Review number: 8201189

Claim number: 10057659194

Application by Dennis Arthur Smith

for a review under the Accident Compensation Act

Held by	Zoom audio and video conference
Date of hearing	29 July 2024 and concluded on 1 August 2024
Reviewer	Erika Vogel
Present	Dennis Smith, via telephone Bobby Parker, via Zoom video
Decision Issued	27 August 2024
Issue	ACC's decision dated 6 March 2024, which declined funding for rehabilitation services.
Decision	Quashed with directions
Costs	Not Sought
Action	Required

Decision

I have considered whether ACC's decision dated 6 March 2024, which declined funding for rehabilitation services, was correct.

My decision in this matter is that ACC's decision is quashed with directions. This means that I have quashed, or overturned ACC's original decision and issued directions. ACC is directed to consider the relevant circumstances I described in the analysis below and issue a new decision within 30 days of this decision.

In reaching my decision, I have considered Mr Smith's verbal evidence and written submissions, ACC's case file and submissions, the Accident Compensation Act 2001 (the Act), and relevant case law.

Background

Covered claim

On 4 March 2023 Mr Smith's treatment provider lodged an ACC45 injury claim form on his behalf with an accident date of 25 February 2023. The accident description was stated as "Patient has claim lodged for tripping over wire with haematoma to left leg the Haematoma had become infected and whilst in hospital had a left occipital lobe infarct…".

On 12 June 2023, ACC approved treatment injury cover for 'Left occipital stroke resulting in vision loss right eye secondary to withheld anticoagulant medication".

On 23 June 2023, the scope of cover was extended to include vision loss to the left eye.

Social rehabilitation needs assessments (SRNA)

Mr Smith requested some assistance with rehabilitation and other needs, such as 'meals on wheels' and was referred for a SRNA. In the SRNA report dated 28 June 2023 the following is noted (in part):

> … Mr Smith reported that he has been privately funding meals on wheels through a local rest home. He discussed that cooking is not something he is interested in but is agreeable that he has the skill and knowledge to prepare himself food. Due to the vision loss, Mr Smith will need to ensure he scans the bench in a systematic pattern to visually locate things that he needs. As there is no reported upper limb impact, it is anticipated that Mr Smith can safely and independently make meals for himself. …

A report from Maddie Martinez from Blind Low Vision NZ, dated 1 November 2023, noted:

> Additional Vision Information: Mr. Smith has Quadrantanopia[1] both eyes. Homonymous Inferior Right sided quadrantanopia. Related to stroke affecting left anterior parietal area of the optic radiations.

[1] Quadrantanopia refers to an anopia (loss of vision) affecting a quarter of the visual field. It can be caused by lesions in the temporal parietal or occipital lobes of the brain. https://en.wikipedia.org/wiki/Quadrantanopia.

Mr. Smith has stated that his right eye is worse and he was under the impression that his left eye was fine, until an eye specialist told him both eyes were damaged. He was not entirely convinced. When preforming a casual field loss test, it became apparent that the lower right quadrant was not recognizing hand movement and Mr. Smith was then aware that there was some loss in that field.

Adjustment to Vision Loss: Mr. Smith shared that when he first lost his vision he was "crashing and banging" into objects and furniture. He shared how he would visually miss a pen on the table, but with time he has learned to scan his environment. Mr. Smith thinks in recent weeks he's "crashed and banged" less and I proposed that this may be due to his adjusting to his visual field and scanning more effectively and being more careful. Mr. Smith is aware he needs to scan a few times when looking for objects or performing close tasks. …

Home Management: Mr. Smith has moved to a new location 3 weeks ago. He is living in a garage that he rents. The garage does not have power turned on, though he stated that it should in the next few weeks. The garage does not have a kitchen, though Mr. Smith shared he will be installing one eventually. Mr. Smith does his cooking in a van parked on the property. It has a gas cooker. Mr. Smith does not have access to refrigeration, so his ability to cook are limited. Mr. Smith stated he does not have trouble cooking, he's just had to scan his environment more in order to locate items. High contrast cutting boards and non slip mats could help with this, as well as proper lighting in his new kitchen.

The environment where Mr. Smith is full of tools and equipment, and as such there is limited walking space. The bedroom part of his quarters is very dark and Mr. Smith does struggle with the darkness.

Proper lighting is important as it will help maximize remaining vision. Bright and well-distributed light can enhance contrast and clarity, allowing him to better identify objects, navigate spaces, and perform daily tasks. Proper lighting can help illuminate areas that fall into Mr. Smith's blind spots, providing a better overall sense of his environment and helping him detect potential hazards more effectively.

A well-lit environment minimizes shadows and reduces the chances of misjudging distances or misinterpreting objects, reducing the risk of accidents. Good lighting could help to prevent falls or missteps.

Task Lighting: For specific tasks like reading, cooking, or other activities that require precision, task lighting can be installed to focus light where it's most needed, ensuring that Mr. Smith can continue to engage in these activities safely and efficiently. …

Orientation skills – indoors / outdoors: Mr. Smith is able to orient visually as he has the functional vision to do so. He does not get lost and has not had any trouble in this respect.

Mobility skills - indoors / outdoors: Mr. Smith is unable to detect obstacles in the lower right part of his visual field, which poses a risk when walking or moving around, especially in unfamiliar environments. In situations where there may be uneven pavements, steps, or potential trip hazards, his current visual impairment can lead to accidents, reduced mobility, and a decreased quality of life. Mr. Smith is acutely aware of the various obstacles in his home, and shared that many have already posed an issue for him and that is why he is so hyperaware.

For Mr. Smith, a cluttered home environment poses multiple serious risks. Objects left on the floor become invisible hazards that he cannot detect. This makes it significantly easier for him to trip leading to potential injuries. In a cluttered setting, his ability to move safely and confidently is severely compromised, as every step can become a potential hazard. Such an environment not only endangers his physical well-being but also can cause psychological stress and anxiety, as the fear of potential injury looms large in daily activities. I've advised have a place for all objects might make Mr. Smith feel safer in his home, he shared that because he's just moved

> in, he hasn't had a chance to do this all yet. Mr. Smith used spray paint to mark a traveling path in his old home and found this to be beneficial as well and is interested in recreating this in his new environment.
>
> Mr. Smith stated that he does not find crossings to be difficult, and he does not have access to public transport near his home. …

A further report from Maddie Martinez from Blind Low Vision NZ, dated 11 December 2023, noted:

> Personal Care:
>
> Home Management: Dennis has power hooked up at his place of residence at this time. He stated he is managing fine with activities of daily living. He is still looking into have an electrician coming out to install lighting. This would now need to be removeable lighting as he does not think he will stay in this location for more than 10 months.
>
> Orientation skills – indoors / outdoors: Mr. Smith stated no need in this area at the time of original assessment.
>
> Mobility skills - indoors / outdoors: Mr. Smith was introduced to a long cane in order to reduce instances of collision with obstacles and risk of fall. During training Mr. Smith was instructed in using the cane in his home environment, in town, and at various shops.
>
> Mr. Smith verbalized an immediate aid in using the cane, as he was able to detect many objects tactilely that he would have missed visually. Mr. Smith would find the object with his cane and then visually scan to detect any risk. Dennis feels that the cane is catching his visual attention and we discussed that this was something he would likely get used to. Discussed feelings of "fraud" when using the cane, as Dennis has fine vision in the other quadrants, but following the trip to town Dennis was more aware of the function of the cane.
>
> Trailed the cane going up and down stairs and at crossings. Dennis was able to find steps with more confidence and safety. Dennis was encouraged to walk with upright posture in order to utilize the cane over the missing vision. …
>
> Any Barriers identified and recommendation for ongoing services:
>
> Mr. Smith declined any further supports after the conclusion of the first 120 minute session. He feels he has the cane skills down and due to his residual vision his needs are not great. Mr. Smith is still concerned about the refunds for taxis from ACC and is focusing his attention on this service. Have discussed that should his vision change, or should he move house he might want to request some further support from BLVNZ …

ACC seeks advice

ACC sought advice and referred the matter to its medical advisor, Dr Sue Macaulay. On 24 January 2024 Dr Macaulay commented:

> Hotline: call from RC re whether ACC should fund personal medical alarm at client's request. (ongoing cost $62 per month)
>
> Client is 65 year old man with covered TI of stroke and CVA unspecified, sudden visual loss L and R.
>
> He had an occipital stroke when anticoagulation was stopped while he was being treated in hospital for an infected hematoma.
>
> The stroke has left him with a permanent stable right homonymous quadrantanopia (loss of the right lower quarter of his visual field in both eyes). This would make him more likely to trip over things on the floor.

SNA identified the need to move clutter and electrical cords to prevent tripping.

After discharge he returned to living alone in a garage on a landlord's property. …

Client's GP can apply for funding medical alarm via MSD, or at least supply letter of support if they feel it is necessary.

A Healthvision 'Client Support Plan' dated 2 February 2024 noted:

What activities I'm independent with:

Independent with mobility, medication management, personal cares, toileting, dressing, grooming, meal prep, directing care. …

Falls Risk:

High falls risk due to decreased balance, fatigue, and visual loss.

Client states that he has had multiple falls over the past 3 months.

Client says he does not use walking aids and mobilizes independently. …

Social rehabilitation needs assessments (SRNA)

Mr Smith was referred for a SRNA with Janina Arabella, occupational therapist. In her report dated 12 February 2024, she stated:

To assist with further recovery Dennis will require the following equipment/consumables items through ACC funding. In doing so, hospital rental equipment can then be returned.

…

Comment re personal alarm – the need for personal alarm is injury related due to increased risk of falling related to reduced eyesight and balance, Dennis is having average of 3 events per day of either tripping or knocking himself with one including falling off a ladder and fracturing a rib.

MRES application will be completed for:

- Steel capped work boots

- ACC to consider hindsight payment for large size computer screen, Dennis has provided receipt for $562.35

- person alarm arranged through St Johns, deemed appropriate for ACC funding as need for alarm is injury related

(dennis has returned to mowing the lawns but doing so in socks and jandals with major visual problem and at high risk of running over his feet is he hits an obstacle, so needs safety boots plus visual aid of large screen due to poor eyesight)

…

Dennis reports he remained in hospital about one week following the stroke. He had some input from physiotherapy, occupational therapy and speech therapy.

He says he has continued to have some issues with balance, loss of eyesight in bottom right quadrants of both eyes, plus occasional slurring of his words and some short term memory loss.

He has been seen by Low Vision New Zealand and has been given a white stick. He says he finds this very useful when he goes out and was very surprised the first time he used it to discover that the stick hit some obstacles in front of him in his walking path that he was not able to see.

…

Dennis reports he has atrial fibrillation and is on medical to manage this plus blood thinners.

…

Dennis reports he was fully independent with domestic tasks prior to injury. This included laundry, cleaning of the bathroom/toilet, vacuuming and mopping, wiping of surfaces, dishes, dusting, changing bed linen, rubbish disposal, meal preparation including breakfast lunch and dinner, grocery shopping.

Following injury Dennis now has difficulty with cleaning floors, bathrooms, kitchen surfaces and dishes dues to poor eyesight. Another major issue is clutter where now he has loss of vision he does not see items and either trips or knocks over objects on the bench and has cut himself on glass or other sharp objects quite regularly.

He says he needs assistance to help put items and obstacles away to help prevent injury. He says he trips or knocks himself average of 3 times a day and a large component of this is clutter where he needs the assist of person with good eyesight and problem-solving to find a safe place to store items.

…

Needs assistance on a regular basis to remove clutter and organise his home to make safe to help prevent injury

…

Says he has learned to cook safely however struggles with washing the dishes properly due to poor eyesight.

… (My own emphasis added)

ACC seeks further advice

ACC sought further advice and referred the matter to its clinical advisor for comment. On 29 April 2024, David Barber, noted (in part):

…

Given that claimant is now back to taking his anticoagulant medications regularly as confirmed by GP, and that he has completed vision rehabilitation, please comment on claimant's current safety risk, i.e.,

Is the claimant's risk of harm or re-injury increased due to covered injury?

Yes.

Due to, a consequence of the covered injuries Sudden visual loss - Right - Approved G66.. - Stroke and cerebrovascular accident unspecified - Left – Approved F4811 - Sudden visual loss - Left – Approved

How does the completed orientation and mobility training and the provision of a long white cane impact this risk?

Yes, this is recommended.

The client is unable to detect obstacles in the lower part of his visual field. Therefore, “a 54" long cane would be beneficial”. This would require some training.

Is the request for steel-capped boots?

No.

There is no justification for steel capped boots in relation to the covered injury.

Is the request for medical alarm related to covered injury?

No.

See previous MA hotline comment.

Given that the claimant best correct visual acuity in May 2023 (post-accident) was R 6/6-2, L 6/6- (See optometrist report, in Eos 12/5/23), and that a functional low vision assessment (FLVA), or an adaptive communications & assistive technology (ACAT) assessment was not conducted as part of the vision rehabilitation programme, Is there an injury-related need to provide claimant with a 32" monitor to access information online?

No.

The client visual lower fields are affected. The middle fields have normal vision.

Considering his covered vision impairment, how does a 32" monitor improve his ability to access information versus his current monitor?

This is not recommended.

Is there an injury-related need to fund overhead lighting at claimant's current home?

Yes.

The Low Vision reports describes, the bedroom part of his quarters is very dark. Proper lighting is important as it will help maximize remaining vision.

…

Is there an injury-related need for ACC to provide 3x meals per week delivered by meals on wheels or reimburse any previous cost of meals incurred by claimant at any period from date of accident to present?

No.

Clearly throughout the clients home assessments, on file the client has '*stated he does not have trouble cooking*'.

ACC's decisions

Based on the advice received ACC issued its decision letter dated 6 March 2024, which declined funding for:

(a) Ongoing home help supports;

(b) Steel-capped boots;

(c) A 32" monitor;

(d) Installation of overhead lighting;

(e) Monthly service fee for a medical alarm; and

(f) Meals on wheels service.

On 21 May 2024 ACC issued a further decision advising Mr Smith that it had extended his home and community support and had since also approved installation of overhead lighting per (d) above. In respect of the remaining items – (b), (c), (e), and (f); ACC is of the view that its decision was correctly made, because the available evidence does not support that Mr Smith require these items / assistance for his covered personal injuries.

Mr Smith is seeking a review of the 6 March 2024 decision. In his review application Mr Smith noted that (in part):

> … The covered injury was a stroke as a result of a treatment injury and therefore I believe that all matters relating to this stroke was/is and should be covered by ACC. This coverage includes sight loss, which is on-going and apparently permanent.
>
> ACC has a legal liability under s81 to provide key aspects of social rehabilitation, i.e. aids and appliances, care, home help, and transport for independence and it is my opinion that this is the very situation that applies here.
>
> As advised to Gwen Doria on 6 March 2024, nothing has changed (that I am aware of) except that ACC has determined that suddenly I can see, that I can now drive and it seems that I have never suffered a stroke! ACC appears to have changed something but Gwen cannot (or will not) answer. Her Team Lead, Kylie David also refuses to make contact with me.
>
> This is clearly all a pre-determination based on falsehoods from ACC and this dodgy decision undermines the finding of multiple reports and professionals who have all determined otherwise – that I do indeed need these services and that ACC should pay for them.
>
> I seek a determination please that
>
> a) Yes, I HAVE had a stroke as a 'treatment injury' with subsequent issues as a direct result of this stroke;
>
> b) That ACC is liable for these all and that they should pay up;
>
> c) To meet with a real person (not a voice by phone) and to sort all this out; and
>
> d) To meet with Ray Wilson the person who wrote this judgment in order to “have it out” with them.

This matter proceeded to a hearing before me.

Review hearing

Applicant’s case

Mr Smith made verbal submissions at the hearing. In summary, he said:

- He wanted to raise a preliminary concern with Mr Bobby Parker's involvement. He explained that he had complained about Bobby Parker as having spoken with the decision maker who he had complained about.
- He noted that he disagrees that the reviewer can proceed with the hearing because he does not believe that it is proper for Bobby to appear. He feels there is a major issue when he has laid a complaint specifically about Bobby. He believes it is jurisdictional and that a court would overturn it immediately.
- His claim is that there was bias involved prior to the 6 March 2024 decision being made. Anyone who has admitted or spoken to the decision maker, who has a bad attitude towards him, is biased. That is the jurisdictional claim that he is making.
- On review two of the requested items were changed. The ones that ACC have not approved is the steel cap boots, the 32-inch monitor, the monthly service fee for medical alarm, and meals on wheel service. Mr Smith said the second SRNA identified

seven items or five items. She put it in there and said, Mr. Smith needs one, two, three, four, five, six, seven, whatever many. There was no problem up until the time that he tried contacting the decision makers.

- He believes the decision maker made a substantial error in trying to lie to him that she didn't understand what he was talking about.
- The stroke caused him a whole heap of problems. It's caused him sight loss, balance and brain fade.
- He had a scare, and that scare caused him to arrange for St. John Ambulance Alarm. He is very, very grateful for that alarm.
- He said that sight, of course, is the major thing, but there's more than the sight. It's gone up and down and up in the last 18 months, but it's been an up-down, up-down situation.
- He is of the view that ACC's conclusion is illogical and factually incorrect. It appears to be based on Ray Wilson's erroneous assessment that in this case, the need has been assessed as due to issues other than the covered injury.
- Before the stroke, he could see, work and drive, but now he can't. He has never been able to since the injury. He has lost his balance.
- He disagrees with ACC's decision. It is not supported by the medical evidence.

At the hearing Mr Smith requested, because of the injury, to have the opportunity to write down what his concern is. On 31 July 2024 Mr Smith provided the following:

> STATEMENT OF CLAIM, RELATING TO JURISDICTION OF REVIEW
>
> **The formal complaint**
>
> 3 On 6 June 2024 the Plaintiff lodged a formal complaint against the Defendant.
>
> 4 On 25 June 2024 the plaintiff asked the Registrar to present this issue as a matter to be resolved before the hearing. "Please ask the adjudicator to either require ACC to complete the Formal Complaint before our submissions are due or to extend the setting of this hearing date till after the complaint is fully dealt with."
>
> 5 On 25 June 2024 Tom advised the Plaintiff that the judge had denied my application. "There are no jurisdictional issues, but this can be presented to the Reviewer at the hearing."
>
> 6 The Plaintiff submits that the matter of complaint should be dealt with before the hearing as:
>
> 6.1 The Plaintiff's claims of bad faith conduct by the Defendant have merit;
>
> 6.2 The primary concern relates to matters that occurred before the decision being reviewed and thus could reasonably have influenced the decision; and
>
> 6.3 Two parties from the Defendant (Gwen Doria and Bobby Parker) have a vested interest in the review outcome, thus are compromised with a conflict of interest which prevent independence from this court.
>
> **BAD FAITH CONDUCT vs JUSTICE**
>
> 7 The Plaintiff submits that:
>
> 7.1 The Defendant has been proven to act in bad faith toward the Plaintiff multiple times;

7.2 My complaints of bad faith have already been shown to have merit;

7.3 This court has attempted to proceed to a hearing of the substantive matter 'regardless' of natural justice; and

7.4 It is only right and proper for a hearing such as this review to be held over until the matter of my claim of bad faith is resolved.

8 Put another way, the Plaintiff submits that any decision made on a review is premature prior to a decision on bad faith conduct by the Defendant.

9 This is because if it be found that the Defendant did breach fundamental principles of professional conduct (Bobby Parker & Gwen Doria) then this would naturally have affected this review decision.

10 Gwen Doria was the decision-maker.

11 The Plaintiff claims that Gwen made not only wrong decisions but that she based them upon 'gossip' that has since been proven to be wrong.

12 The significance of this bad faith conduct is huge for the Plaintiff.

13 All of these decisions relate to Gwen, thus the Plaintiff cannot legitimately defend himself against ACC's false accusations – be they false medical ones or the Plaintiff's life-style choices

13.1 If Gwen will not answer questions;

13.2 Front for ACC; and

13.3 If ACC keeps them secret and non-transparent.

14 **WHEREAS** the Plaintiff seeks an adjournment of this matter until any bad faith decision is finalised

On 1 August 2024 I proceeded to conclude the hearing.

ACC's case

Mr Parker provided the following reply in respect to the jurisdictional issue Mr Smith raised at the hearing.

- He does not think there is any jurisdictional issue.
- His involvement in this matter only commenced after the decision was made, so regardless of any issues Mr Smith has with his communication or involvement in this matter, it had no bearing whatsoever on the actual decision that was issued on 6 March 2024, and which is the subject of this review application.
- He noted it is very important to distinguish and clarify that this particular review application is not concerned with any issues that have been raised under the Code of Claimant Rights. He is aware that a complaint has been lodged, which includes his involvement. Any finding in relation to that complaint is in itself a reviewable decision, which can be challenged by way of the Part 5 review process, but it is not the subject of this particular review application.
- Once the review application was allocated to him, he contacted Mr Smith by phone and advised him that he had concerns about the basis for how the decision was made

and that he plans to discuss this further with the decision maker, the decision maker being Gwendoria.

- His particular concern was that while advice had been sought from a technical specialist prior to the decision being made, there didn't appear to be any clinical advice regarding whether the need for the various items was required due to Mr Smith's covered personal injuries. So, there is no secrecy about the fact that he spoke with the decision maker. In fact, he told Mr Smith up front prior to contacting the decision maker that he would be discussing the matter with her.

Mr Parker provided written submissions, which form part of the record. These are:

- Steel capped boots - ACC submits that the available evidence does not support funding this item. ACC's medical advisor indicated that there was no justification for this item in relation to the covered injuries. It appears that the main reason for requiring steel-capped boots (per the SRNA report) is that Mr Smith has been undertaking mowing the lawns in socks and jandals. The appropriate choice of footwear to use when undertaking such tasks (regardless of physical impairment) is a matter of common sense, not an injury-related need.
- 32" monitor - ACC submits that the available evidence does not support funding this item. ACC's medical advisor noted that, while Mr Smith's visual lower field was affected by his covered injuries, the middle fields had normal vision. In other words, while Mr Smith's visual impairment means that "Objects left on the floor become invisible hazards that he cannot detect", this would not affect his visual ability to see information on directly in front of him on a monitor, regardless of the size of the monitor.
- Monthly service for medical alarm - ACC submits that the available evidence does not support funding this service. ACC notes that Mr Smith has been provided with appropriate tools, training, and advice regarding reducing the risk / incidence of falls. This includes reducing clutter, having proper lighting, and the use of a cane to help detect objects in the affected lower visual field. Additionally, ACC's medical advisor indicated that this could be considered further if Mr Smith's GP provided further information to support why the provision of a medical alarm was necessary in the context of the covered personal injuries. Further, ACC's medical advisor noted that such medical alarm can be funded via the ministry of social development.
- Meals on Wheels - ACC submits that the available evidence does not support funding this service. None of the assessment reports supported the need for this service in the context of the covered injuries. Rather, there is consistent evidence on file that the applicant has no issues / trouble cooking. It appears to be a matter of interest / convenience that underlies the provision of such meal delivery services, as opposed to an actual injury-related need. ACC submits that it appropriately considered the request for funding of the various items / services. In considering the matter, ACC has had regard to the considerations under section 81 of the Act and whether the needs for the various items / services were required as a direct consequence of the covered injuries.
- While ACC sympathises with Mr Smith and his circumstances, ACC respectfully submits that its decision declining funding for the steel-capped boots, 32" monitor,

medical alarm subscription, and meal-on-wheels subscription was correctly made and that this review be dismissed.

Relevant law

Section 79 of the Act sets out the purpose of social rehabilitation:

> The purpose of social rehabilitation is to assist in restoring a claimant's independence to the maximum extent practicable.

Section 81 of the Act provides for the Corporation's liability to provide key aspects of social rehabilitation. Section 82 provides for similar, but less prescribed "other social rehabilitation".

The obligation is therefore stated to be a liability, and ACC must provide funding for entitlement, if the criteria in the section is satisfied.

Generally, section 81 says "key aspect of social rehabilitation means any of the following":

(a) aids and appliances:

(b) attendant care:

(c) child care:

(d) education support:

(e) home help:

(f) modifications to the home:

(g) training for independence:

(h) transport for independence.

Section 84 explains how the assessment is to be undertaken. If the assessment recommends it, then ACC should fund the "key aspect", or "other social rehabilitation" under section 82, if ACC finds it:

1. is required as a direct consequence of the personal injury for which the claimant has cover; and
2. is for the purpose to assist in restoring a claimant's independence to the maximum extent practicable; and
3. is necessary and appropriate, and of the quality required, for that purpose; and
4. is of a type normally provided by a rehabilitation provider; and
5. the provision of the key aspect has been agreed in the claimant's individual rehabilitation plan, if a plan has been agreed.

A decision under the social rehabilitation provisions of the Act involves an exercise of discretion. The Courts have held that the respondent's exercise of discretion can only be successfully challenged on appeal where the respondent has:

a. Made an error of law or principle

b. Taken account of irrelevant considerations

c. Failed to take account of relevant considerations; or

d. Made a decision that was plainly wrong.

Section 54 of the Act provides that ACC must make every decision on a claim on reasonable grounds, and in a timely manner, having regard to the requirements of this Act, the nature of the decision, and all the circumstances.

There is also the overarching principle of the scheme that it was never meant to provide full restitution to those that have suffered an accident, but rather has been to "minimise" (often referred as "cushioning") the effects of an accident[2].

The Court's approach to discretionary decisions was confirmed in the Supreme Court decision of *K v B* [2010] NZSC 112. At paragraph 32, the Supreme Court distinguished between a general appeal, and an appeal against a decision made in the exercise of a discretion:

> … a general appeal is to be distinguished from an appeal against a decision made in the exercise of a discretion. In that kind of case the criteria for a successful appeal are stricter: (1) error in law (2) taking into account of irrelevant consideration (3) failing to take account of a relevant consideration or (4) the decision is plainly wrong.

In the ACC context, Judge Ongley outlined the issue of discretion, and the role of the reviewer in the District Court decision of *Howard v ACC* [2010] NZACC 208. He stated at paragraph 21:

> It must be remembered that this was a review of a discretionary decision of the Corporation. While the reviewer is required under s 145 to look at the matter afresh and put aside matters of policy, the question at review was whether the Corporation had exercised its discretion wrongly. The reviewer was not able to make a new decision in substitution for the Corporation's exercise of discretion.

Analysis

Jurisdictional issue

Mr Smith raised a jurisdictional point, which in essence is that he is of the view that the complaint matter related to Mr Parker's involvement should have been dealt with before the hearing. He noted ACC breached fundamental principles of professional conduct (Bobby Parker & Gwen Doria) and in his view this would naturally have affected this review decision.

As explained to Mr Smith at the hearing, the complaint lodged against Bobby Parker & Gwen Doria is a separate process and review, as it is lodged through the Code of Claimants' Rights. This review application is not concerned with any issues that have been raised under the Code of Claimant Rights. Any finding in relation to that complaint is in itself a reviewable decision, which can be challenged by way of the Part 5 review process, but it is not the subject of this particular review application.

Jurisdiction relates to the reviewer's legal authority to consider issues raised at review. Even if Mr Smith's concerns in relation to Mr Parker were valid (and I make no findings in the regard, given the matter is subject of a complaints investigation) then it does not pose any jurisdictional challenges to this review. For this review there is no requirements for Mr Parker to be unbiased, as he represents ACC as one party to a dispute.

[2] Blair AP "Accident Compensation in New Zealand" 1978 page 9.

I consider there is no jurisdictional issue to determine, which bars me from proceeding with, and determining this review.

As ACC correctly pointed out in its submissions, the issue to be determined before this review is whether there is any material error in the decision by ACC on 6 March 2024. ACC's case is that a causal relationship has not been established between the need for the various items under social rehabilitation provisions, and the covered personal injury. This is the issue I will consider.

Mr Smith's evidence

In his review application, Mr Smith stated that the covered injury was the consequences of a stroke he suffered, consequent to treatment injury, and he therefore believes that all matters relating to this stroke was/is and should be covered by ACC. He added that this coverage includes sight loss, which is ongoing and permanent.

As noted in the case law quoted above, the question at review is whether ACC had exercised its discretion wrongly. I am not able, as a reviewer, to make a new decision in substitution for ACC's exercise of discretion. I am guided by the available medical evidence to determine this matter, which I now turn to.

The assessments

ACC is required to meet the costs of rehabilitation where the rehabilitation is directly linked to the injury caused to the claimant.

Further, it is accepted that ACC must first be satisfied that there is a covered injury, and then determine ongoing causation and rehabilitation needs. The process requires ACC to obtain assessments from suitably trained assessors.

In the first instance I find that ACC obtained proper assessments of Mr Smith, and it was completed by appropriately qualified assessors. Mr Smith interpreted and relied on some of these reports and pointed to potential flaws in ACC's interpretation of the assessments.

Medical evidence

At the outset it is important to note that Mr Smith has ACC treatment injury cover as a result of a stroke and consequential to this covered injury is Mr Smith's vision loss to both his left and right eye. An eye specialist confirmed that both eyes were damaged. This is not in dispute.

Further, the medical evidence supports that Mr Smith's injuries are permanent (irrespective whether he is taking his medications) and the need for some of the rehabilitation aids requested are causally linked to his covered injury.

The occupational physician, Janina Arabella, noted in her February 2024 report, that "To assist with further recovery Dennis will require the following equipment/consumables items through ACC funding", amongst these included "the need for personal alarm is injury related due to increased risk of falling related to reduced eyesight and balance" and "with major visual problem and at high risk of running over his feet is he hits an obstacle, so needs safety boots plus visual aid of large screen due to poor eyesight".

In April 2024 ACC clinical advisor David Barber answered "Yes" when asked "Is the claimant's risk of harm or re-injury increased due to covered injury? Irrespective of whether, as Mr Barber noted "The client visual lower fields are affected. The middle fields have normal vision" Mr

Smith's vision remains impaired consequential to his covered injury, and a larger 32" monitor will improve his ability to access information and assist with his covered injury.

When asked "Considering his covered vision impairment, how does a 32" monitor improve his ability to access information versus his current monitor? Mr Barber answered 'No' and noted that "The client visual lower fields are affected. The middle fields have normal vision" and therefore not recommended. His view ignores the SRNA.

Mr Barber further answered "No" when asked about Mr Smith's request for steel-capped boots and the reason for this answer was noted as **"**There is no justification for steel capped boots in relation to the covered injury". He provided no specific reasoning to support his view.

Mr Barber answered "No" to the question whether the request for medical alarm related to the covered injury. In support he only referred to previous MA hotline comment, which noted that Mr Smith can apply for an alarm via his GP.

With regards to the meals on wheels, Mr Barber merely states '"No" based thereon that "throughout the clients home assessments, on file the client has "stated he does not have trouble cooking'".

Mr Smith has consistently advised the various treatment providers that he is managing with cooking his own meals. Although Mr Smith is of the view that he has learned to cook safely he still struggles with washing the dishes properly due to poor eyesight. The risk still remains that Mr Smith might not see an obstacle i.e. a knife while cooking, or trip while cooking, which makes it dangerous for him. Therefore, the risk outweighs the costs that ACC would have to pay for meals on wheels. The assessments all make note of this risk, despite Mr Smith's belief that he can safely cook for himself.

I acknowledge that ACC's responsibility to restore a claimant to the maximum extent possible, was never meant to provide full restitution to those that have suffered an accident, but rather to "minimise" (often referred as "cushioning") the effects of an accident, as noted above. However, in the current matter, I am of the view that these considerations do not outweigh ACC's duty not to assist Mr Smith with the consequences of his covered injury, which he is struggling with on a daily basis.

The discretion

In respect of ACC's interpretation and consideration of the assessment reports, it is my view ACC has not correctly understood or interpreted all the findings and has not taken into account all relevant considerations. On balance I am not satisfied that ACC has considered all aspects of Mr Smith's rehabilitation and needs causally related to his covered injury.

I am satisfied that Mr Smith had shown that ACC exercised its discretion incorrectly when it reached its decision.

It is therefore my conclusion that ACC's decision is quashed and referred back, as it had not applied its discretion correctly, taking into account irrelevant considerations and failing to take into account relevant considerations.

Outcome

In light of the findings I make above, I make the following findings for each item considered:

(a) Ongoing home help supports – There is no reason to question ACC's exercise of its discretion;

(b) Steel-capped boots - ACC has failed to take account of all relevant considerations;
(c) A 32” monitor - ACC has failed to take account of all relevant considerations;
(d) Installation of overhead lighting - There is no reason to question ACC’s exercise of its discretion;
(e) Monthly service fee for a medical alarm – ACC has failed to take account of all relevant considerations; and
(f) Meals on wheels service - ACC has failed to take account of all relevant considerations.

ACC’s decision is quashed with directions. This means that I have quashed, or overturned ACC's original decision and issued directions. ACC is directed to consider the relevant circumstances I have discussed in my findings above and issue a new decision within 30 days of this decision.

Costs

Mr Smith did not seek any review related costs.

Erika Vogel

Reviewer

Date: 27 August 2024

Appeal rights: The applicant and ACC each have the right to appeal to the District Court.