

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 191

**ACR 254/21
ACR 168/22**

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

Hearing:	8 May 2023
Heard at:	Auckland
Appearances:	B Hinchcliffe for the appellant I Hunt for the respondent
Judgment:	27 November 2023

RESERVED JUDGMENT OF JUDGE I C CARTER
[Suspension of entitlements, Accident Compensation Act 2001, s 117
Personal injury, Accident Compensation Act 2001, s 26]

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Introduction

[1] On 9 February 2021, Mr Nedelcu arrived at work as a security guard in his car to start his shift in the early evening. After he had parked and as he was getting out of the car, he turned to get his bag out of the car and felt a strong pain in his back. Due to the back pain he experienced, he spent about three weeks in North Shore Hospital until discharged on 9 March 2021.

[2] He claimed accident compensation and cover was initially accepted by the Corporation for a lumbar sprain injury caused by his lifting accident, from which flowed entitlements to weekly compensation, treatment and support, including for 30 hours of home and community support for about a month from 12 May to 15 June 2021.

[3] Mr Nedelcu sought an increased level of home and community support, which the Corporation declined. The Corporation later suspended Mr Nedelcu's entitlements on the basis that he had recovered from the covered lumbar sprain injury and that any continuing back symptoms were not caused by the February accident.

[4] Mr Nedelcu sought review of the Corporation's decision dated 10 May 2021 not to increase home and community support and the Corporation's decision dated 25 May 2021 to suspend his cover. Reviewer Hannah Yiu, in a decision dated 15 October 2021, decided that the Corporation's decisions to:

- (a) grant 30 hours of home and community support from 12 May to 15 June 2021;
and
- (b) suspend Mr Nedelcu's entitlements,

were correct.

[5] Following a new diagnosis in early November 2021, Mr Nedelcu claimed accident compensation cover for an L2/L3 disc prolapse with radiculopathy. The Corporation declined cover in a decision dated 16 November 2021 on the basis that the L2/L3 lumbar disc prolapse with radiculopathy was not caused by Mr Nedelcu's 9 February 2021 accident when getting out of his car. Mr Nedelcu sought review of the Corporation's decline decision. Reviewer Melissa Perkin in a decision dated 15 September 2022 decided that the Corporation's decision was correct.

[6] Mr Nedelcu appeals against both of the Review Decisions:

- (a) Appeal ACC 168/22, relating to the Review Decision dated 15 September 2022 (Review 7456705) affirming the Corporation's decision dated 16 November 2021 to decline cover for a L2/3 disc prolapse with radiculopathy.
- (b) Appeal ACC 254/21, relating to the Review Decision dated 15 October 2021 (Review 7361183) affirming the Corporation's decisions:

[i] dated 10 May 2021 to grant 30 hours of home and community support from 12 May to 15 June 2021; and

[ii] dated 25 May 2021 to suspend Mr Nedelcu's entitlements.

[7] The two appeals were directed to be consolidated and heard together.

Issues

[8] There is no dispute as to the factual background of Mr Nedelcu's medical history as established by the evidence, or about what are the relevant legal principles. The grounds of appeal are in effect that on the correct application of the law to the facts, particularly in relation to causation, there should have been a favourable outcome to Mr Nedelcu on each of the Corporation's decisions and each of the Review Decisions concerning:

- (a) cover for a L2/3 disc prolapse with radiculopathy;
- (b) an increased level of support greater than the grant of 30 hours of home and community support from 12 May to 15 June 2021;
- (c) continuation of Mr Nedelcu's entitlements which should not have been suspended.

[9] Both parties' submissions addressed the cover/causation and suspension of entitlement issues.

[10] Neither party specifically addressed the home help/support issue. But it is plainly a live issue on the face of Mr Nedelcu's Notice of Appeal and I have determined it in this judgment.

Facts

[11] On 9 February 2021, Mr Nedelcu, then aged 66 years, was about to start work as a security guard at Massey University. As he was getting out of his car, he bent over to get a bag which weighed approximately 8 kgs and twisted his body (the accident). He immediately felt a strong pain in his back which caused him to fall back into the seat in his car. He waited

for 10 minutes and started to recover, and then completed a 12-hour shift in pain. The pain remained when he got out of his car and he had pain overnight.

[12] Mr Nedelcu thought he may have had a serious problem, so the next day went to the emergency department at North Shore Hospital where he was advised to go to Shorecare. Dr Hilton Jones examined Mr Nedelcu and made a recommendation for him to see a physiotherapist. An ACC45 request for cover for a lumbar sprain was lodged with the Corporation by Dr Jones, whose consultation notes stated that Mr Nedelcu had lumbar spine pain which was referred into his buttocks. Cover was granted by the Corporation on 11 February 2021.

[13] Mr Nedelcu was unable to find an available physiotherapist, but instead went to a chiropractor later that day and went to work another shift, but he remained in pain. He returned home to sleep after his evening shift but could not then get out of bed. He stayed in bed for approximately three days, and his pain did not improve. He subsequently ran out of analgesia. An ambulance was called and Mr Nedelcu was taken to North Shore Hospital, where he was admitted between 16 February 2021 and 9 March 2021.

[14] Mr Nedelcu was extensively investigated at North Shore Hospital. On admission an x-ray of the lumbar spine revealed no acute fracture or other findings of concern.

[15] On 17 February 2021, Mr Nedelcu was seen by Orthopaedic Consultant, Joshua Sevaio, who noted that Mr Nedelcu had normal sensation and reflexes. He recorded a potential diagnosis of sciatica in addition to urinary retention but recommended a precautionary MRI to rule out cauda equina syndrome.

[16] An MRI was performed on 18 February 2021. The radiologist comment was spondylosis and facet joint arthrosis which was described as worse at L4/L5. The radiologist also noted an incidental finding of a lesion in his right sacrum for which testing was recommended to ensure that it was not malignant. The conclusion was of no acute concerns at present.

[17] On 19 February 2021 Mr Nedelcu was seen by Orthopaedic Registrar, Anabelle Dekker, who recorded that Mr Nedelcu was still reporting significant pain corresponding to the L5

level. She explained that "there is no disc bulg[e] within the spine, however there is arthritic changes that are affecting the spinal nerve." She recorded a plan for the patient to mobilise with physiotherapy input, for there to be discussion with the spinal team if there was no improvement and for the patient to be discharged once comfortable.

[18] Later in the same day Orthopaedic House Officer, Libby Halligan, again explained that the MRI findings were chronic and that acute pathology such as disc prolapse had been ruled out.

[19] On 20 February 2021, Mr Nedelcu was once again seen by Dr Dekker, who reiterated that the relevant changes were longstanding and unlikely to require surgery. She recorded that Mr Nedelcu had normal sensation and motor power. She also advised that he receive analgesia and physiotherapy input and was to be discharged once he was mobile.

[20] Dr Dekker saw Mr Nedelcu again the next day and recommended an ultrasound in light of urinary retention issues and that Mr Nedelcu be encouraged to get out of bed and mobilise. She recorded that she had explained to him that his pain was unlikely to resolve quickly and that he needed to progress towards discharge.

[21] On 22 February 2021 the appellant was seen by Orthopaedic Health Officer, Elyssa Tan, who again recorded that the MRI had shown chronic arthritic changes and no acute pathology and that while the patient was enquiring about surgical options, it was best to focus on mobilisation and analgesia. She recorded an impression of nerve irritation secondary to lumbar osteoarthritis. On the same day Physiotherapist, Nicola Eldred, recorded that she had explained the importance of mobilising, but that Mr Nedelcu declined to get out of bed.

[22] On 23 February 2021 Mr Nedelcu was again seen by Dr Dekker who recorded a diagnosis of "nerve irritation secondary to lumbar osteoarthritis". She noted that blood tests had indicated a raised CRP and that if this continued a repeat MRI might be required to rule out discitis.¹

¹ Discitis is an infection of the intervertebral disc space (serious but uncommon).

[23] On 23 February 2021 Ms Eldred recorded that Mr Nedelcu would receive no further physiotherapy input as he was unwilling to participate in physiotherapy or discuss what support he might need at home, as he said that he would not be going home until he was fully mobile.

[24] On 25 February 2021 Mr Nedelcu was seen by Dr Karen Park, anaesthetist, who recorded that she provided advice in relation to the importance of mobilisation but that Mr Nedelcu was adamant that he could not move. She noted that Mr Nedelcu lived alone and suggested that social worker input might be of assistance.

[25] On 1 March 2021 a repeat MRI was performed. The radiologist recorded no evidence of discitis, but did note a new area of disc extrusion at L2/3.

[26] On 2 March 2021 Mr Nedelcu was seen by Dr Matthew Bowman, orthopaedic registrar, who explained that some final investigation was required to rule out malignancies, but that Mr Nedelcu was otherwise ready to be discharged and could not remain in hospital long term. Later the same day Orthopaedic House Officer, Libby Halligan, recorded that Mr Nedelcu might not be eligible for ACC support "given there is a longstanding degenerative cause of his back patient [pain] identified" but that he might be able to obtain support from the DHB.

[27] On 4 March 2021 Mr Nedelcu was seen by Social Worker, Kesia Andrews, who advised him that ACC "may not accept claim due to degenerative changes as per orthopaedics" but recorded that Mr Nedelcu disagreed and expected to receive loss of earnings and home support from ACC.

[28] On 8 March 2021 a multidisciplinary team meeting was held with Mr Nedelcu to discuss his discharge. While Mr Nedelcu advised that he wished to stay in hospital forever, he was told this was not possible. A referral was made to the Corporation to provide various home help and support. Mr Nedelcu was discharged from hospital the next day on 9 March 2021.

[29] In North Shore Hospital's discharge notes dated 9 March 2021, House Officer Dr Dylan Hwang noted that the diagnosis was back pain with nerve irritation secondary to lumbar osteoarthritis. Dr Hwang noted that Mr Nedelcu had been thoroughly investigated for his

back pain. The assessment was that Mr Nedelcu's lumbar back pain would be managed conservatively with no surgical intervention given the MRI findings. The hospital assessment also noted that the pain would settle over time. Mr Nedelcu was discharged into his General Practitioner's care with ACC home support. No formal orthopaedic follow up was required.

[30] Mr Nedelcu had limited mobility after his discharge from hospital. He received assistance with meal preparation, shopping, cleaning and transport as arranged by the hospital and funded by the Corporation.

[31] Mr Nedelcu raised concerns regarding the quality of services and issues with the meal preparation assistance he was receiving. This resulted in the Corporation funding "meals on wheels". Mr Nedelcu was provided with a hot cooked meal six times a week as well as additional meal preparation assistance when he advised that he required two hot meals a day. Mr Nedelcu also began receiving weekly compensation.

[32] The Corporation made a decision on 10 May 2021 to grant 30 hours of home and community support from 12 May to 15 June 2021. This reduced the number of hours of community support and number of provided cooked meals per day (from 2 to 1) compared to what was initially provided when Mr Nedelcu was discharged from hospital. Mr Nedelcu did not consider that the reduced number of hours home help and provision of cooked meals provided him sufficient assistance. He applied for review of the Corporation's decision.

[33] Subsequently, in May 2021 the claim was reviewed by the Corporation's Medical Advisor, Hine Hikairo, Registered Nurse. She reviewed the clinical notes from the hospital and advised that Mr Nedelcu's covered lumbar sprain would have already resolved. She noted her assessment that any ongoing problems were most likely due to degenerative changes in his spine, rather than any further injury resulting from the accident.

[34] Based on this advice, the Corporation made a decision dated 25 May 2021 to suspend Mr Nedelcu's entitlements, which would cease from 7 June 2021. Mr Nedelcu applied for review of the Corporation's decision suspending entitlements.

[35] Mr Nedelcu's General Practitioner referred him to see Orthopaedic Surgeon, Clayton Chan. On 3 June 2021 Mr Chan assessed Mr Nedelcu and reviewed his hospital notes. He advised that:

Although his second MRI scan had shown a small right L2/3 disc prolapse, his back and leg pain predate this and the distribution of his right leg pain is not consistent with femoratica. In addition to this, an incidental finding has been of a right sacral lesion. At present, the cause of Mr Nedelcu's symptoms are unclear. To ensure that nothing significant has been missed I have referred him for a SPECT CT bone scan of his lumbar spine and pelvis.²

[36] Both of Mr Nedelcu's applications for review³ were dismissed in a decision dated 15 October 2021 by Reviewer, Hannah Yiu. That first Review Decision is the subject of appeal ACR 254/21.

[37] A bone scan was performed on 16 June 2021 and Mr Chan reported on 25 June 2021 that this had shown no increased intake in the lumbar spine or pelvis. He noted that Mr Nedelcu's pain had been improving and he did not believe anything further needed to be done, but recommended a referral to the Auckland Regional Pain Service if there were problems in the future.

[38] In April 2022 Mr Nedelcu visited a new General Practitioner who referred him to see Orthopaedic Surgeon, Mr Anand Segar. Mr Segar arranged a further bone scan and MRI, both of which were performed on 12 April 2022. The radiologist's conclusion in relation to the bone scan was that it showed:

... at L4-L5, facet joint narrowing and sclerosis was present, right more than left side with associated relatively symmetric mild to moderate increased tracer uptake. Mild progressive of the facet changes since the previous SPECT CT 16/6/21.

[39] In relation to the MRI the impression was:

L4-L5; shallow posterior annular bulge. Bilateral mild to moderate facet changes with ligamentum flavum and facet hypertrophy. Trace facet effusion. Mild right and moderate left narrowing of the lateral recesses with contact of the L5 nerve root. Facet associated foraminal narrowing with contact of the right side L4 nerve root.

² Femoratica symptoms include sharp shooting pain, pins and needles, numbness and muscle weakness, which are most commonly caused by a disc prolapse (bulge) which compresses and irritates an adjacent nerve root.

³ (a) home help/cooked meals; and (b) suspension of entitlements.

[40] On 19 April 2022 Mr Segar advised Mr Nedelcu was suffering from back pain and right leg pain:

... due to L4-5 facet arthrosis and right sided L5 nerve root contact. Reviewed the imaging today and discussed the finding. No further spinal intervention is required from a surgical point of view. No further spinal injury is required as well. It is clear from the imaging that his pain is coming from the L4-5 segment and this needs to be managed non-operatively.

[41] On 19 May 2022 Mr Nedelcu saw Musculoskeletal Physiotherapy Specialist, Katie Carnachan, who advised that there did not appear to be a clear mechanical pattern to Mr Nedelcu's pain and recommended some gentle exercise.

[42] Comment was sought from radiologist, Dr Andrew Slaven in relation to the changes at the L2/3 level between the two MRIs taken at North Shore Hospital on 18 February and 1 March 2021.

[43] In a report dated 16 March 2022 Dr Slaven noted that the first MRI demonstrated minor loss of disc height, moderate loss of disc signal, minor disc bulging and an annular fissure associated with a shallow disc herniation, while the subsequent MRI showed similar changes but with the annular fissure having grown more extensive. He commented that:

There has been a significant change between the two MRI scans in a relatively short time interval in a clinical setting of a significant injury between the two MRI scans, it would be reasonable to assume that the interval change was a result of the injury although no finding specific for a traumatic aetiology is demonstrated on the later MRI scan.

[44] The claim was reviewed by the Corporation's Clinical Advisor (Physiotherapy), Chris Crompton, who noted Dr Slaven's comment referring to "a significant injury between the two MRI scans ... although no finding specific for a traumatic aetiology is demonstrated on the later MRI scan.". As observed by Mr Crompton, Mr Nedelcu's February 2021 accident had occurred *before* both MRIs had been taken. Therefore the extension in extrusion at L2/3 could not be causally linked to the February 2021 accident and was likely to represent a progression of the degenerative process.

[45] He also explained that the changes at L2/3 were degenerative in nature, that the February 2021 accident was not of the type that would be expected to cause such a disc injury

and that all the available expert comment suggested that the L2/3 pathology was incidental to and not the cause of Mr Nedelcu's symptoms.

[46] On 10 November 2021 the Corporation received a medical certificate from Mr Nedelcu's General Practitioner referring to an injury diagnosis of L2/3 disc prolapse. The Corporation declined to grant cover for L2/3 disc prolapse with radiculopathy⁴ in a decision dated 16 November 2021. Mr Nedelcu applied for a review of the Corporation's decision declining cover for a L2/3 disc prolapse. Mr Nedelcu's application for review of this decision was dismissed on 15 September 2022 and is the subject of appeal ACR 168/22.

Law

Cover – did the accident cause the injury?

[47] Section 20 of the Act provides that a person has cover for a personal injury caused by an accident.

[48] Section 25(3) clarifies that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident. Similarly, the fact that symptoms arise at the time of an accident or close to the time of an accident (in other words a temporal connection) does not itself prove that an accident has caused a personal injury.⁵

[49] Personal injury is defined in s 26 as a physical injury suffered by a person, including, for example, a strain or a sprain. Section 26(2) provides that personal injury does not include personal injury caused wholly or substantially by a gradual process, and s 26(4) provides that personal injury does not include a personal injury caused wholly or substantially by the ageing process. As a result, there is no cover for an injury that arises out of a gradual process (except in limited circumstances, not applicable in this case).

[50] In order to have cover, a claimant must prove that their injury was caused by an accident. It is for the claimant to show that it is more probable than not that the accident caused the physical injury.⁶

⁴ Radiculopathy is damage to the roots of nerves whether they enter or leave the spinal cord.

⁵ *Powell v Accident Compensation Corporation* [2002] NZACC 2 at [19].

⁶ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340 at [64].

[51] The onus is on Mr Nedelcu to satisfy the Court that the legislative criteria are met. What is required is described in one case in these terms:⁷

The appellant must establish, on the balance of probabilities, that his ongoing symptoms are the result of personal injury for which he has cover; he is not entitled to the benefit of any doubt; he cannot rely on possibilities; and he cannot call on the respondent to prove that it is not liable to provide cover. It is up to the appellant to prove his case.

[52] Mr Nedelcu is not entitled to ask the Court to speculate.⁸ A degree of precision is required.

[53] It is for the claimant to establish causation on the balance of probabilities.⁹ The balance of probabilities means more probable than not and higher than 50 per cent. However the courts do not engage in mathematical calculations, but rather form a general impression of the sufficiency of the law and scientific evidence and the presumptive inference which a sequence of events inspires in a person with common sense.¹⁰

[54] The Court should not place too much emphasis on the onus as the question is whether the evidence as a whole justifies a conclusion that the necessary causal nexus between injury and medical condition exists.¹¹ The question of causation is answered by determining whether there is a sufficient basis that points to proof of causation on the balance of probabilities for a Court to draw a robust inference of causation between the accident and any injury to Mr Nedelcu.¹²

[55] The fact that a person has suffered a personal injury is not, of itself, to be construed as an indication or presumption that it was caused by an accident (s 25(3) of the Act). Similarly, the fact that symptoms arise at the time of an accident or close to the time of an accident (in other words, a temporal connection) does not itself prove that an accident has caused a personal injury.¹³

⁷ *Sarten v Accident Compensation Corporation* [2004] NZACC 2 at [26].

⁸ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340 at [63] and [70].

⁹ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

¹⁰ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340 at [65].

¹¹ *Wakenshaw v Accident Compensation Corporation* [2003] NZAR 590.

¹² *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

¹³ *Powell v Accident Compensation Corporation* [2002] NZACC 2 at [19].

[56] The leading authority regarding pre-existing degenerative changes is the High Court decision in *McDonald v Accident Rehabilitation and Compensation Insurance Corporation*.¹⁴ The Court cited with approval the comments of the District Court in *Hill v Accident Compensation Corporation*:¹⁵

.. the provisions of s 10 make it clear that personal injury caused wholly or substantially by the aging process is not covered by the Act. ...

If medical evidence establishes that there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered. The fact that it is the event of the accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effect of those changes to become apparent and of course in many cases for them to become the disabling feature.¹⁶

[57] A further example is the case of *Sparks v Accident Compensation Corporation*¹⁷ where Judge Ongley said:

The legal test for entitlements requires sufficient evidence to show that need for assistance arises as a consequence of the covered injury. Where there is an accompanying degenerative or gradual process condition, entitlements will not be available if the personal injury is caused wholly or substantially by that condition.

[58] In *Johnston v Accident Compensation Corporation*¹⁸, Simon France J, with reference to *McDonald*, *Cochrane v Accident Compensation Corporation*¹⁹ and *Accident Compensation Corporation v Ambros*²⁰ rejected an argument on behalf of the appellant that it was sufficient to link the incapacity to the accident. A claimant has to establish that the accident caused an identifiable physical injury that is causing or contributing to the claimant's present condition. A condition that has become symptomatic because of the accident will not be sufficient for a claimant to receive ongoing entitlements.

¹⁴ *McDonald v Accident Rehabilitation and Compensation Insurance Corporation* [2001] NZAR 970.

¹⁵ *Hill v Accident Compensation Corporation* [1998] NZACC 189.

¹⁶ See also *Dennes v Accident Compensation Corporation* [2011] NZACC 254.

¹⁷ *Sparks v Accident Compensation Corporation* [2006] NZACC 45, para [29].

¹⁸ *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

¹⁹ *McDonald, Cochrane v Accident Compensation Corporation* [2005] NZAR 193 (HC).

²⁰ *Accident Compensation Corporation v Ambros* [2007] NZCA 304; [2008] 1 NZLR 340 (CA).

[59] In *Mehrtens v Accident Compensation Corporation*²¹ Judge Ongley referred to the following factors as useful in determining whether there has been an injury caused by an accident:²²

- (a) The nature of the injury - as initially identified - since it is generally reasonable to expect that an initial diagnosis, primarily directed at treatment, rather than any issue of ACC coverage or entitlements - will represent an unvarnished assessment of "the injury", which may later require closer analysis in terms of any ACC issue.
- (b) Any further or revised diagnosis of the injury - having regard to the observations above.
- (c) The significance and seriousness of the accident, and in particular the mechanism of injury. In other words, is the injury which has been diagnosed plausibly or reasonably likely to have been caused by the event, or equally explicable by non-injury causes.
- (d) The development of symptoms, and any change in those symptoms, following the accident - the onset (whether immediate or gradual), magnitude, and nature of those symptoms.
- (e) The extent of any pre-existing condition and whether there had been prior symptoms consistent with that condition (as might be revealed by claimant history, or prior medical interventions and the results of x-rays, MRI scans, and the like).
- (f) Whether any change in the presentation of symptoms is consistent with the natural course of the identified/diagnosed condition, or injury.

²¹ *Mehrtens v Accident Compensation Corporation* [2012] NZACC 25

²² *Mehrtens v Accident Compensation Corporation* [2012] NZACC 25 at para 48

- (g) The objective signs or indicia of injury. This may be simple where the injury is obvious - such as a laceration. It may be less obvious where the symptoms are explicable in different ways i.e., where the symptoms may be explained by reference of pre-existing conditions, which the injury has merely rendered symptomatic, but may equally be explained as having stemmed substantially from the accidental injury.
- (h) The nature and quality of the evidence, both medical and factual. In relation to the medical evidence, particularly in an area where an opinion is relied upon, the Court will be influenced by the extent to which the medical opinion proceeds logically from as clear or settled a basis of fact as is possible (including the possible need for caution when significant reliance is based on a claimant's self-report); appropriate analysis of that material including, where necessary, the presentation of a differential diagnosis; an appropriate level of regard for and consideration of medical research and studies bearing on the issue at hand applied to the particular facts of the case; and a logically reasoned conclusion which takes account of any differing views or factors which might contra indicate the opinion being presented. In this respect, an opinion which is seen to absorb and respond to matters (whether matters of fact or opinion) which challenge the view offered, will often be regarded as more persuasive.

[60] The approach discussed by Judge Ongley in *Mehrtens* was applied in *Lucas v Accident Compensation Corporation*²³ (a surgery case) where Judge Powell accepted the factors as an outline of considerations that are applicable to many of the issues that come before the Court, including the issues that arise in the present appeal. A further case where the approach in *Mehrtens* was applied is *Duncan v Accident Compensation Corporation*, a decision of Judge Maclean.²⁴

²³ *Lucas v Accident Compensation Corporation* [2015] NZACC 216, [14].

²⁴ *Duncan v Accident Compensation Corporation* [2015] NZACC 347, [29] - [30].

Entitlements

Social rehabilitation – home help

[61] Reviewer Yiu correctly summarised the statutory provisions governing discretionary social rehabilitation entitlements including home help.²⁵

[62] Section 67 provides that a claimant who has suffered a personal injury is entitled to entitlement(s) if he or she has cover for the personal injury and is eligible under the Act for the entitlement(s) in respect of the personal injury.

[63] Section 68(2) provides that the Corporation is required to provide entitlements only to the extent required by the Act.

[64] Section 69 lists the entitlements the Corporation can provide, including social rehabilitation.

[65] Section 70 provides that a claimant is responsible for his or own rehabilitation to the extent practicable having regard to the consequences of his or her own personal injury.

[66] Section 79 states that the purpose of social rehabilitation is to assist in restoring the claimant's independence to the maximum extent practicable.

[67] Social rehabilitation is provided under s 81 through key aspects of social rehabilitation, including home help (s 81(e)). Under s 81(3), the Corporation is liable to provide a key aspect of social rehabilitation if a claimant is assessed under s 84 as needing the key aspect and all of the conditions in s 81(4) are met.

[68] A decision under the social rehabilitation provisions of the Act involves the exercise of discretion by the Corporation.²⁶ On appeal against the exercise of a discretion, the decision can only be challenged if it was incorrectly exercised due to the Corporation:²⁷

(a) Making an error of law or principle.

²⁵ Review Decision 15 October 2021 at [35] to [42].

²⁶ *Harper v Accident Compensation Corporation* [2020] NZACC 147 at [41], [42]; *Gregory v Accident Compensation Corporation* [2016] NZACC 118 at [14].

²⁷ *Kacem v Bashir* [2011] 2 NZLR 1 at [32]; *May v May* (1982) 1 NZFLR 165 at 170 (CA).

- (b) Taking account of irrelevant considerations.
- (c) Failing to take account of relevant considerations.
- (d) Making a decision that was plainly wrong.

Power to suspend entitlements

[69] Section 117(1) of the Act provides that the Corporation may suspend or cancel an entitlement if "it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement."

[70] The Corporation must have a sufficient evidential basis to suspend or cancel an entitlement. In *Ellwood v Accident Compensation Corporation*,²⁸ Mallon J held:

[64] ... Before entitlements are suspended at ACC's initiative (or that suspension is upheld by a reviewer or the District Court) ACC should take steps to clarify the position one way or the other. The claimant is not present at the first stage so the obligation must be on ACC at this stage to obtain sufficient evidence. Mr Beck's proposed test of asking whether there is a sufficient basis on which entitlements should be suspended (in effect, terminated) is a reasonable one. If there is an insufficient basis then the test of "is not satisfied" is not met. If there is a sufficient basis then ACC can be "not satisfied" of the right to entitlements. As the reviewer and the District Court apply the same test the same approach should be taken at each stage.

[65] I therefore consider that s 116 [s 117 of the 2001 Act] combined with the requirement in s 62 [s 54 of the 2001 Act] on ACC to make reasonable decisions requires ACC to have a sufficient basis before terminating benefits. If the position is uncertain then there is not a sufficient basis. The "not satisfied" test is not met in these circumstances.

[71] In a sequel to the first decision in *Ellwood*, in *Ellwood v Accident Compensation Corporation*²⁹ the High Court declined to grant special leave to appeal, regarding it as settled law that an entitlement can only be granted when the claimant's incapacity is due to the covered personal injury. Dobson J commented that the Court does not necessarily have to be definitively satisfied that symptoms were caused by a gradual process or disease:³⁰

²⁸ *Ellwood v Accident Compensation Corporation* [2007] NZAR 205 at [64] - [65] (HC).

²⁹ *Ellwood*, in *Ellwood v Accident Compensation Corporation* [2012] NZHC 2887 at [17] - [21].

³⁰ *Ellwood*, in *Ellwood v Accident Compensation Corporation* at [22].

That point also addresses a number of the other proposed questions of law which, to a greater or lesser extent, were subsidiary to this principal one. For instance, the criticism of the test applied by Judge Beattie on causation required the Judge to be satisfied that the symptoms were not caused by a physical injury, but it did not necessarily follow that the Judge also needed to be satisfied that the symptoms were caused by a gradual process or disease. The argument for Mr Ellwood makes more than is justified of the onus on ACC to establish definitively what the cause of ongoing pain is. Mallon J's concern was that entitlements should not be suspended where the potential causes of pain were more or less equally likely hypotheses of qualifying and excluded causes. It is not inconsistent with that approach to focus in a negative sense on discounting the contribution of an injury as the cause of pain in a definitive sense, without necessarily solving every medical puzzle as to what other causes contributed to the symptoms complained of.

[72] It is well established that cover must be established as a pre-requisite to entitlement.³¹

Section 67 states:

67 Who is entitled to entitlements

A claimant who has suffered a personal injury is entitled to 1 or more entitlements if he or she –

- (a) has cover for the personal injury; and
- (b) is eligible under this Act for the entitlement or entitlements in respect of the personal injury.

[73] In *Parsons v Accident Compensation Corporation*,³² Judge Powell referred to s 67, noting that a claimant is only entitled to continue to receive an entitlement if the entitlement is for a covered injury:

[10] As a result the correct approach in determining whether a claimant is no longer entitled to an entitlement or entitlements is to consider whether the two components of s 67 continue to be satisfied. In other words entitlements can only be suspended under s 117(1) if either of the two requirements in s 67 are not, or are no longer, met.

[11] With regard to the requirement under s 67(a) this is most often manifested when the covered injury is recorded as a sprain or a strain and the entitlement sought is for a more specific injury such as a rotator cuff tear or lumbar disc prolapse. In such situations a causal inquiry is necessary to determine whether the tear or prolapse was indeed related to the injury for which cover was granted or whether the injury for which the entitlement is required occurred independently of the covered injury. Likewise it is well established that a claimant cannot rely upon a non-covered injury to support a claim for entitlements, and in the absence of cover no entitlements can therefore flow. [See in particular *Medwed v Accident Compensation Corporation* [2009]

³¹ Section 67; *Medwed v Accident Compensation Corporation* [2009] NZACC 86; *Newton v Accident Compensation Corporation* [2015] NZACC 22, at [25]. As conceded by Mr Hinchcliffe in argument, the suggestion in *Hamilton v Accident Compensation Corporation* [2013] NZACC 14 at [16] that where cover is initially granted for an injury and a more specific medical condition is later identified, the later condition is automatically taken as included in the covered injury - no longer represents the correct legal position.

³² *Parsons v Accident Compensation Corporation* [2015] NZACC 325.

NZACC 87 at [13] and [26] and my decision in *Newton v Accident Compensation Corporation* [2015] NZACC 22 at [24] and [25].]

- [12] In contrast where there is no dispute over the extent of cover the question becomes whether the claimant is still eligible for a particular entitlement or entitlements pursuant to s 67(b). If the covered injury has resolved the claimant will for example no longer be eligible for weekly compensation as he or she is "no longer unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury" pursuant to s 103(2) of the Act.

[74] In *Hayes v Accident Compensation Corporation*³³ Judge Powell referred to his earlier judgment in *Rogers v Accident Compensation Corporation*³⁴ and similarly emphasised that the nature of the covered injury had to be taken into account in considering whether or not the claimant was entitled to continue to receive entitlements.

[75] As Dobson J's judgment in *Ellwood* and the judgment of Judge Powell in *Parsons* indicate, there is also a question of causation. That is, is there a causal nexus between the claimant's symptoms as at the date of the decision and the covered injury sustained by the claimant in the accident?

[76] Judge Barber summarised the law in this respect in *Furst v Accident Compensation Corporation*³⁵ (also a suspension decision) as follows:

- [14] Section 26 of the Act defines "personal injury" as physical injuries suffered by a person. Personal injury caused "wholly or substantially" by a non-work gradual process, disease or by the ageing process is excluded. If medical evidence establishes there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be cover: *McDonald v ARCIC* [2002] NZAR 970 at 26.
- [15] There must be a causal nexus between the covered injury and the condition of the claimant for which entitlements were sought at the time of ACC's decision to suspend or decline entitlements: *Milner v ACC* (187/2007).
- [16] Causation cannot be established by showing that the injury triggered an underlying condition to which the appellant was already vulnerable, or that the injury accelerated the condition which would have been suffered anyway: *Cochrane v ACC* [2005] NZAR 193.
- [17] The question is whether the evidence as a whole justifies a conclusion that there is a nexus between injury and incapacity: *Cochrane*.

³³ *Hayes v Accident Compensation Corporation* [2015] NZACC 327.

³⁴ *Rogers v Accident Compensation Corporation* [2015] NZACC 324.

³⁵ *Furst v Accident Compensation Corporation* [2011] NZACC 379.

Appellant's submissions

[77] It was submitted on Mr Nedelcu's behalf:

- (a) In respect of cover/causation, the evidence – especially of Dr Slaven (Radiologist)³⁶ and Mr Segar (Orthopaedic Surgeon)³⁷ – establish that a disc injury and radiculopathy was present after the accident, could have been caused by the February 2021 accident and was not wholly or substantially related to a pre-existing process condition, noting:

- [i] The MRI report stating that there was a new disc injury;
- [ii] Dr Slaven stating the interval change is as a result of the accident on 9 February 2021;
- [iii] No evidence of an active arthritic condition in the lumbar spine;
- [iv] No pre-existing lumbar complaints; and
- [v] Expedient treatment soon after the accident.

- (b) In respect of suspension of entitlements:

- [i] The Corporation incorrectly relied on diagnoses of a Nurse Clinical Advisor, Hine Hikairo, and a Physiotherapist Clinical Advisor, Chris Crompton, who may not diagnose a disc injury under the Corporation's treatment guidelines.
- [ii] According to the notes of medical doctors, there was facet joint osteoarthritis, disc space narrowing and the presence of osteophytes. There was no significant arthritic change in the spine.

³⁶ Dr Slaven suggested that the interval change on the second MRI was the result of an injury.

³⁷ Mr Segar suggested that the disc bulge was causing the symptoms.

- [iii] Prior to the Corporation's suspension decision, the Corporation did not have a sufficient basis to be satisfied that the disc injuries found on the MRIs were not accident related.

Respondent's submissions

[78] The Corporation in essence submits:

- (a) The evidence as a whole does not establish on the balance of probabilities that it is more probable than not that Mr Nedelcu's February 2021 accident caused his continuing back pain after his lumbar sprain injury had resolved.
- (b) The Corporation had a sufficient basis on which to suspend Mr Nedelcu's entitlements at the time that it did so and that basis continues to apply.

Analysis

Cover – did the accident cause the injury?

[79] To succeed on appeal, Mr Nedelcu must show on the evidence as a whole that it is more likely than not that his accident on 9 February 2021 caused the condition for which he is seeking cover, that is, a L2/3 lumbar disc prolapse with radiculopathy.

[80] Standing back and looking overall at the evidence as a whole the evidence does not establish that it is more likely than not that Mr Nedelcu's accident on 9 February 2021 caused a L2/3 lumbar disc prolapse.

[81] Following Mr Nedelcu's accident, the cause of his symptoms was extensively investigated. On my assessment of the medical evidence, the correct overall position was accurately summarised by Reviewer Perkin.³⁸

[63] The evidence establishes that Mr Nedelcu is suffering from degeneration in his spine with facet joint arthrosis, which is worse at L4/L5 where there is contact with the descending nerve roots at L5 and far lateral exiting nerve roots at L4 and L5 on the right. The arthritic changes are causing nerve irritation and pain. This was confirmed in the assessments of Dr Halligan and Dr Hwang at North Shore Hospital, Mr Segar, and ACC clinical advisors Mr Crompton and Ms Hikairo. Mr Crompton and Ms Hikairo's assessment was that posterior thigh and calf pain is not consistent with a

³⁸ Review Decision dated 15 September 2022 at [63], [64], [66], [67].

pain generator at L2/L3, citing the evidence of the treating specialist and the SPECT scan in support. Dr Chan's assessment in his letter of 3 June 2021 supports the finding that the right L2/L3 disc prolapse was not the cause of Mr Nedelcu's symptoms

[64] The fact Mr Nedelcu is still suffering from lumbar spine pain in spite of the improvement in the disc bulge and annular tear at L2/L3, as evidenced in the April 2022 MRI, supports a conclusion that the pain he is suffering is not from L2/L3, but more likely to be generated at L4/L5 from facet joint arthrosis and right sided L4 and L5 nerve root contact.

...

[66] The New Zealand Orthopaedic Association factors for the mechanism for disc injuries include a loading event involving axial compression combined with flexion, rotation and/or a sudden axial impact load to the lumbar spine. When applying these criteria to the circumstances of the 9 February 2021 accident, I find a causal link with a disc injury is not supported.

[67] Given that Mr Nedelcu has bilateral facet joint arthrosis and multilevel degenerative disc disease, disc degeneration may also be considered as part of the continuum of degeneration, with the possibility a posterior annular fissure having a degenerative cause.

[82] The x-ray performed at North Shore Hospital on 16 February 2021 showed that his disc heights were preserved and there was generalised disc desiccation³⁹ except at L3/4. There was no spondylolisthesis.⁴⁰

[83] The MRI scan of his lumbar spine performed two days later, on 18 February 2021, also showed satisfactory disc heights and no evidence of spondylolisthesis or any nerve compression. No acute concerns were noted.

[84] On 19 February 2021 Dr Dekker stated that there was no disc bulge, but confirmed that there were arthritic changes affecting the spinal nerve. It was thought that Mr Nedelcu's pain was at the L4/5 level. There was no suggestion that these changes were attributable to the accident on 9 February 2021.

[85] A follow up MRI scan performed on 1 March 2021 again showed no evidence of discitis, however did show that a right side superiorly extruded L2/3 disc prolapse had developed, compressing Mr Nedelcu's right L2 nerve root. Ms Halligan noted on 2 March 2021 that there was a "longstanding degenerative cause" of Mr Nedelcu's back pain.

³⁹ Disc desiccation is a process of vertebral discs slowly losing fluid. It happens naturally with age but can also be caused by trauma and repeated strain from lifting heavy objects.

⁴⁰ Spondylolisthesis is a forward shift (slippage) of one vertebra on another due to a defect in the bone or in the joint that normally bind them together. It can be congenital or develop after injury.

[86] Mr Chan, having reviewed the available imaging, noted that although the 1 March 2021 MRI scan did show a small disc prolapse, he had back and leg pain before that scan and the distribution of his right leg pain was not consistent with femoratica. As at the date of Mr Chan's report (3 June 2021) "the cause of Mr Nedelcu's symptoms are unclear".

[87] Although Dr Slaven, radiologist, noted on 16 March 2022 that there had been a significant change between two MRI scans in a relatively short time interval, and suggested it would be reasonable to assume that the interval change was the result of the injury, there was no finding specific for a traumatic aetiology (cause) demonstrated on the later MRI scan.

[88] Mr Nedelcu relies on Dr Slaven's opinion to show that his injury was caused by the accident on 9 February 2021. However given Dr Slaven's note of the absence of any evidence of a traumatic cause, his report is not sufficient to establish that the accident on 9 February 2021 caused Mr Nedelcu's injury. In addition, there is no comment or explanation from Dr Slaven as to how the mechanism of Mr Nedelcu's accident (turning to pick up a bag) could have caused the L2/3 disc prolapse which developed some weeks after Mr Nedelcu's accident.

[89] The more likely explanation is that pre-existing degenerative changes were brought to light, or which became symptomatic as a consequence of the February 2021 accident. The legal position is clear that it can only be the injury caused by the accident and not continuing effects of a pre-existing degenerative condition that can be covered. The fact that an accident may render symptomatic that which previously was asymptomatic does not alter that basic principle. What is more likely here is that the accident did not cause the degenerative changes and simply caused the effect of those changes to become apparent.

[90] It was argued for Mr Nedelcu that Mr Segar's opinion was that the disc bulge was causative of Mr Nedelcu's symptoms. However, Mr Segar states in his report of 19 April 2022 that "CT SPECT of the lumbar spine shows increased radiotracer uptake at L4-5 bilateral facet joints. This is unchanged compared to the CT SPECT of June 2021. This is likely the cause of his back pain ...". Similarly, he attributes Mr Nedelcu's leg pain to a small bulge at L4-5. Mr Segar's report does not therefore help Mr Nedelcu, who is seeking cover for a disc bulge at L2/3. Further, Mr Segar does not suggest that the cause of the bulge is related to the 9 February 2021 accident.

[91] The weight of the medical evidence is that the changes to Mr Nedelcu's spine are degenerative and long-standing. There is clear evidence of degeneration in Mr Nedelcu's spine and the evidence overall does not establish that it was more likely than not that the accident on 9 February 2021 has caused a L2/3 lumbar disc prolapse with radiculopathy.

Entitlement to social rehabilitation / home help

[92] Reviewer Yiu captured the essence of Mr Nedelcu's challenge to the Corporation's home help decision and accurately summarised the Corporation's decision-making process and reasons:⁴¹

[49] On this review, Mr Nedelcu is essentially arguing that he was initially granted a higher level of funding for home support, which has now, in his view, been unfairly decreased, and that the quality of care provided (frozen meals) is unacceptable.

[50] As set out earlier, a decision under the social rehabilitation provisions of the Act (here, under s 81, on the matter of home help) involves ACC's exercise of discretion. That means that ACC's exercise of discretion can only be successfully challenged by Mr Nedelcu on appeal if ACC has made an error of law or principle, taken account of irrelevant considerations, failed to take account of relevant considerations, or made a decision that was plainly wrong. I do not consider that ACC has done so in coming to its 10 May 2021 decision to grant Mr Nedelcu 30 hours of home help for the 12 May 2021 to 15 June 2021 period.

[51] ACC's 10 May 2021 decision was based on the recommendation of the occupational therapist assessor Ms Apuya, who completed a social rehabilitation needs assessment of Mr Nedelcu. She recommended that Mr Nedelcu be granted 5.5 hours of home help for six weeks, having assessed his needs. No contrary expert advice has been provided by Mr Nedelcu to suggest that Ms Apuya's recommendations are incorrect. ACC granted Mr Nedelcu 30 hours of home help over five weeks - that is, six hours of support per week. That is a slightly higher level of hours than the assessor's recommendation.

[52] Mr Nedelcu relies on the North Shore Hospital's recommendation of a higher number of hours to support his argument that ACC is in error in its 10 May 2021 decision. However, I note that North Shore Hospital had in fact recommended that Mr Nedelcu receive a short term independence package from ACC for less than six weeks, commencing 9 March 2021. That means that the hospital considered that Mr Nedelcu would no longer need further short term assistance by 20 April 2021 (being six weeks from 9 March 2021). In providing for provision of further hours of help from 12 May 2021, some nine weeks after Mr Nedelcu's discharge date, ACC has in fact provided Mr Nedelcu with a higher level of support than that initially recommended by North Shore hospital.

[53] As to Mr Nedelcu's complaint regarding the frozen meals received and his expressed desire for hot prepared meals seven days a week, I consider that these matters do not make ACC's 10 May 2021 decision (which was a decision on the number of home help hours) incorrect. I further note that Ms Apuya considered

⁴¹ Review Decision 15 October 2021 at [49] to [55].

Mr Nedelcu's wishes and opined that bulk meal preparation could ensure that Mr Nedelcu had healthy cooked meals throughout the week and that this would encourage his participation in meal preparation on the days where no support workers are due to attend.

[54] In coming to its decision, I consider that ACC has duly considered Mr Nedelcu's rehabilitative needs. Mr Nedelcu has responsibility for his own rehabilitation to the extent practicable having regard to the consequences of his injury, and the purpose of social rehabilitation is to assist him to restore his independence to the maximum extent practicable, and not to cater to his every wish.

[55] Given the above, I can find no basis for Mr Nedelcu's claim that ACC's 10 May 2021 decision was intended to punish him.

[93] I agree with Reviewer Yiu's analysis and conclusion that the Corporation properly and correctly considered Mr Nedelcu's rehabilitative needs. I am satisfied that the Corporation made no error of law or principle, did not take account any irrelevant consideration or fail to take account of any relevant consideration, and was not plainly wrong.

Suspension of entitlements

[94] To succeed on appeal, Mr Nedelcu must show, in relation to the decision suspending entitlements, that the Corporation did not have a sufficient basis to not be satisfied of Mr Nedelcu's ongoing right to the entitlements.

[95] Mr Nedelcu had cover for a lumbar sprain which had resolved by May 2021. After May 2021, there is no evidence to suggest that Mr Nedelcu had a covered injury and was entitled to ongoing entitlements in relation to that injury.

[96] As Mr Nedelcu was not suffering from a lumbar sprain injury after May 2021, it follows that the Corporation had a reasonable basis to conclude that entitlements flowing from that injury should be suspended.

[97] The Corporation's submissions highlighted that in the first set of submissions filed on behalf of Mr Nedelcu, before the two appeals were consolidated, it was accepted that "a lumber [sic] sprain injury would have been resolved by the date of the suspension decision". It would follow that, in circumstances where Mr Nedelcu had not made a claim for cover for anything other than a lumbar sprain, there could never be a right to any entitlement. Cover is a pre-requisite to any entitlement.⁴²

⁴² *Medwed v Accident Compensation Corporation* [2009] NZACC 86 and *Newton v Accident Compensation Corporation* [2015] NZACC 22 at [22] - [25].

[98] Although that concession no longer appears in submissions on behalf of Mr Nedelcu, there is no suggestion that the lumbar sprain is contributing to his ongoing symptoms, or has in fact not resolved. Mr Nedelcu only had cover for a lumbar sprain. It was to that injury that the right to entitlements attached. There is no evidence to suggest that Mr Nedelcu's lumbar sprain is in fact still contributing to his condition. It follows that there is no right to ongoing entitlements.

[99] The medical evidence points to a non-accidental cause of Mr Nedelcu's continuing condition after May 2021, that is, pre-existing degenerative changes to his spine. Entitlements are not available if the injury is wholly or substantially caused by a pre-existing condition, which is likely to be the case.

[100] Submissions on behalf of Mr Nedelcu criticise the Corporation's reliance on the opinions of Nurse Clinical Advisor, Hine Hikairo, and a Physiotherapist Clinical Advisor, Chris Crompton. However these Clinical Advisors did not diagnose or request cover for any injury of Mr Nedelcu. Their advice was based on an analysis of the available primary information relating to Mr Nedelcu's medical history.

[101] In order to suspend entitlements, the Corporation had to have a sufficient basis to be satisfied that Mr Nedelcu had no ongoing right to the entitlements as at the date of the suspension decision, the date of the Review Decision and the date of hearing this appeal.⁴³ I agree with Reviewer Yiu's⁴⁴ summary of the relevant evidence available to the Corporation as at 25 May 2021 and that this provided the Corporation with a sufficient basis to be satisfied that Mr Nedelcu was not entitled to continued entitlements for his lumbar sprain:

- a ACC had only received an application for cover for, and provided cover for, a lumbar sprain in relation to Mr Nedelcu's 9 February 2021 accident.
- b Mr Nedelcu's 18 February 2021 MRI did not show any other physical injury caused by his February 2021 accident.
- c The North Shore hospital/orthopaedic surgeon's opinion as at 9 February 2021 was that Mr Nedelcu was suffering from nerve irritation secondary to lumbar osteoarthritis. These are not conditions for which Mr Nedelcu has ACC cover in relation to his 9 February 2021 accident.

⁴³ *Elwood v Accident Compensation Corporation* [2007] NZAR 205, and in the District Court by way of example, *Hays v Accident Compensation Corporation* [2015] NZACC 327, at [11].

⁴⁴ Review Decision 15 October 2021 at [63].

- d ACC had received clinical advice on 11 May 2021 from ACC clinical advisor Ms Hikairo that Mr Nedelcu's covered lumbar sprain would have resolved by that date and that there was evidence of an alternative explanation for his current clinical presentation (nerve irritation secondary to osteoarthritis and spinal degeneration).
- e ACC sought further clarification from Mr Nedelcu's GP Dr Hancock on 19 May 2021 as to whether he agreed or disagreed that Mr Nedelcu's ongoing incapacity was no longer due to a lumbar sprain, and received no response.

[102] The evidence as a whole points to a likely underlying degenerative cause of Mr Nedelcu's condition after May 2021 and the Corporation could not be satisfied that Mr Nedelcu's disc injuries were caused by the February 2021 accident. The Corporation therefore had a sufficient basis to be satisfied that Mr Nedelcu was not entitled to ongoing entitlements.

[103] There continued to be a sufficient basis for continuing suspension through to the date of the Review Decision and to the date of hearing this appeal.

Conclusion

[104] On the evidence as a whole, Mr Nedelcu has not established on the balance of probabilities that his February 2021 accident caused the injury of a L2/3 disc prolapse with radiculopathy and there is no accident compensation cover for that injury.

[105] There is no appealable error in the Corporation's decision to grant of 30 hours of home and community support from 12 May to 15 June 2021.

[106] There was and continues to be a sufficient basis for the Corporation to suspend Mr Nedelcu's entitlements after May 2021.

Result

[107] Appeal ACC 168/22, relating to the Review Decision dated 15 September 2022 (Review 7456705)⁴⁵ is dismissed.

⁴⁵ Affirming the Corporation's decision dated 16 November 2021 to decline cover for a L2/3 disc prolapse with radiculopathy

[108] Appeal ACC 254/21, relating to the Review Decision dated 15 October 2021 (Review 7361183)⁴⁶ is dismissed.

Costs

[109] Although Mr Nedelcu is unsuccessful on appeal, I make no order for costs.



I C Carter
District Court Judge

Legal Representatives: ACC and Employment Law, Solicitor, Auckland, for appellant
Young Hunter, Solicitors, Christchurch, for respondent

⁴⁶ Affirming the Corporation's decisions:
[i] dated 10 May 2021 to grant 30 hours of home and community support from 12 May to 15 June 2021; and
[ii] dated 25 May 2021 to suspend Mr Nedelcu's entitlements.