	<i>PNMJ and National Disability Insurance Agency</i> [2015] AATA 866 (11 November 2015)	AAT	<p>Three year old child with severe disability including severe neurological disorder, uncontrollable seizures and multiple other disabilities.</p> <p>Is 24 hour care ‘reasonable and necessary’?</p> <p>Also raises issue of status of review by AAT when plan under review already replaced by subsequent plan with increased support but no increase in care hours.</p>	Applicant	Twenty four hour care reasonable and necessary and funded support to be increased for 6 months pending next review. Well-being of family at risk, limited support available from community and informal support, very high and complex needs, extensive care and support already provided by parents.

2015	<i>Fear by his mother Vanda Fear and National Disability Insurance Agency</i> [2015] AATA 706 (14 September 2015)	AAT	Applicant with catastrophic brain injury cared for at home. Are pulse oximeter, bedside oral suctioning machine and portable oral suctioning machine (all necessary to maintain health) reasonable and necessary? Are the items of equipment appropriately funded under NDIS or general health system? (s 34 (1) (f))	NDIA	Equipment more closely related to health needs. The fact that also allows applicant to remain living at home does not change that principal purpose is to manage health. The fact that equipment not now funded by the State health system not part of the test for whether should be funded by NDIS. Cost of equipment not reasonable and necessary.
2015	<i>McCutcheon and National Disability Insurance Agency</i> [2015] AATA 624 (21 August 2015)	AAT	Applicant with spina bifida and scoliosis, perthes disease in left hip, chronic renal failure, heart disease. Whether chiropractic treatment reasonable and necessary? (S 34 (1) (d) or s 34 (1) (f))	Applicant	Chiropractic treatment could amount to good practice for the purposes of s 34(1)(d); Applicant's lived experience of impact of treatment on mobility and function to be given considerable weight; treatment most appropriately funded by NDIS s 34 (1) (f)
2014	<i>ZNDV and National Disability Insurance Agency</i> [2014] AATA 921 (25 November 2014)	AAT	Five year old applicant; Early intervention program; Aspergers and developmental delay in areas of social interaction . Is the provision of equipment for a home occupational therapy room reasonable and necessary? (s 34(1) (c); 34 (1)(d))	NDIA	Provision of a home therapy room not likely to be of long-term benefit to applicant, based on expert evidence. Cost of equipment not value for money. Cost not reasonable relative to benefits. S 34 (1)(c) not met. Not necessary to decide, but not satisfied s 34 (1)(d) met (current good practice).
2014	<i>TKCW and National Disability Insurance Agency</i> [2014] AATA 501 (23 July 2014)	AAT	Three year old applicant ASD. Whether listening/sound therapy/TLP reasonable and necessary? Whether child care for twin brother to allow mother to attend therapy with applicant reasonable and necessary? S 34 (1) (c); 34 (1)(d); s 34 (1) (e)	NDIA	Listening therapy/TLP not reasonable and necessary. Insufficient evidence to show effective and beneficial; good practice. Not value for money given not confident of benefits. S 34 (1) (c); s 34 (1)(d); Funding for care of twin brother nor reasonable and necessary. Reasonable for family to use current arrangements/make adjustments s 34 (1) (e).

2014	<i>Young and National Disability Insurance Agency</i> [2014] AATA 401 (20 June 2014)	AAT	Applicant with type 1 diabetes and Emphysema. Oxygen and Insulin dependent. Is a portable insulin pump and portable oxygen concentrator reasonable and necessary? Is this equipment more appropriately provided by the state health system? S 34 (1)(f)	NDIA	Insulin pump and oxygen concentrator not reasonable and necessary as primary purpose the treatment of health condition. S 34 (1)(f). Not satisfied he is unable to undertake activities of daily living or participate in community without them. Whether or not funding is provided by state health system is not part of the test for whether should be funded by NDIS.
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