

# Support Coordinators and the Administrative Appeals Tribunal (AAT)

A recent decision of the AAT, [‘Al Saed and National Disability Insurance Agency’](#) demonstrates that a NDIS participant may use a support coordinator as either a support person or as an advocate at the AAT. However, caution is still required where there is a potential conflict between the interests of the support coordinator and the interest of the participant and NDIA. The NDIA is also clear that funds in a participant’s plan cannot be used to pay a support coordinator for their services advocating for a participant at the AAT. This does not prevent a support coordinator providing services pro bono or for a private fee.



In addition, any person acting as an advocate for a participant needs to make sure they are not engaging in ‘legal practice’ or holding themselves out to be a lawyer.

## Quick facts of the case

- Does a NDIS participant have a right to appoint a Support Coordinator as their representative in the Tribunal? **Yes**
- Does the Tribunal have the power to disallow a representative, including a support coordinator from appearing if there is a conflict or some other factor? **Yes**
- Should the Tribunal exercise its power to prohibit the Support Coordinator appearing for the NDIS participant? **Not in this case**

In ‘Al Saed and National Disability Insurance Agency’, the NDIS participant wanted to be represented at the AAT by her support coordinator, as neither Legal Aid nor disability advocacy services had capacity to provide the level of assistance she needed.

Al Saed’s matter was listed for a case conference. The Conference Registrar identified that Ms Al Saed was represented by her support coordinator and contacted the support coordinator prior to the first case conference to discuss their concern that a conflict of interest existed. The Conference Registrar told the support coordinator not to attend the case conference. The support coordinator disputed his exclusion from the case conference. The Conference Registrar vacated the case conference and referred the matter for an interlocutory hearing, for the matter to be considered by a Member of the Tribunal.

The NDIA argued that it was not acceptable for a support coordinator to appear in the Tribunal where the support coordinator had a conflict or the potential for financial gain. An application for review of a plan may include a request for more support coordination funding or more funding generally, either of which could result in the support coordinator receiving a financial benefit from the decision being reviewed by the Tribunal.

The Tribunal agreed that they do have the power to prevent a specific person from being a party’s representative,<sup>1</sup> but whether they should exercise that power would depend on the facts of the particular case.<sup>2</sup>

<sup>1</sup> Al Saed and National Disability Insurance Agency [2022] AATA 271 (18 February 2022) at [32].

<sup>2</sup> Al Saed and National Disability Insurance Agency [2022] AATA 271 (18 February 2022) at [33].

In this case, they considered facts, such as:<sup>1</sup>

- the additional funding requested for support coordination was small in comparison to the total value of supports the NDIS participant was seeking
- it was unlikely the support coordinator would be required as a witness
- even if the additional support coordination funding was approved, there was no guarantee that the particular support coordinator assisting the NDIS participant at the Tribunal would receive that funding

The Tribunal stated that it is for the Tribunal to judge whether they believe the support coordinator is acting in self-interest or in the best interests of the NDIS participant, and there should be evidence of a representative's misbehavior for the Tribunal to disqualify them.

In this case, the Tribunal concluded that it was appropriate for the NDIS participant to be represented by her support coordinator.

## Funding of Support Coordination

The NDIA referred to section 200A of the NDIS Act 2013 which states:

“Nothing in this Act permits or requires the Agency to fund legal assistance for prospective participants or participants in relation to review of decisions made under this Act”.

They also referred to page 15 of the Operational Guideline titled [Reviewing Our Decisions](#) which states:

“You can't use your NDIS funding for someone to represent you at the Tribunal. For example, you can't use your NDIS funding for a lawyer, support coordinator or other provider. We also can't fund any legal advice or legal support when you go to the Tribunal.”

The Tribunal stated that “Those matters relate, however, to questions of funding. They do not prevent the mere appearance of the Applicant's support coordinator in circumstances where the Support Coordinator acts pro bono or is otherwise privately paid without drawing on NDIS funding.”<sup>2</sup>

The [AAT Guideline](#) notes that where a person 'is party to any unusual remuneration arrangements, including whether the person's remuneration is dependent on the outcome of the matter', you must notify the NDIA and the AAT so the situation can be addressed.<sup>3</sup>

## Our tips

- Declare any potential conflict of interest at the beginning of a case conference and in any written reports
- Excuse yourself from discussion on the item where there is a potential conflict
- Ensure that NDIA funds are not used for attendance at the Tribunal by any person and explain that to the NDIA and the Tribunal either prior to or at the beginning of a case conference
- If there is no other person who can support a participant at the Tribunal, tell the Tribunal and ask for suggestions as to how to manage any potential conflict

<sup>1</sup> Al Saed and National Disability Insurance Agency [2022] AATA 271 (18 February 2022) at [34].

<sup>2</sup> Al Saed and National Disability Insurance Agency [2022] AATA 271 (18 February 2022) at [27].

<sup>3</sup> Administrative Appeals Tribunal Guideline: Persons Giving Expert and Opinion Evidence (30 June 2015) at 5.2

