

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 185      ACR 260/21**

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

Hearing:      31 August 2022

Heard at:      Wellington

Appearances:    Mr L Hansen for the appellant  
                         Mr B Marten for the respondent

Judgment:      27 September 2022

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**RESERVED JUDGMENT OF JUDGE C J McGUIRE  
[Clause 12 Schedule 1 – Social Rehabilitation “aid or appliance”  
Accident Compensation Act 2001]**

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[1] On 29 June 2021, the District Court allowed an appeal by the appellant. He was granted cover for a treatment injury back dated to 4 December 2002.

[2] On 4 May 2021, ACC issued a decision declining funding for shoes and socks on the basis of “the information we have available, and considering the scope of the legislation...”. Further it said that shoes and socks “are an everyday item for which people self fund...” and “there is no allowance under the ACC legislation to fund these items...”.

[3] The appellant sought a review of the decision declining funding for shoes and socks which was dismissed in a decision dated 19 October 2021.

[4] Mr Razek now appeals against that decision.

### **Background**

[5] On 4 April 2017, the appellant's GP lodged a treatment injury claim on his behalf for diabetes caused by interferon treatments. The alleged causal link was that treatments with interferon for hepatitis C had caused his diabetes. ACC declined the appellant's claim. That decision was overturned by a reviewer on 14 December 2018 and cover was granted. The date of injury was determined to be 4 December 2002.

[6] The appellant then sought cover for further consequential conditions, as well as back dated weekly compensation and lump sum compensation.

[7] Following a conciliation meeting held in May 2019, ACC agreed to investigate further cover and entitlements.

[8] ACC investigated the appellant's entitlement to an independence allowance. This was allowed. However, it took a review and an appeal before this was back dated to the date of injury, determined to be 4 December 2002.

[9] On 24 February 2020, the appellant sought reimbursement for 80 pairs of socks and 40 pairs of shoes that he had purchased over the preceding 20 years as prophylactic treatment for his peripheral neuropathy (a consequence of his diabetes) at a total cost of \$11,600.

[10] For the reasons noted above (para [2]), on 4 May 2021, ACC declined funding for the shoes and socks.

[11] The appellant sought a review of the decision to decline funding for shoes and socks. In a decision dated 19 October 2021, the reviewer dismissed the appellant's review on the basis that this was a discretionary decision. Therefore, ACC's decision was not flawed.

[12] Mr Razek now appeals against that decision.

### **Appellant's submissions**

[13] Mr Hansen took the Court through the medical evidence. In a vocational independence medical assessment report dated 14 August 2005, the report writer Dr Veitch noted:

On the positive side, he has no complications with his diabetes which he is managing himself with insulin injections four times a day.

[14] In a further vocational independence medical assessment dated 10 June 2013, the report writer Dr Hartshorn noted:

He is able to remove and replace his shoes and socks for the examination and was able to remove and replace his shirt for the examination of the shoulders. He was able to get on and off the examination couch without assistance.

[15] In a vocational independence medical assessment dated 4 June 2015, the author, Dr Ruttenberg noted:

There has been antalgic gait and impaired range of movement of the lumbar spine. The doctor also notes a 16 year history of insulin dependent diabetes.

[16] In a report dated 5 March 2019, Mr Madison, consultant physician, endocrinology, diabetes, medicine, noted that the appellant:

Has also developed peripheral neuropathy involving altered sensation in the lower extremities.

[17] Mr Hansen submits therefore that the appellant was suffering diabetes related conditions since around 2012.

[18] In an impairment assessment report dated 7 October 2019, Dr Todd again refers to peripheral neuropathy noting:

- He lacks sensation in his lower legs
- He wears special socks
- He wears special shoes
- He describes numbness in his feet

[19] In a further report of 2 March 2020, Dr Madison says:

There is a question of the funding for his diabetic socks and shoes. He was advised to get these over a decade ago for painful diabetic neuropathy.

[20] There is a further report by consultant physician Mr Madison dated 28 July 2020 where the physician notes:

Mr Razek has neuropathy and has established foot disease...

I first met him in 2012.

[21] There are reports from two podiatrist Ms Roche and Ms King from 2012 confirming that the appellant was wearing diabetic approved footwear.

[22] In the appellant's affidavit dated 5 May 2022, he says:

Since 2002, I have been ordering shoes and socks from Front Runner for my diabetes.

[23] Mr Hansen submits that the evidence shows the appellant has needed diabetic socks and shoes from 2010.

[24] He notes however, the appellant says that his feet hurt from 2002 and therefore he needed special shoes and socks to relieve the pain from that time.

[25] In his written submissions, Mr Hansen refers to s 75 of the Act and following relating to social and vocational rehabilitation. He submits that in respect of s 81 diabetic shoes and socks are required for the relief of pain as a direct consequence of the diabetes and that they are for the purpose of social rehabilitation to assist in restoring the claimant's independence to the maximum extent practicable, in terms of s 79.

[26] In regard to clause 13 of schedule 1, he submits that the rehabilitation outcome is the relieving of pain to a lower, to the extent possible, mobility for Mr Razek, and although a prescription is not mandatory, the podiatrist recommends the use of diabetic shoes and socks.

## **Respondent's submissions**

[27] Mr Marten notes that the appellant lodged his claim on the basis that his shoes and socks constituted an "aid or appliance" within the meaning of the Act. ACC declines his claim on the basis that they were everyday items, not an aid or appliance.

[28] He notes that clause 12 of schedule 1 defines an aid or appliance as "any item likely to assist in restoring a claimant to independence".

[29] Mr Marten accepts that the evidence from the appellant's treating endocrinologist and podiatrist is that the shoes and socks are prescribed; they are important for preventing diabetes related damages to his feet, and they are therefore likely to assist in restoring him to independence.

[30] He says further that ACC accepts that the shoes and socks are aids within the meaning of clause 12 and that they are sufficiently distinguishable from other everyday items to qualify for social rehabilitation, and on the basis of the unusual facts of this case, they do appear to be required as a direct consequence of his covered injury.

[31] He accepts therefore that regrettably part of the 4 May 2021 decision is wrong.

[32] He says however that ACC has significant issues with the evidence presented by Mr Rzek in respect of the quantity and value of shoes and socks that he has requested.

[33] Mr Marten also submits that there are several discretionary layers within the social rehabilitation provisions of the Act. As such, if the Court agrees that the shoes and socks constitute a social rehabilitation aid, the appropriate course to remit the matter to ACC to make a decision as to the quantity of shoes and socks it will fund both historically and on an ongoing basis.

[34] Mr Marten in his written submissions notes that aids and appliances are one of the eight key aspects of social rehabilitation in s 81(1).

[35] He notes also the decision making process mandated by the Act contain several discretionary steps that are relevant to this appeal and the Court's decision in respect of disposition.

[36] He notes that clause 13 of the first schedule provides that:

In deciding whether to provide or contribute to the cost of an aid or appliance, the Corporation must have regard to the factors set out in paragraphs (a) – (b).

[37] As such, he says, any decision on whether to fully fund the aid, or simply contribute to the cost of it, is a discretionary decision that ACC must make in the first instance.

[38] He refers to what the High Court said in *S v ACC*:<sup>1</sup>

It may be noted that, in exercising its cl 14 discretion, ACC may choose only to make a *contribution* to attendant care. This is no doubt a reflection of the underlying principle that ACC's role is to "cushion" against the consequences of an accident, rather than provide full restitution...

[39] Mr Marten says for example, that the vocational independence medical assessment reports on the file are thorough, and if the issue of shoes and socks had been important for social rehabilitation one of the doctors would have made mention of the fact. He notes that the first recommendation came in 2019. Finally, he notes that the evidence offered by the appellant to support the quantum of his claim is inadequate. He refers to an invoice from Front Runner dated 24 February 2020 which says:

Mr Osama has purchased two pairs of shoes from us since 2000 valued at \$220 ech (sic) plus at least four pairs of socks from us valued at \$35 each.

So over 20 years, he has purchased 80 pair of socks at \$35 ech total equals \$2,800.

40 pairs of shoes at \$220 ech total equals \$8,800 so total spend is equals \$11,600.

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<sup>1</sup> *S v Accident Compensation Corporation* [2015] NZHC 3304 at [11].

## **Decision**

[40] At the hearing of this appeal, Mr Hansen has drawn attention to the evidence such as it is, to support his claim for social rehabilitation by provision in his case of special socks and shoes.

[41] As is presently seen, in spite of the detailed medical assessments on file, there is little evidence of any quality that focuses on the need for special socks and shoes for the appellant, except until approximately 2020.

[42] I agree with counsel's submission, not opposed by Mr Hansen that ACC should be forwarded the opportunity to consider the retrospective evidence and the other relevant factors within the legislation to make a decision in line with its discretionary powers to do so. Section 161 of the Accident Compensation Act requires the Court to determine an appeal by –

- a. Dismissing the appeal; or
- b. Modifying the review decision; or
- c. Quashing the review decision.

[43] In order to achieve the desired outcome in this case therefore, the review decision of 19 October 2021 finding that ACC's decision of 4 May 2021 declining to fund the costs of socks, shoes and slippers was correctly made is quashed.

[44] In terms of s 161(2)(b) of the Accident Compensation Act 2001, the Corporation is required to decide, (by way of further decision with review rights), the extent of reimbursement the appellant is entitled to under the Act in respect of shoes and socks as key aspects of his social rehabilitation, as provided for under s 81 of the Act.

[45] Should there be any issue as to costs, counsel have leave to file memoranda in respect thereof.



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Judge C J McGuire  
District Court Judge

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