

# 失智症患者於長照機構 誤嚥致死之注意義務

Duty of Care for Dementia Patients with Death by  
Inadvertent Swallowing in Long-Term Care Facility

令和5（ネ）年第283號損害賠償請求控訴事件

令和6年4月18日名古屋高等裁判所、名古屋地方裁判所



## 摘要

死者A住在被告營運之老人福祉機構，因進食誤嚥致死，則其繼承人質疑被告機構未依醫囑提供餐食，亦未於進食中全程協助與監視。高等法院認為，醫師指示死者A之主食應從米飯改為「白粥」，目的在於避免嘔吐而非誤嚥；則被告機構雖未經醫師同意而擅自提供「用湯汁泡軟之米飯」，惟其效果與「白粥」相同而與醫囑目的不相違背。其次，死者A雖是重度障礙者，但事發時並無吞嚥障礙的情況，被告並無可能預見死者A誤嚥致死，故尚無義務全程監看A進食。最後，機構職員已善盡安全注意義務，事發當下也有善盡危機處理之責。

關鍵詞：安全注意義務（duty of care）、吞嚥障礙（dysphagia）、長期照顧（long-term care）、債務不履行（non-performance）

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Decedent A, a resident of an elderly welfare organization operated by the defendant, died as a result of swallowing. A's heirs challenged the defendant's failure to follow the physician's instructions to provide meals, and its failure to provide assistance and supervision throughout the process of eating. The High Court held that the physician's instruction that the A's staple food should be changed from rice to congee was aimed at avoiding vomiting rather than swallowing. While the defendant provided "rice softened with soup" without the physician's consent, it was concluded that this was equivalent to congee and didn't contradict the physician's instructions. Secondly, although A was severely impaired, he didn't have any swallowing disorder at the time of the incident, and the defendant was not obliged to supervise A's entire meal as it was impossible for the defendant to foresee A's death by accidental swallowing. Finally, the staff of the organization had fulfilled their duty of safety and their duty of crisis management at the time of the incident.

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## 壹、事實概要

### 一、事件概要

本案係由死者A的繼承人（原告X1、X2）對介護老人福祉設施的營運者（被告Y）所提起的損害賠償訴訟。A於機構中因進食不慎誤嚥致死，家屬質疑機構未依醫師指示提供正確質地的米飯，未善盡於進食過程全程協助或持續監視的注意義務，緊急處置未符合安全配慮義務等，依債務不履行或不法行為，求償35,531,332日圓（X1、X2各17,765,666日圓）及自A死亡當日（2019年12月12日）起至支付完成為止，按年5%利率計算的延遲損害金。