

(The Gender Centre advise that this article may not be current and as such certain content, including but not limited to persons, contact details and dates may not apply. Where legal authority or medical related matters are cited, responsibility lies with the reader to obtain the most current relevant legal authority and/or medical publication.)

# Watching Out for Discrimination

## Medicare Ignores the Needs of Trans People

by Julia Cabassi, Inner City Legal Centre

Article appeared in Polare magazine: September 1996 Last Update: October 2013 Last Reviewed: September 2015



### Hormone Drugs & Rebates Under the Pharmaceutical Benefits Scheme

**R**ecently, the Inner City Legal Centre acted for a person who was refused rebate on the

cost of the hormone therapy. The particular hormone treatment was on an authority prescription scheme. The authority prescription scheme is part of the pharmaceutical benefits scheme and usually requires special authorisation for a rebate on rare or expensive drugs.

*When his doctor inquired, it seems because his birth certificate said female and these were male hormones, he was not entitled to a rebate because the rebate was not available for females.*

When his doctor inquired, it seems because his birth certificate said female and these were male hormones, he was not entitled to a rebate because the rebate was not available for females. The circumstances of the refusal of the rebate remain unclear. However, the outcome is that Ian again has access to the rebate. The problem was resolved without the need to pursue a legal remedy. The negotiations gave us some important information for anyone who regularly uses hormone treatments. The outcome is good news for post-operative transgenders, but leaves the situation for pre-operative/non-operative transgenders unclear.

### Ian's Story

Ian was born female and has undergone gender reassignment surgery about three years ago. He needs to continue to receive hormone therapy in the form of an injection every three weeks or so at a cost of about \$50 per injection.

The hormone treatment he is receiving was on an authority prescription scheme which requires that each prescription is authorised. Ian's doctor telephoned for an authorisation for a new prescription for Sustanon under the previously allowable category of "male hypogonadism" (males with low testosterone). The authority prescription was refused.

The doctor was advised that because Ian was registered with Medicare as a female, he was not eligible to obtain the drug on authority prescription and would therefore have to pay full price for the treatment. It seemed that a decision regarding access to male hormones for women had been made somewhere along the line.

This seemed very strange as Ian had been accessing Sustanon under the authority prescription scheme for at least two years prior to this refusal.

Ian is in receipt of a disability support pension as his sole source of income and he could not afford the cost of the hormone treatment which he receives every three weeks at a cost of \$50.00 on each occasion and it will be necessary for him to continue to receive hormone treatment for the rest of his life. This decision would cause Ian and many others in similar situations considerable financial hardship.

### What Could We Do?

The options depended on the basis of the decision for denying Ian the rebate. If the rebate was being denied to Ian, oddly enough, as a woman, we could tackle the problem as a discrimination complaint. As the decision making responsibilities on access to pharmaceutical benefits lies with the Commonwealth Government, Ian could make the complaint under the Sex Discrimination Act and lodge his complaint with the Human Rights and Equal opportunity Commission. Precisely because the decision maker was the Commonwealth Government, we could not lodge a complaint under the N.S.W. Anti-Discrimination Act. So even though there have been recent changes to enable complaints of transgender discrimination under the Anti-Discrimination Act (N.S.W.) this would not have assisted in this case.

### The Investigation - What We Found Out:

The decision seemed strange and inconsistent with previous practice in Ian's case. What had changed in the interim? The first step was tackling the "Great Commonwealth Health Bureaucracy" to find out who was responsible for the decision.

We wrote to the Pharmaceutical Benefits Advisory Committee (P.B.A.C.). Part of P.B.A.C.'s responsibilities is to advise the Commonwealth Government on which drugs ought to receive a subsidy under the scheme. We were advised that there had been no recent decisions made by P.B.A.C. that would have resulted in the refusal of the rebate in the client's case. We were advised to contact the Health Insurance Commission (H.I.C.) which is responsible for administering the pharmaceutical benefits scheme.

So we spoke to H.I.C. In response to our letter, the H.I.C. wrote that they had been acting on the basis of advice that the "birth" sex of a person is their sex regardless of any gender reassignment. However, after receiving our complaint the H.I.C. sought new legal advice from the Attorney-General's Department which now provides that a person who has undergone gender reassignment surgery will be treated as a person of their assigned sex for the purposes of accessing gender specific drugs under the pharmaceutical benefits scheme. The H.I.C. has sent this new advice to all H.I.C. processing centres.

Obviously this was a good outcome in Ian's case and he now accesses his prescriptions under the authority prescription scheme and obtains a rebate. This does raise some concerns that pre-operative/non-operative transgenders may be refused access to a rebate for hormone treatment. It will depend on the circumstances in each case whether it is possible to lodge a discrimination complaint against such a decision. The best thing to do is get legal advice on your situation. If you are refused a rebate, it is important to get as much information as possible. Here's a quick checklist of questions.

You need to ask:

- Is the drug available under the Pharmaceutical Benefits Scheme?
- Is this drug on the authority prescription scheme?
- Why were you refused access to a rebate?

You need to get advice. Whether you can rely upon the H.I.C.'s new advice will depend on your situation.

**Ian is not our client's real name and some of the details have been changed to preserve our client's confidentiality.**

Polare Magazine is published quarterly in Australia by The Gender Centre Inc., which is funded by the Department of Family & Community Services under the S.A.A.P. program and supported by the N.S.W. Health Department through the AIDS and Infectious Diseases Branch. Polare provides a forum for discussion and debate on gender issues. Unsolicited contributions are welcome, the editor reserves the right to edit such contributions without notification. Any submission which appears in Polare may be published on our internet site. Opinions expressed in this publication do not necessarily reflect those of the Editor, The Gender Centre Inc., the Department of Family & Community Services or the N.S.W. Department of Health.

The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.