

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 129

ACR 193/20

UNDER THE ACCIDENT COMPENSATION ACT 2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF THE
ACCIDENT COMPENSATION ACT

BETWEEN NATASHA HOWELL
Appellant

AND ACCIDENT COMPENSATION CORPORATION
Respondent

Hearing: On the papers

Judgment: 2 August 2023

JUDGMENT OF JUDGE C J MCGUIRE AS TO COSTS

[1] Following the appellant's successful appeal in this case, Ms Howell's lay advocate, Mr Stryder, seeks costs of a total of \$9,845.

[2] It appears that in his assessment of costs, he has used a calculation of half the Category 2 proceedings daily recovery rate of \$1,910 per day to give a total of \$9,845.

[3] In regard to costs claims by lay advocates, this Court is bound by the decision of *Accident Compensation Corporation v Carey*.¹

[4] In *Carey*, Justice Grice said:

If the Judge has been assisted by the non-lawyer representative in a straightforward case, it would, as a guideline, generally be appropriate to set a daily rate set at 50 per cent of the daily lawyer rate, based on Category 1.

¹ *Accident Compensation Corporation v Carey* [2021] NZHC 748 at [91].

[5] The Category 1 daily rate is therefore prima facie applicable in this case.

[6] However, as mentioned, in his schedule of costs, Mr Stryder has based his calculations on the Category 2 rate.

[7] In addition, Mr Stryder charged for the preparation of the case on appeal, a task undertaken by ACC's Counsel, Mr Hunt. He also sought \$200 for disbursements without further elucidation. Mr Stryder also sought costs of \$382 for the preparation of the costs memorandum. However, this item is not provided for in the schedule to the District Court Rules.

[8] The appeal related to two decisions of the respondent declining funding for surgery and declining to approve cover for sacroiliac joint pathology.

[9] While the decisions appealed date from 2019, the considerable history of the appellant's injuries goes back to 2012. Accordingly, in this case I have allowed 0.5 of a day for the commencement of the appeal and a whole day for the preparation of written submissions.

[10] While Mr Stryder had prepared detailed submissions, which he read, and indeed attempted to re-read in part again in his reply, this case ultimately required the Court to painstakingly analyse the long history of a variety of theories of causation put forward by the medical experts.

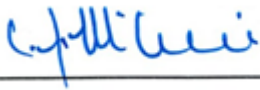
[11] Taking all matters into account, I therefore conclude the following schedule of costs:

21.	Commencement of appeal	0.5 day
9.9	Appearance at judicial conference 30.04.21	0.2 day
9.9	Appeal at judicial conference 1.11.22	0.2 day
9.8	Memorandum dated 14.12.22 for judicial conference	0.2 day
24A	Preparation of written submissions	1.0 day
25	Appearance at hearing	0.5 day
	Total	2.6 days

[12] Applying *Carey*, Mr Stryder is entitled to costs of 50 per cent of the Category 1 proceedings daily rate of \$1,270 per day.

[13] In this case therefore, he is entitled to costs of 2.6 days at a daily rate of \$635, making a total of \$1,651.

[14] Accordingly, the respondent is ordered to pay costs to Mr Stryder of \$1,651.



CJ McGuire
District Court Judge