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Refunding Medicare after a personal injury claim settlement

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During a personal injury claim, you are likely to come across the concept of a ‘settlement refund’. Settlement refunds are amounts taken out of personal injury compensation to pay back various entities that provided financial assistance after your injury. It is important for claimants in personal injury matters to understand when these refunds will be payable, as it can impact the amount of the settlement or judgement that will be paid to the claimant.

In this blog, we look at what is one of the most significant settlement refunds, which is the refund payable to Medicare Australia.

What is refunded to Medicare after a personal injury settlement?

Medicare Australia (‘Medicare’) is entitled to be refunded for any medical treatment they have funded for claim-related injuries for which the claimant later receives compensation. This applies to almost all personal injury compensation payments involving claims where the compensation amount is more than $5,000.00.

The total amount that Medicare provided to that claimant for treatments to do with their injury is calculated, and this is the amount that Medicare must be paid from the settlement or compensation received.

This will not include payments that were made by Medicare to or on behalf of the claimant, which do not relate to any injuries or illnesses associated with the personal injury claim.

For example, let’s consider a person (let’s call them John) who injures their knee in a car accident. Between the date of the accident and the compensation payment, they receive funding from Medicare for the following items:

Appointment with their GP relating to their injured knee ($100.00);

A regular hearing test ($200.00);

Pain injection for their injured knee ($300.00); and

A regular optometrist's appointment ($400.00).*

** these are not correct figures – they are simply being used to illustrate the example.*

If John were to lodge a motor vehicle accident (CTP) claim for compensation for his accident-related knee injury, a refund will need to be paid to Medicare for $400.00, which includes $100.00 for the GP appointment and $300.00 for the pain injections, from any applicable compensation payment or settlement.

Importantly, the other $600.00 that Medicare funded during that period (for the hearing test and optometrist's appointment) does not need to be paid back because they do not relate to the motor vehicle accident that John was being compensated for.

Why is Medicare refunded in personal injury claims?

The idea behind the refund requirements in personal injury claims is that the person who was at fault for or caused the injuries should pay for the medical treatment, not Medicare (which is, ultimately, the taxpayer).

For example, for a public liability compensation claim, the idea is that the respondent (or their insurer) should also be required to pay back Medicare as their negligence has caused the injury and therefore caused Medicare to have to provide the funding.

When a lawyer assists a claimant to assess the value of their claim, one of the components that they can be compensated for is the medical treatment that they have received. Generally, this includes amounts that Medicare paid for those treatments, which are set aside to be paid straight to Medicare from any settlement monies the injured person receives. This is done instead of Medicare claiming the amount from the insurer (for example, by their own legal action).

Put simply, by refunding Medicare from the settlement amount, it means that claimants are not "double dipping" on funding for their treatments by receiving funds from Medicare for their treatment and then also being compensated by the respondent for the same treatment.

How is the Medicare refund calculated in personal injury claims?

There are two ways Medicare calculates how much they will take from a personal injury settlement as a refund:

Notice of Charge prior to settlement

No valid Notice of Charge at settlement

Both of these methods involve Medicare sending the claimant a form called a ‘Medicare History Statement’ or a ‘Notice of Past Benefits’.

A Medicare History Statement lists all the treatments Medicare has funded for the claimant since the claim-related accident. A claimant’s task when they receive a Medicare History Statement is to go through and tick every item that relates to their personal injury claim. In John’s situation, he will tick the GP appointment and injections but will not tick the hearing test or the optometrist’s appointment.

Once Medicare receives the ticked Medicare History Statement, they add up all the ticked items to calculate how much the refund will be. They will notify the claimant of the calculation in a document called a Notice of Charge.

Importantly, Medicare will provide information about the timeframes for sending back the ticked Medicare History Statement. If a claimant does not send their Medicare History Statement back in time, Medicare will issue a ‘deemed’ Notice of Charge, which will be for all the items on the Medicare History Statement, whether claim related or not. For John, this would mean that he is required to refund $1,000.00, which includes all four of the appointments, rather than the $400 only for claim-related Medicare expenses.

All claimants should be conscious of this and ensure they are:

checking the mailing address provided on their claim regularly; and

complete the Medicare History Statement within the timeframe stated on the form and the correspondence from Medicare.

Method one – Notice of Charge prior to settlement

Where there is a valid Notice of Charge at the time of settlement of the personal injury claim, the amount in that Notice of Charge will be paid directly to Medicare by the compensation payer (i.e., the insurer/ respondent/ defendant). The compensation paid to the claimant is reduced by the refunded amount.

This will occur where the claimant has completed a Medicare History Statement during their claim (i.e., prior to a settlement or judgment in their compensation claim) and where the Notice of Charge has not expired before the settlement or judgement was reached.

Method two – No valid Notice of Charge at settlement

If there is no valid Notice of Charge at the time the personal injury claim settles, the process for the refund can get a bit more complicated. Because there isn't a 'valid' current Notice of Charge to calculate how much the refund is, Medicare will, instead, be paid 10% of the total settlement amount by the insurer/defendant. This is called an 'advanced payment'.

Medicare then sends a fresh Medicare History Statement to the claimant to work out how much the Notice of Charge will be.

If the Notice of Charge is less than the advanced payment, Medicare will pay the difference between the two amounts within 28 days. If the Notice of Charge is more than the advanced payment, the claimant will need to pay the difference to Medicare within 28 days.

If we have a look at John's CTP claim again, let's assume that his settlement was for $6,000.00. If there is no Notice of Charge at the time of his settlement, the insurer will pay $600.00 (i.e. 10%) of this settlement to Medicare as an advanced payment. Medicare will then send him a Medicare History Statement to complete.

If he returns his Medicare History Statement on time, the Notice of Charge should be $400.00 (for the accident-related injuries). This means that Medicare will pay the difference of $200.00.

If he doesn't return his Medicare History Statement on time and the Notice of Charge is $1,000.00, then he will be required to pay the difference of $400.00 to Medicare.

> ***Important tip****: Make sure you keep a lookout for the Medicare History Statement, complete it accurately and return it to Medicare well within the timeframe advised.*
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> *It's worth noting that the example we have used (for John) involves small amounts of funding by Medicare. If you use a lot of Medicare services immediately after your injury and prior to your compensation claim settlement, and you don't complete the Medicare History Statement (accurately or in time), you could find yourself significantly out of pocket.*

Get help from a personal injury lawyer

If you would like some advice about a personal injury claim or Medicare (or other) settlement refunds, reach out to IM Lawyers. It costs you nothing to find out where you stand, and we run personal injury claims on a 'no win, no fee' basis.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.