IN THE DISTRICT COURT
AT WELLINGTON

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

[2021] NZACC 144 **ACR 19/18**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 162 OF THE ACT
BETWEEN	BARRY JUDKINS Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the Papers

Judgment: 22 September 2021

JUDGMENT OF JUDGE AA SINCLAIR
[Application for leave to appeal: s 162 Accident Compensation Act 2001]

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[1] The applicant, Barry Judkins, seeks leave to appeal to the High Court from the decision of Judge P R Spiller dismissing Mr Judkins' appeal from a review decision which upheld the decision of the Accident Compensation Corporation ("the Corporation") dated 16 June 2017 finalising Mr Judkins' individual rehabilitation plan ("IRP").

[2] The Reviewer concluded that the contents of the IRP were reasonable and that the Corporation had given Mr Judkins ample opportunity to engage in the process. Accordingly, the Corporation was entitled to finalise the IRP.

District Court Judgment

[3] On appeal, Mr Judkins contended that the IRP and its interventions were flawed. He raised the following arguments:

[a] A new vocational independence medical assessment ("VIMA") was required prior to the IRP being finished. The VIMA dated 7 June 2012 by Dr Walls was flawed, and therefore the deemed new IRP was also flawed as it was based on a "misdirected" document. The Corporation was required to update the VIMA every 3 months and there should have been another VIMA prior to the IRP being finished. Furthermore, it was improper for an IRP to be completed prior to treatment being concluded.

[b] It was unreasonable for the Corporation to finalise the IRP. The Corporation was in breach of its Code of Claimants' Rights and of the Guidelines within the Accident Compensation Act 2001 ("the Act") for vocational independence. In addition, since 2012, there had been further significant changes in Mr Judkins' condition which had not been taken into account in the existing VIMA.

[4] In reply, the Corporation submitted that the interventions and the IRP were appropriate at the time and it was within the Corporation's scope to finalise the IRP.

[5] Judge Spiller set out the factual background and relevant statutory provisions. He referred to the decision in *Robinson v Accident Compensation Corporation*[1] where the Corporation had also issued a decision deeming the appellant's IRP to be finalised. In that case, Judge Beattie stated:

> [16] The respondent's decision deeming the appellant's IRP to be finalised in accordance with clause 8(2) of Schedule 1 to the Act, has as its basic consideration the question of reasonableness. Such reasonableness is to be considered both in terms of the time and opportunity given to an appellant to agree to the IRP, and secondly, from an objective perspective to consider whether the provisions of the IRP are reasonable, that is, it contains proposed

[1] *Robinson v Accident Compensation Corporation* [2012] NZACC 241.

> activities which are reasonable having regard to the appellant's required needs for rehabilitation.

[6] With regard to the requirement for a new VIMA, Judge Spiller noted that there is no statutory provision requiring the Corporation to update the VIMA every 3 months or require another VIMA prior to the IRP being finalised. His Honour went on to state:

> [41]...The IRP is often the first step in vocational independence rather than the last step as it must be completed within 13 weeks of accepting the claimant's claim for cover (see s 75 of the Act). The IRP states that Mr Judkins is "now ready to have [his] vocational independence assessed". The clear indication from the Corporation is that further vocational assessments of Mr Judkins will be undertaken, following the IRP, to test whether Mr Judkins has achieved vocational independence. In the meantime, his weekly compensation continues.

[7] Judge Spiller further noted that s 75(b) of the Act provides that the Corporation may include provision for treatment in the IRP. He observed that this provision clearly indicated that it is not improper for an IRP to be completed prior to treatment being concluded.

[8] As to the reasonableness of the Corporation finalising the IRP, Judge Spiller discussed the requirements under s 77(1) and Schedule 1, cl 8, of the Act and concluded that the Corporation had given Mr Judkins reasonable time to agree to the proposed IRP. His Honour then went on to consider the contents of the IRP and was satisfied that it contained proposed activities which were reasonable having regard to Mr Judkins' required needs for rehabilitation.

Finally, Judge Spiller commented on the Corporation's *Code of Conduct* and *Initial Medical Assessment and Vocational Independence Assessment: Guides for Providers* stating that these are guidelines for the Corporation's staff and have no statutory force. His Honour concluded: "In any event, there is no indication that the Corporation has, in finalising Mr Judkins' IRP, as part of an ongoing process, breached principles of natural justice or acted outside of the law.

Case for the Applicant

[9] In his submissions, Mr J Robinson, advocate for Mr Judkins, identified the following proposed question of law:

> The appellant [Mr Judkins] states that the Corporation's own publications totally support [Mr Judkins'] argument as to the overall interpretation of these sections within the IPRC Act 2001.[2]

[10] The publications are the Corporation's *Code of Conduct* and *Initial Medical Assessment and Vocational Independence Assessment Guidelines for Providers.* Mr Robinson submits that these publications are an "in depth guideline" based solely upon legislation relevant to the vocational independence process and support his view as to the overall interpretation of ss 77, 88, 89, 95, 96 and Schedule 1, cls 7 and 8 of the Act. As to the correct approach to the interpretation of these provisions, Mr Robinson refers to the Interpretation Act 1999 and what he describes as the four rules of interpretation.

[11] Mr Robinson contends that the Court misconstrued the importance of the Corporation's *Code of Conduct* and *Initial Medical Assessment and Vocational Independence Assessment Guidelines for Providers* in determining that they had no statutory force.

[12] Mr Robinson further asserts that it would be a miscarriage of justice if the Corporation's own policy documents were "contrary to the legislation under which they are bound". In addition, he says that if the High Court found that the Corporation's internal publications properly reflected the law, then it would be clear that the Corporation had breached natural justice and/or acted contrary to the law in not requiring a further VIMA before the IRP was finalised.

Discussion

[13] Section 162 of the Act provides that an applicant may appeal to the High Court on questions of law with leave of the District Court. Relevantly, the proposed point of law must be "capable of bona fide and serious argument" to qualify for the grant

of leave.[3] In considering this issue, care must be taken to avoid allowing issues of fact to be dressed up as questions of law.[4]

[14] Mr Robinson contends that the Corporation is required to update the VIMA every 3 months and there should have been another VIMA before Mr Judkins' IRP was completed. He asserts that the Corporation's publications support Mr Judkins interpretation of the relevant statutory provisions.

[15] There is no statutory provision which requires the Corporation to update the VIMA every 3 months or requires another VIMA prior to the IRP being finalised. Furthermore, as Judge Spiller made clear, the Corporation's *Code of Conduct* and *Initial Medical Assessment and Vocational Independence Assessment: Guidelines for Providers* are guidelines for the Corporation's staff and others and have no statutory force.

[16] Issues regarding cover and entitlements are required to be determined on the basis of the applicable statutory provision/test and not on the basis of any internal policy or procedure which the Corporation may choose to adopt.

[17] Furthermore, any policy or procedure implemented by the Corporation does not carry any weight in interpreting the relevant statutory provision(s). There may be a number of reasons why the Corporation chooses to adopt a particular approach.

[18] In the same way, the Corporation's view as to the meaning of a provision of the Act provides no assistance in determining its correct meaning. Rather, the meaning of that provision is to be ascertained from its text and in the light of its purpose.[5]

[19] Accordingly, for these reasons, I do not consider that the question of law identified by Mr Judkins is one capable of bona fide and serious argument and therefore does not qualify for the grant of leave.

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[2] Accident Compensation Act 2001.
[3] *Impact Manufacturing Ltd v Accident Rehabilitation and Compensation Insurance Corporation* HC Wellington AP 260/00, 6 July 2001.
[4] *Northland Cooperative Dairy Limited v Rapana* [1999] 1ERNZ 361, 363 (CA).
[5] Interpretation Act 1999, s 5(1).

Result

[20] The application by Mr Judkins for leave to appeal to the High Court is dismissed. There is no issue as to costs.

AA Sinclair
District Court Judge

Solicitors: Medico Law Limited, Auckland, for the Respondent.