IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 152 **ACR 300/21**

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

Hearing:	20 July 2023
Heard at:	Dunedin / Otepoti
Appearances:	Mr P Sara for the Appellant Ms J Maslin-Caradus for the First Respondent (via AVL)
Judgment:	19 September 2023

RESERVED JUDGMENT OF JUDGE C J MCGUIRE
(Causation)

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[1] The issue for determination is whether the respondent was correct in its decision of 24 December 2020 to decline cover for the appellant's L4/5 disc prolapse and funding for surgery to treat that condition.

Background

[2] The appellant was employed at the Redroofs Rest Home facility in Roslyn, Dunedin.

[3] She hurt her back in the course of her employment on 24 July 2019. She describes the circumstances in a statement.

> 7. I started to work that day and I started doing the breakfast dishes. The dishwasher had broken down and I needed to do the dishes by hand. I was doing the breakfast dishes for about 40 or 50 residents and this included side plates and bowls and cutlery. Probably there would have been about 100 side plates, about 30 bowls plus associated cutlery.
>
> 8. As well as that, there were mugs and trays as well as ramekins.
>
> 9. In order to wash the dishes, I had to use one of the sinks. The sink that I used had a deep bowl, the bottom of which would be about level with my kneecaps. The top of the sink would be a bit above the level of my hips. In order to do the dishes, I had to bend right over.
>
> 10. I would wash some dishes, take them out, put them on a rack to dry and then wash some more. As well as the breakfast dishes, I then did the morning tea dishes and some of the cook's prep dishes. As well as that, I did the large veggie trays. These are large stainless steel cooking trays for steaming vegetables.
>
> 11. I would have finished doing all of these dishes by about midday and then I helped serve the lunch. After that, I had my lunch break and then went back to do the lunch dishes after my break.
>
> 12. The pile of dishes was on my left and the drying racks were on my right. The process of doing the dishes involved twisting my body to the left, getting a pile of dishes, then straightening up, lifting them into the sink, washing them, picking them up, twisting to the right to put them onto the drier.
>
> 13. By this time, I had been doing the dishes for approximately two hours and all of that time had been involved in washing the dishes as described above. I would straighten up to grab another pile of dishes to wash them, but not when I was putting them out to dry on the rack.
>
> 14. I would wash a couple of dishes at a time, partially straighten when I was lifting them out onto the drying tray and then go back to wash another couple of dishes and so on.
>
> 15. Just before 11 o'clock, I was doing the dishes as previously described and I was straightening up from the bent over position in order to grab another pile of dishes, when I felt a ping in my back.
>
> 16. I felt the pain as I was straightening.
>
> 17. I felt the pain in my lower back. On a scale where zero is no pain and 10 is the worst pain I have experienced, the pain I experienced would be between seven and eight on that scale.
>
> 18. The pain was so severe I had to stop work and go and fill in an accident report. I rubbed some anti-inflammatory cream on my lower back and took some Panadol.

> 19. I went back to work to continue the dishes until midday. The pain level remained the same.
>
> 20. My back was still sore serving lunch, but not so severe as it was earlier due to the Panadol taken and anti-inflammatory cream applied.
>
> 21. After my break, I continued to do the dishes by hand, which were only a few before the dishwasher was fixed. I then started loading the dishwasher.
>
> 22. My back pain remained while loading the dishwasher and has been extremely sore ever since, impacting on my daily life.
>
> 23. In 2007, 2009 and 2010, I had previous back sprains. Making a complete and full recovery.

[4] On 26 July 2019, the appellant attended the Broadway Medical Centre where an ACC claim form was completed, with the injury description as "lumbar sprain – probable".

[5] ACC accepted cover for the injury on 29 July 2019.

[6] On 1 August 2019, ACC interviewed Ms Gray and the following details of injury and accident were recorded:

> Dishwasher broke, was washing all the dishes, sink is quite deep and low, bending into that for a long period of time. Lower back just started aching. Lumbar sprain.

[7] On 6 August 2019, her back was x-rayed. The report was as follows:

> Alignment is satisfactory. Vertebral body heights are well preserved. Mild marginal osteophyte is seen at L2/3, suggesting some mild spondylosis. No pars defects seen.

[8] Commencing 8 August 2019, the appellant saw a physiotherapist regularly, with the last recorded consultation on 12 November 2020. In the assessment notes for 8 August 2019, under the heading "Subjective" is "severe LBP (lower back pain), travels to thoracic".

[9] Her final physiotherapy attendance appears to have been on 12 November 2020. The record notes that the appellant was still waiting on ACC's decision and approval for surgery.

[10] On 6 August 2019, she had an x-ray on her back to rule out disc herniation. The report said this:

> Alignment is satisfactory. Vertebral body heights are well preserved. Mild marginal osteophyte is seen at L2/3, suggesting some mild spondylosis. No pars defects seen.

[11] In what appears to be her final consultation with the physiotherapist on 12 November 2020, it is noted that ACC was still deciding on approval for surgery. The clinical note records the following under the heading "Subjective":

> … Not been right since had imaging, had review Mr Taha who said surgery or pain clinic but increased pain meds and so thinks will go for surgery and had told Mr Taha this so waiting on ACC approval, better with taping and after treatment. Last Friday CT discogram and severe back/leg pain and positive results, so now waiting for results to go to specialist and get appointment for review and slowly getting it easier since then but not back to normal levels pain.

[12] The appellant was referred to Dr Douglas Hill, who assessed her on 19 March 2020. In his report he noted:

> … She injured herself when she was leaning deep into a sink and developed acute low back pain.

[13] He diagnosed an L5/S1 disc lesion.

[14] An MRI scan occurred on 6 May 2020. The report included the following:

> …
>
> L4/5: mild posterior central disc protrusion. No canal or nerve root compromise.
>
> L5/S1: minor posterior central disc protrusion. No nerve root compromise seen.

[15] In a further report of 19 May 2020, Dr Hill noted:

> Her MRI scan has been completed and is essentially normal for age.

[16] Dr Hill referred the appellant to musculo skeletal pain specialist, Dr McLaughlin. In his report of 18 June 2020, under the heading "Opinion and Diagnosis" is this:

> Michelle's presentation is consistent with lumbar discogenic pain. The MRI image does show minor changes of the L4/5 disc, and I think it is most likely that the L4/5 disc is the generator of Michelle's pain.
>
> **Recommended Management/Treatment**
>
> I have been over the MRI images with Michelle and talked to her about discogenic pain, the natural history and the various treatments available.
>
> Michelle told me that she is significantly disabled by her pain and has reassured me that she has tried conservative care without success to date.

[17] Dr Hill also referred the appellant to Mr Taha, a Dunedin neurosurgeon who saw the appellant on 17 July 2020.

[18] In his report of the same day, Mr Taha said:

> She was leaning deep into a sink on 24 July 2019 when she developed the acute onset of pain in her low pain. At that stage the pain was not radiating down her leg, but this pain has developed ever since.
>
> She has failed with conservative treatment despite efforts with physiotherapy. She has a disc at L4/5 with a small protrusion that might be the cause of her pain. The pain is severe and is in her back more than her leg. The pain is affecting her work as a kitchen aide.
>
> …
>
> In terms of management, I think the next step for Michelle would be provocative L4/5 discogram and we will look to do this under ACC.

[19] The discogram was performed on 4 September 2020. The report of the same day included this:

> The discogram demonstrated a posterior central annular tear, with some extravasation of contrast posterior-inferiorly in the epidural space.

[20] In his report to the appellant's treating GP, Dr Ruth Barnett, dated 16 September 2020, Mr Taha stated:

> I advised Michelle that we can take a wait and see approach. A referral to the pain clinic. Or the surgical option with fusion of L4/5 either interior or posterior depending on the suitability of the anterior fusion and the presence of vascular surgery.

[21] On 6 October 2020, Mr Taha submitted an assessment report and treatment plan seeking ACC funding to perform an L4/5 anterior lumbar interbody fusion.

[22] ACC asked its clinical advisor, Mr Peter Hunter, for comment. He was asked this question:

> Does the medical evidence support a causal link between any of the client's covered accidents and the condition/pathology requiring surgery? Please provide the reasons for your opinion.

[23] Mr Hunter's response was:

> The contemporary clinical information does not suggest that an acute injury to the L4/5 disc occurred on 24/07/2019.
>
> The MRI imaging a year after the injury showed mild disc dehydration at L4/5 with some disc bulging but no disc prolapse.

[24] He went on to say that a causal link for ACC to fund the major spinal fusion surgery proposed with any ACC covered injury has not been established.

[25] ACC therefore wrote to the appellant on 24 December 2020 declining to cover the L4/5 disc prolapse or to fund surgery because the need for surgery was not primarily due to her injury on 24 July 2019.

[26] Mr Taha commented further on 12 February 2021. He said:

> On 24 July 2019, Michelle was leaning into a deep sink for work. She then developed the acute onset of pain in her back, which then radiated down her legs. Provocative discogram was positive. MRI confirmed small disc prolapse supporting her symptoms evident in clinical assessment.
>
> In my opinion, the clinical findings, imaging and provocative discogram confirms the traumatic nature of the injury and the application for coverage of surgery costs.

[27] ACC asked orthopaedic surgeon, Mr Hunter, to reconsider the matter in light of the statements from Ms Gray and Mr Taha's additional comments.

[28] Mr Hunter produced a further report dated 19 April 2021. In it he explained that traumatic injury to discs is usually caused by lifting and twisting, or a significant fall. Repetitive twisting without sudden major overload is unlikely to damage a healthy lumbar intervertebral disc.

[29] Mr Taha responded to this in a further report dated 30 September 2021. He said:

> While the mechanism of injury might sound trivial, this does not exclude the possibility of a small rupture of her ligaments which contain the disc that could have resulted from the movement of Michelle leaning into the sink. Even with a small rupture, her symptoms were bad.
>
> Treatment initially was conservative approach. This is known to be beneficial and to work for 90 per cent of patients in 90 days of the injury, however there is a number of patients who do not improve with conservative management only.
>
> The MRI scan findings confirm that there is no major rupture of the disc itself. The explanation for this could be that the injury did not cause a major rupture, but it does not exclude injury to the disc. As Michelle had no pain at all prior to the injury on 24 July 2019, in my opinion the incident itself could be the determinant point and when her symptoms started.
>
> In Dr Hunter's report, he was saying that the CT discography (while not very detailed) appeared to show a disc nucleus as being largely intact, so it means that even if it is slightly disrupted, it might well be explained by the incident.
>
> It is a well known fact that radiology and symptoms do not always match up in 100 percent of people. When there is doubt, further investigations are warranted, such as the provocative testing that was arranged.
>
> The test itself came back as being positive by the radiologist.

[30] In a follow-up letter dated 18 October 2019, Mr Taha reframed his earlier opinions as follows:

> The MRI scan showed a small L4/5 disc prolapse was confirmed as the source of her pain, with provocative test. The pain started immediately after she bent over into the deep sink on 24 July 2019, making it probable that the mechanism of injury (ie. her leaning into the deep sink) to cause a small rupture of her ligaments which contained the disc that could have resulted from the movement. She did not have pain prior to this incident.

[31] Following the unsuccessful review in this case, Dr Hill, specialist pain medicine physician and anaesthetist wrote to the appellant saying:

> I just wanted to relate to you the findings of your nerve conduction studies that were done in October 2021. You advised me that there were no significant abnormalities and this is correct. I wanted to let you know that there was some evidence of a mild left L5 nerve root injury and this would be due probably to the disc protrusion that you have at L5.

> This finding does not change our treatment at all, but does give you an explanation for some of the left side pain and sensory changes. The injury is mild, and I would not expect that this would cause you any long term problems. It is possible that you have previously had some acute pain related to the nerve. On the MRI, there was no obvious nerve root compromise, but the nerve conduction results suggest that there has been some effect on the left L5 root.

[32] The clinical neurophysiology report to which Dr Hill refers is dated 22 October 2021. The conclusion of the clinical neurophysiologist was:

[33] The neurophysiological evidence is most consistent with mild left L5 nerve root injury. There is no evidence of axonal or demyelinating peripheral neuropathy.

[34] A repeat MRI was performed on 21 July 2022. Under the heading "Impression" was this:

> Stable L4/L5 broad-based annular disc bulge and small central disc protrusion without appreciable progression since the prior CT study and without evidence of spinal or foraminal stenosis or nerve root compression.

[35] Mr Sara sought further opinion from Dr McLaughlin to address these issues:

(a) What physical injury, if any, was caused by the accident event on 24 July 2019?

(b) What is the nature of that physical injury (noting that pain is treated as a symptom, not as a physical injury)?

(c) How did the events at Michelle's work on that day cause that injury?

[36] Dr McLaughlin's response dated 21 September 2022 was as follows:

(a) What is the physical injury?

> It is most likely that the accident caused an injury to the L4/5 disc. The CT imaging of 4 September 2020 demonstrated a posterior central annular tear with extravasation of contrast posteroinferiorly. This is most consistent with a grade three internal disc disruption (Page 188, Bogduk).

(b) How did the events at Michelle's work on that day cause that injury?

> Michelle told me on 24 July 2019 she was required to wash dishes over a two hour period as the dishwasher had broken down. The task involved reaching into a deep bowl about the level of the kneecaps. Dishes were taken from this position and then placed onto a drying rack, ie. repetitive bending. The duration of the dishwashing was over about two hours. Michelle estimates it would have been about 100 side plates and about 30 bowls, plus cutlery, mugs, trays and ramekins. It was not a job which Michelle was accustomed to, as usually the washing task would have been completed by the dishwasher.

[37] Dr McLaughlin then listed five factors that increase the likelihood of injury to a disc, ie. internal disc disruption. Applying these to the appellant's case, he said:

> Michelle was unaccustomed to the task that she was required to complete. The task was one of periods of prolonged bending, with repetitions from bending to standing and reaching out at a distance some way from her body. These factors are likely to have led to internal disc disruption, which for Michelle was an onset of low back pain. Michelle had MRI imaging indicating at the L4/5 level a loss of signal and a central disc bulge. Her CT discogram shows grade three internal disruption (reference: Clinical and Radiological Anatomy of the Lumbar Spine, 5th Edition, pages 188-196).

[38] That opinion was in turn reviewed by ACC's clinical advisory panel, which met on 27 September and 11 October 2022.

[39] Its first report is dated 7 October 2022. It reported again on 3 November 2022 after reviewing Dr McLaughlin's report of 21 September 2022.

[40] Dr McLaughlin had noted that unaccustomed activities, bending over with the "disc in compression" with multiple repetitions and reaching out at some distance away from the body can lead to internal disc disruption.

[41] The panel commented:

> Modern kinematic and lumbar biomechanical studies show that, with activities such as washing heavy dishes in a sink, there are compressive forced, and the pressure in the invertebral discs does change.
>
> When there is repetitive bending and twisting, such as when washing dishes in a low sink, up to 17 muscle groups around the spine compensate for these and protect the spine.
>
> As noted by Dr McLaughlin, fitter people can tolerate the hard work of leaning over washing dishes by hand for several hours, better than less fit people.

> Muscle fatigue accumulates, and a high level of compensatory muscle activity predisposes people to pain development. More passive muscles are used during the spinal loading which can also cause pain.
>
> None of this proves that Ms Gray prolapsed one disc, in the context of two deteriorated discs in her lower spine, when washing heavy dishes for several hours. The contemporary records do not support that impression as discussed in our previous comment.

[42] Dr McLaughlin responded to the clinical advisory panel's report on 7 December 2022. Amongst other things, he said"

> On page 7 of 10 (of the CAP's first report) second paragraph, the description of the degradative changes of the annulus are not consistent with the literature that I provided. It is the end plate which is damaged (to an end plate unaccustomed to high repetitive forces with high loads because of the distance Michelle had to reach (much like taking a piece of wire and repetitively bending – it finally breaks) leading to small cracks and fissures. That leads to the disc itself changing properties, in particular, losing water, which leads to increased forces on the annulus.

Appellant's Submissions

[43] Mr Sara referred to Dr McLaughlin's comment in his response to the clinical advisory panel, dated 7 December 2022, where he compared the activities of the appellant bending, lifting and twisting, while washing dishes in a deep sink over a period of two hours as being similar to repetitively bending a piece of wire until it finally breaks.

[44] Mr Sara says it is undeniable that the appellant ended up with an annular tear, which was shown in the Pacific Radiology discogram report of 4 September 2020.

[45] Mr Sara says that no other causative event has been identified.

[46] He notes that the clinical advisory panel seems to take the view that the back pain might be due to an annulra tear, but not caused by trauma.

[47] Mr Sara says that effectively, the clinical advisory panel does not think the two hour task of washing dishes in a low sink not fit for purpose as described by the appellant is sufficient to cause the injury she suffered.

[48] Mr Sara submits that it appears to be the "lack of drama" in this case that gets the attention of the clinical advisory panel.

[49] However, he says that Mr Taha, neurosurgeon, says that it can be a relatively minor matter that causes such injury.

[50] He submits that Dr McLaughlin is the doctor who best engages with a credible medical rationale and that the panel simply says "we don't agree with you" as it is looking for something more dramatic by way of causation.

[51] He acknowledges that the appellant has had injuries in the past, but they have nothing to do with the "dishes incident".

[52] Mr Sara says here there is a continuum of disabling pain over a long period of time and that we are dealing with a very specific part of the appellant's back and that this too rules out a multi-level degenerative condition.

[53] Mr Sara refers to ACC's statutory purpose "which includes, amongst other things, that its primary focus is on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant's health, independence and participation"[1].

Respondent's Submission

[54] Ms Maslin-Caradus accepts that the dishwashing episode described in this case is strenuous and that it was an unaccustomed activity.

[55] She reaffirmed that ACC's position is that the disc prolapse and tear was caused by natural degeneration and that this is supported by the clinical advisory panel and the imaging.

[56] She acknowledges that the clinical advisory panel does not suggest that earlier accidents played a role.

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[1] Section 3C Accident Compensation Act 2001

[57] She refers to the fact that the appellant's GP's response was to refer her for physiotherapy and to provide pain relief.

[58] She notes that the x-ray taken did not show any end plate fracture.

[59] She refers to the subsequent investigation in March 2020 with Dr Hill, General Practitioner (Special Interest).

[60] Then there was the MRI taken on 6 May 2020, approximately a year after the accident, which showed a mild L4/5 posterior central disc protrusion with no canal or nerve root compromise.

[61] She acknowledges that the discogram of 4 September 2020 confirmed that the L4/5 disc was the source of pain.

[62] She refers to the MRI carried out on 21 July 2022 and notes that the imaging showed natural protrusion fissures not only at L4/5, but also L5/S1.

[63] Counsel refers to subsequent reports from the clinical advisory panel and the comments on those reports by Dr McLaughlin. She notes the view of Mr Hunter, principal clinical advisor – orthopaedic surgery, who says that the contemporary clinical information does not suggest that an acute injury to the L4/5 disc occurred on 27 July 2019.

[64] She refers to the two clinical advisory panel reports and submits that, in essence, the panel is saying that the mechanism of the accident was not enough to cause an annular tear.

[65] She submits that the Court must be satisfied in respect of causation and that risk of causation is not enough.

[66] She refers to Mr Taha's reports. She says that Mr Taha relies heavily on the results of the discogram, which she notes shows the source of the pain, but not the reason for the pain.

[67] She submits that orthopaedic surgeons who were prominently represented on the clinical advisory panel, are best placed to draw proper conclusions in this case.

[68] If she accepts that Ms Gray has suffered pain, but that according to the clinical advisory panel, while it is uncertain as to what was causing her ongoing pain, it was not caused by the dishwashing episode.

Decision

[69] The appellant was 27 years old at the time of the "dishwashing" episode. She was employed at Redroofs Rest Home facility in Roslyn, Dunedin. On 24 July 2019, the dishwasher had broken down, so she was forced to do the dishes by hand, using a sink that she described as follows:

> The sink that I used had a deep bowl, the bottom of which would be about level with my kneecaps. The top of the sink would be a bit above the level of my hips. In order to do the dishes, I had to bend right over.

[70] This activity went on for two hours and involved her also washing large stainless steel cooking trays. The activity involved her twisting her body to the left to get a pile of dishes, washing them, picking them up and twisting to the right to put them onto the drier. She said that just before 11 o'clock, she was straightening up from the bent-over position in order to grab another pile of dishes when she felt a pain in her back.

[71] She described that pain as being between seven and eight on a scale zero to ten. She said:

> The pain was so severe I had to stop work and go and fill in an accident report. I rubbed some anti-inflammatory cream on my lower back and took some Panadol.

[72] She then went back to work and continued the dishes until midday, with the pain level remaining the same.

[73] She continued the work after lunch until the dishwasher was fixed. She then started loading the dishwasher and her back pain remained while doing that activity "and has been extremely sore ever since, impacting on my daily life".

[74] It is plain that what she did following her injury was what any reasonable person would have done in the same circumstance. She saw her GP on 26 July 2019, two days after the accident. She diagnosed a lumbar sprain.

[75] It would appear that the expectation was that her injury would resolve. An x-ray taken on 6 August 2019 showed satisfactory alignment of her spine and that vertebral body heights were well preserved.

[76] She then underwent extensive physiotherapy, which appears to have commenced on 8 August 2019, that is some two weeks after her injury event, and this continued on a regular basis for the next 15 months. The therapy was appropriate, but the injury was not resolving.

[77] In the physiotherapist's report of 12 November 2020, which appears to be the last report of the physiotherapist, this is recorded :

> … ACC still deciding on approval and waiting for further info, in last week been very sore, went for couple walks, flat beach, walked for 30 minutes and for last 10 or so was sore. Worse next day. … Still waiting to hear from ACC on surgery approval. Not been right since had imaging, had review Mr Taha who said surgery or pain clinic, but increase pain meds and so thinks will go for surgery … last Friday CT discogram and severe back/leg pain and positive result, so now waiting for results to go to specialist and get appointment for review … and slowly getting bit easier since then but not back to normal levels pain.

[78] Following ACC's decision to decline cover for her L4/5 disc prolapse funding for surgery, Mr Taha wrote to Mr Sara on 31 September 2021. He said:

> I have commented in my previous letter to ACC on 12 February 2021 that Michelle's symptoms, MRI findings and CT provocative tests proved, in my opinion, the traumatic nature of her symptoms.
>
> The MRI scan showed a small L4/5 disc prolapse was confirmed as the source of her pain with provocative test. The pain started immediately after she bent over into the deep sink on 24 July 2019.
>
> While the mechanism of injury might sound trivial, this does not exclude the possibility of a small rupture of her ligaments which contain the disc that could have resulted from the movement of Michelle leaning into the sink. Even with a small rupture, her symptoms were bad.
>
> Treatment initially was conservative approach. This is known to be beneficial and to work for 90 per cent of patients in 90 days of the injury, however there is a number of patients who do not improve with conservative management only.

> The MRI scan findings confirm that there is no major rupture of the disc itself. The explanation for this could be that the injury did not cause a major rupture, but it does not exclude injury to the disc. As Michelle had no pain at all prior to the injury on 24 July 2019, in my opinion the incident itself could be the determinant point and when her symptoms started.
>
> In Dr Hunter's report, he was saying that the CT discography (while not very detailed) appeared to show a disc nucleus as being largely intact, so it meant that even if it is slightly disruptive, it might well be explained by the incident.

[79] In her report of 25 January 2022, Charlotte Hill, specialist pain medicine physician, said this:

> I just wanted to relate to you the findings of your nerve conduction studies that were done in October 2021. You advised me that there were no significant abnormalities and this is correct. I wanted to let you know that there is some evidence of a mild left L5 nerve root injury and this would be due probably to the disc protrusion that you have at L5.

[80] The MRI carried out on 21 July 2022 revealed this:

> IMPRESSION
> Stable L4/L5 broad-based annular disc bulge and small central disc protrusion without appreciable progression since the prior CT study and without evidence of spinal or foraminal stenosis or nerve root compression.

[81] ACC sought advice from the clinical advisory panel which reported on 7 October 2022 and 3 November 2022.

[82] Ultimately, the panel in its second report, after reviewing the mechanism of injury, said:

> None of this proves that Ms Gray prolapsed one disc in the context of two deteriorated discs in her lower spine when washing heavy dishes for several hours. The contemporary records do not support that impression, as discussed in our previous comment.
>
> Dr McLaughlin mentioned a sudden fall, landing on the buttocks, which was not the case here.
>
> Dr McLaughlin suggested that vertebral bodies (the bones of the spine) are vulnerable to stresses exerted by lumbar muscles. This may be true with extreme muscular forces, causing bones to fracture in very unusual violent circumstances. This has no relevance to Ms Gray leaning over for a few hours. There is no evidence of any vertebral body bony injuries.

[83] The stance of the clinical advisory panel is understandable. This case might be described as something of an "outlier". The appellant was only 27 years old when this

incident occurred and the mechanism of injury appears to be less than traumatic. However, what cannot be challenged is that the work activity that day required the use of an unnatural posture to wash the dishes. It involved the use of a very low sink. This meant that the biomechanical activities she was thereby forced to undertake were unnatural ones.

[84] Within an hour, the appellant was in pain, which she described as seven to eight on a scale of zero to ten. She reported the incident, used anti inflammatory cream on her lower back and took Panadol. She needed to see her GP which she did within 48 hours.

[85] The conservative treatment that she then undertook of some 15 months physiotherapy failed to improve her condition.

[86] The discogram undertaken showed a posterior central annular tear and the MRI scan showed a small L4/5 disc prolapse as evidence of damage at the L4/5 level.

[87] I therefore conclude that this was injury damage and it was caused by her unnatural dish washing activities on 24 July 2019.

[88] Accordingly, the appeal is allowed and ACC's decision of 20 December 2020 declining cover for L4/5 disc prolapse and declining to approve surgery funding to treat that condition is reversed.

[89] Costs are reserved.

CJ McGuire
District Court Judge

Solicitors: Peter Sara, Barrister & Solicitor, Dunedin
Fletcher Vautier Moore, Lawyers, Nelson