Their Honours considered the purpose of the Act would be defeated if the characteristics of the disabled person, such as violent behaviour, were attributed to the person with whom the comparison was being made and found Daniel had been discriminated against by the education authority.

Throughout the proceedings a case was made out for direct discrimination only, as the model for indirect discrimination was not applicable in the circumstances. PL

LISA RENNIE, QLD

Don't be added to the bottom of the waiting list

Aviles v Allianz - Unreported, Brisbane District Court, Boulton DCJ, 27 August 2003

A request by a defendant for a medico-legal examination can sometimes cause a plaintiff frustrating delays. Defendants most often make these requests after the plaintiff has obtained their medical evidence, and it is not uncommon for the next available medical appointment to be up to six months away.

In *Aviles v Allianz* , the insurer requested that the plaintiff undergo examination by a psychiatrist and forwarded the requisite panel of three practitioners. The plaintiff rejected the panel on the grounds of unnecessary delay. Allianz submitted a further panel of practitioners which was again rejected on the same grounds.

Allianz then provided a third panel. An appointment with Dr Lawrence on this panel would have caused a delay of six months or more, while appointments with doctors on the previous panels would have caused delays of approximately seven to ten months.

Allianz argued that the practitioners on its panel were ones in whom it had confidence. Boulton DCJ noted that it was not good enough for Allianz to adopt a stance that there are only seven psychiatrists in Brisbane in whom it has confidence and if that means delay to the plaintiff then it is up to the plaintiff to concede the point.

Boulton DCJ ordered that Allianz provide the plaintiff with a panel of three psychiatrists available within three months to assess the plaintiff. Further, if Allianz failed to do so, it would forgo the right to have the plaintiff assessed.

The irony is that had the plaintiff's solicitors agreed to the first panel of experts, the examination would have long since been completed by the time the application was heard.

The *Personal Injuries Proceedings Act* 2002 (Qld) and *WorkCover Queensland Act* 1996 (Qld) have similar provisions allowing defendants the opportunity to have plaintiffs independently examined and require a similar panel of three practitioners to be submitted for the plaintiff's consideration. *Aviles* could be applied in these situations to avoid unnecessary delay for plaintiffs.

In the past, plaintiff lawyers have generally accepted the delay caused by the defendant exercising their right to have the plaintiff examined. In light of the decision in *Aviles*, plaintiff lawyers are less likely to tolerate long waiting lists for medical examinations. It is most likely that defendants will have to either widen the pool of specialists they brief or make bulk future appointments which they can then allocate to specific plaintiffs as the need for review arises.

As reports from new specialists become available, the APLA special interest group forum will be a great tool for practitioners to discuss these reports and to assist in making a choice of expert from a defendant panel. It may well be the case that solicitors prefer to endure some delay, rather than select a practitioner who will undoubtedly write an unfavourable report. However, as a result of *Aviles*, that delay should be no more than three months. PL

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