

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2022] NZACC 149 ACR 083/21

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	MICHELLE HAGAR Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Judgment on the papers

Appearances: The Appellant is self-represented
 A Douglass for the Accident Compensation Corporation

Judgment: 29 July 2022

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for social rehabilitation - s 82, Accident Compensation Act 2001]**

Introduction

[1] This is an appeal from the decision of a Reviewer dated 29 March 2021. The Reviewer dismissed an application for review of the Corporation’s decision dated 28 July 2020 declining Ms Hagar’s request for “disability assist dog” training for a “disability assist dog” needed because of a covered injury.

Background

[2] Ms Hagar has an accepted sensitive claim and has cover for mental injury (PTSD) in relation to that claim. She also has cover for two back injuries and associated chronic pain.

[3] As a result of her PTSD, Ms Hagar suffers acute social anxiety. This causes her to fear and avoid being in public, and to struggle with many day-to-day activities such as going to the gym or using public transport. She lives a reclusive lifestyle and is largely unable to participate in the community, which has a significant impact on her level of independence and overall wellbeing.

[4] In 2017, Ms Hagar adopted a German Rottweiler named Bree. This dog completed numerous training programmes since being in Ms Hagar's care, and gained skills that enabled her to provide specific emotional support to Ms Hagar and assist with some physical tasks.

[5] In terms of Ms Hagar's rehabilitation, Bree was used as therapeutic treatment for PTSD, in addition to more traditional treatments. Bree facilitated Ms Hagar initially accessing and engaging with psychotherapy, and supported her in undertaking Graded Exposure Therapy, a widely accepted treatment for PTSD. Ms Hagar attended regular psychotherapy with her psychotherapist, and her main rehabilitation goal was to gain a greater level of independence and, eventually, re-integrate into the community. Bree added value to Ms Hagar's life and directly assisted in some aspects of her recovery.

[6] However, Bree was limited in her ability to assist Ms Hagar further, since pets such as Bree are prevented by law from accessing a number of public spaces (such as supermarkets, eateries, shopping malls and public transport). Consequentially, Ms Hagar was unable to access these places. This limited public access caused Ms Hagar to explore the option of having Bree certified as a disability assist dog. As such, Bree would be entitled special public access rights, which would enable her to accompany Ms Hagar throughout the community.

[7] On 1 March 2019, Ms Hagar applied for an entitlement for disability assist dog training. This request was declined on the same day on the basis that the training would not be in relation to treatment for PTSD.

[8] On 4 April 2019, the Corporation revoked its 5 March 2019 decision and began to reconsider whether Bree was an important part of Ms Hagar's recovery.

The Corporation obtained advice from several psychology advisors, technical specialists, a supported assessor, and Ms Hagar's physiotherapist. It also conducted a social rehabilitation needs assessment and sought advice from the chair of the National Panel for Consistent Decision Making.

[9] On 2 July 2020, the Corporation's technical specialist concluded that, on balance, considering the nature of Ms Hagar's injury, her beliefs, individual needs, and circumstances, it seemed reasonable to contribute towards the cost of the dog's training and certification, subject to certification being possible.

[10] Subsequent to this report, it became clear to the Corporation that Bree would need to be legally certified as a disability assist dog under the Dog Control Act 1996. Without this certification, Bree's effectiveness would be limited as she would not be able to accompany Ms Hagar to all places to which she needed access.

[11] On 15 July 2020, Ms Hagar notified the Corporation that she had extensively researched every assistance dog organisation in New Zealand, and that none was available/willing to train Bree to be a disability assist dog. Due to the unavailability of New Zealand trainers, Ms Hagar enrolled Bree with "Capable K9s" in Australia. Ms Hagar and Bree underwent training by Skype, funded by Ms Hagar.

[12] On 28 July 2020, the Corporation decided not to fund Bree's training, explaining that training/certification with an Australian-based organisation would not allow the dog Bree to be considered a disability assist dog in New Zealand. This meant that the rehabilitation outcome of using Bree for support in public places could not be achieved. Ms Hagar applied to review this decision.

[13] In February 2021, Ms Hagar contacted the Department of Internal Affairs. Ms Hagar sought advice on whether there would be any opportunity to gain an exemption to the Dog Control Act 1996 requirements and the likelihood that changes would be possible to allow for situations like Ms Hagar's. The Department confirmed that there was no provision for granting an exemption to the list of entities recognised in Schedule 5 of that Act.

[14] On 1 March 2021, as part of her submissions for review, Ms Hagar acknowledged that it was technically correct that the rehabilitation outcome for which funding was sought could not currently be achieved. She asked that the Reviewer direct that, should the Dog Control Act 1996 be amended or a special exemption granted, or a New Zealand organisation agreed to certify the training Bree has already received and/or the certification she would receive from Capable K9s, the Corporation would be required to reimburse the costs of the training and certification as being appropriate social rehabilitation.

[15] On 4 March 2021, review proceedings were held. On 29 March 2021, the Reviewer dismissed the review, on the basis that the restrictions imposed by the Dog Control Act 1996 prevented the Corporation from certifying the dog as a “disability assist dog”. The Reviewer noted that she could not make a decision binding the Corporation to change its decision should the law as to disability assist dog certification change in the future, as the Reviewer’s jurisdiction was limited to reviews of decisions as they presently stood.

[16] On 23 April 2021, a Notice of Appeal was lodged.

[17] On 11 June 2021, K9 Search Medical Detection New Zealand (K9SMD) was added to Schedule 5 of the Dog Control Act 1996.

[18] On 26 August 2021, Ms Hagar requested the Corporation to fund her dog Bree’s training programmes and certification, and travel and accommodation for a trainer to travel to New Zealand. In response, the Corporation requested that Ms Hagar provide further information.

[19] On 30 October 2021, Ms Hagar provided a more detailed request for funding for training and certification with K9SMD.

[20] On 26 January 2022, Ms Hagar advised that she and Bree had been successfully accepted into the K9SMD programme. The Corporation subsequently paid a total of \$3952.60 towards this programme.

[21] On 25 February 2022, Judge Henare issued a Minute stating that the Court wished to be satisfied on the issue of jurisdiction as to Ms Hagar’s appeal. Counsel for the Corporation agreed to provide a memorandum on jurisdiction explaining why the central issue in the appeal was moot and the pathways open to Ms Hagar to deal with the issues that she had raised. Ms Hagar was given the opportunity to provide submissions in reply.

Relevant law

[22] Section 2 of the Dog Control Act 1996 provides that “disability assist dog” means a dog certified by one of the organisations listed in Schedule 5 as being a dog that has been trained (or is being trained) to assist a person with a disability. Schedule 5 lists the following organisations authorised to certify dogs as disability assist dogs:

Assistance Dogs New Zealand (in force on 28 June 2019)
 Hearing Dogs for Deaf People New Zealand
 K9 Medical Detection New Zealand (in force on 28 June 2019)
 K9 Search Medical Detection (in force on 11 June 2021)
 Mobility Assistance Dogs Trust
 New Zealand Epilepsy Assist Dogs Trust
 Perfect Partners Assistance Dogs Trust (in force on 28 June 2019)
 Royal New Zealand Foundation of the Blind Incorporated

[23] Section 75(1) of the Dog Control Act 1996 provides:

Any disability assist dog accompanying and assisting a person with a disability, or accompanying a person genuinely engaged in the dog’s training, may enter and remain—

- (a) in any premises registered under regulations made under section 120 of the Health Act 1956; or
- (b) in any public place.

[24] Section 79 of the Accident Compensation Act 2001 provides that the purpose of social rehabilitation is to assist in restoring a claimant’s independence to the maximum extent practicable. Section 82 of this Act provides:

- (1) The Corporation may provide any other social rehabilitation if—

- (a) it is required as a direct consequence of the personal injury for which the claimant has cover; and
- (b) a claimant is assessed or reassessed under section 84 as needing it; and
- (c) the Corporation considers that it—
 - (i) is for the purpose set out in section 79; and
 - (ii) is necessary and appropriate, and of the quality required, for that purpose; and
 - (iii) is of a type normally provided by a rehabilitation provider; and
- (d) its provision has been agreed in the claimant's individual rehabilitation plan, if a plan has been agreed.

[25] Section 145 of the Act provides for the decisions that a Reviewer is allowed to make on a review:

The reviewer must—

- (a) dismiss the application; or
- (b) modify the Corporation's decision; or
- (c) quash the Corporation's decision; or
- (d) direct the Corporation to make a decision within a time frame specified by the reviewer if the Corporation has not made the decision in a timely manner as contemplated by sections 54 and 134(1)(b); or
- (e) make the decision for the Corporation if it has not made a decision in a timely manner as contemplated by sections 54 and 134(1)(b).

[26] In *Kacem v Bashir*,¹ Tipping J stated in the Supreme Court:

[32] ... 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 of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong.

Discussion

[27] The issue in this case is whether the Corporation, in its decision of 28 July 2020, properly exercised its discretion, in relation to Ms Hagar's social rehabilitation, in declining her request for funding for training her dog Bree.

¹ *Kacem v Bashir* [2010] NZSC 112; [2011] 2 NZLR 1.

[28] Ms Hagar submits that the Corporation is obligated to contribute to funding her request for training and certification of Bree with Capable K9's, as this initial request dated back to 2019, and they have continued their training with Capable K9's and continue to do so to the present. Capable K9's and Ms Hagar should be given the credit of the training already completed. All of the training with CK9's has helped in the process of being accepted by K9SMD, which was added to Schedule 5 of the Dog Control Act 1996. Success with K9SMD, allowing legal public access for Bree as a disability assistance dog, will allow Ms Hagar to become more independent when visiting Australia to see family and in New Zealand. The Dog Control Act requires that certification must be with an organisation listed in Schedule 5 of the Act and does not state that training must be completed with a Schedule 5 provider. The Reviewer's decision dated 29 March 2021 was 13 days before K9SMD was added to schedule 5, and the Corporation should have reconsidered this decision based on the new information.

[29] This Court acknowledges Ms Hagar's submissions. However, the Court refers to the following considerations.

[30] First, the provision of social rehabilitation, such as that claimed by Ms Hagar, is one within the discretion of the Corporation (as indicated by the word "may" in section 82(1) of the Act), and the criteria for a successful appeal are stricter than for a general appeal. The grounds are restricted to:

- (1) error of law or principle;
- (2) taking account of irrelevant considerations;
- (3) failing to take account of a relevant consideration; or
- (4) the decision is plainly wrong.

[31] Second, the Corporation, in assessing Ms Hagar's request for social rehabilitation through funding for training her dog, was under a statutory obligation to consider if this funding was necessary and appropriate, and of the quality required, to assist in restoring her independence to the maximum extent practicable.² The

² Sections 79 and 82(1)(c) of the Act.

training of Ms Hagar's dog was designed to allow broader access to public places. However, as at the date of the Corporation's decision, Ms Hagar's dog could not obtain the certification required under the Dog Control Act 1996. The Corporation thus correctly concluded that the rehabilitation outcome of using the dog for support in public places could not be achieved, and so the request for funding for training was correctly declined.

[32] Third, the inability to obtain certification of Ms Hagar's dog continued up to and beyond the review proceedings and the Reviewer's decision. The Reviewer thus correctly found that the Corporation's decision declining funding was correct. A Reviewer, in making a decision following a review hearing, is required to address the correctness of the Corporation's decision before the Reviewer.³ A Reviewer is not empowered to make a decision binding the Corporation to change its decision should the relevant law change in the future.

[33] Fourth, the relevant change in the law governing the certification of dogs took effect after the Reviewer's decision and well after the Corporation's decision in question.⁴ The change did not have retrospective effect. Therefore, the correctness of the Corporation's decision was unaffected by the change in the law.

Conclusion

[34] In light of the above considerations, the Court finds that the Corporation, in its decision of 28 July 2020, properly exercised its discretion, in relation to Ms Hagar's social rehabilitation, in declining her request for funding for training her dog Bree. It has not been established that the Corporation made an error of law or principle, took account of irrelevant considerations, failed to take account of a relevant consideration, or made a decision that was plainly wrong.

[35] The decision of the Reviewer dated 29 March 2021 is therefore upheld. This appeal is dismissed.

³ Section 145 of the Act.

⁴ Schedule 5 of the Dog Control Act 1996, as amended on 11 June 2021.

[36] I make no order as to costs.

A handwritten signature in dark ink, appearing to read 'P R Spiller', is written over a faint, circular official stamp.

P R Spiller
District Court Judge

Solicitors: ACC Legal Services for the Respondent.