



Australian Government
Department of Social Services

MC22-003791

Mr Bob Buckley
convenor@a4.org.au

Dear Mr Buckley

Thank you for your email of 27 May 2022 to the Minister for Finance, Senator the Hon Katy Gallagher, regarding decisions made by the Administrative Appeals Tribunal (AAT) in respect of the National Disability Insurance Scheme (NDIS). Your email was referred to the Minister for the National Disability Insurance Scheme and Minister for Government Services, the Hon Bill Shorten MP, as this matter falls within their portfolio responsibilities. I have been asked to reply on behalf of the Minister.

Individuals affected by an internal review decision made under section 100 of the *National Disability Insurance Scheme Act 2013* (NDIS Act) may make an application to the AAT for external review. The AAT may then affirm, vary or set aside and either substitute the decision or remit it back to the National Disability Insurance Agency (NDIA). In making a decision, the AAT must have regard to the same matters as decision makers within the NDIA. The AAT cannot make decisions inconsistent with the NDIS Act.

The AAT stands in the shoes of the decision maker and is subject to the same legislative requirements. However, a decision by the AAT may or may not be consistent with the general approach taken by the NDIA on a particular policy issue or in specific circumstances, without either decision being inconsistent with the NDIS Act. The Federal Court of Australia has recognised that it is possible for ‘reasonable minds’ to differ in determining what supports may be reasonable and necessary, without there being legal error.

Decisions of the AAT are specific to the circumstances of the matter before it at the time that it hears the matter and are only binding in each particular case. While past decisions of the AAT can provide guidance for delegates in future decision making, those principles are not universally binding.

I trust this information is of assistance. Thank you for bringing this matter to our attention and for giving us an opportunity to address any confusion caused by the previous comments.

Yours sincerely

A handwritten signature in blue ink that reads "Julie Yeend".

Julie Yeend LVO
Branch Manager
NDIS Governance, Policy and Legislation

27 June 2022