



MEDIA RELEASE

Federal Court upholds Fairness of PSR Committee Process

The Federal Court has firmly rejected arguments that a Professional Services Review Committee hearing was unfair or that the Committee has wrongly understood the requirements of the 'urgent after-hours' MBS item and the '80/20 rule'.

The Court held that the Committee was correct in its understanding of the urgent after-hours item that 'urgency' is to be assessed by the medical practitioner only at the conclusion of their attendance on the patient.

PSR Director, Professor Julie Quinlivan, stated, "This ruling reinforces the message that a service should not be billed until it has been performed. After completing a service, then the practitioner will have a clear understanding of whether the need for the service was urgent."

The Court also held that the Committee was correct in its view that once the evidence establishes that the practitioner had rendered 80 or more attendance services on 20 or more days in a 12 month period, there is a practical onus on the practitioner to establish that there was an absence of alternative medical services for the practitioner's patients on any of those days if that is the exception to the 80/20 rule relied on by the practitioner.

At the hearing, the practitioner was accompanied by a lawyer who played an active part in the proceedings, including cross-examining a witness who gave evidence concerning the availability of medical services in the area in which the practitioner had practised. Additionally, the Committee took into account further material submitted by the practitioner's lawyer after the hearing, even though the Committee had not expected to receive any further evidence at that time.

The Court found that the Committee had advised the practitioner of any adverse finding that would not obviously be open on the material before it, gave the practitioner an opportunity to deal with adverse information that was credible, relevant and significant to the decision to be made, and adopted a procedure that was reasonable to give the practitioner a genuine opportunity to be heard.

PSR General Counsel, Mr Bruce Topperwien, stated, "We strongly encourage practitioners to contact their medical defence organisation and obtain legal representation at the outset. The PSR process allows practitioners to give oral and written submissions repeatedly throughout the review process."

The judgment can be accessed at: www.austlii.edu.au/au/cases/cth/FCA/2018/2063.html

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