IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 91 **ACR 138/21**

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

Hearing: 1 June 2023
Held at: Hamilton/Kirikiriroa

Appearances: K Koloni for Mr Mann
F Becroft for the Accident Compensation Corporation

Judgment: 6 June 2023

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Jurisdiction – s 149(1), claim for social rehabilitation - s 81, whether causal link between symptoms and injuries - ss 20, 25, 26, costs on review – s 148(2), Accident Compensation Act 2001 ("the Act")]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 11 May 2021. The Reviewer dismissed an application for review of the Corporation's decisions of 23 September 2020: (1) declining to provide Mr Mann with a social rehabilitation assessment and transport assistance, and (2) dismissing an allegation that the Corporation had failed to issue a decision in a timely manner in response to Mr Mann's request for an individual rehabilitation plan. Mr Mann also appeals the review costs awarded by the Reviewer on 11 May 2021.

Procedural Matter

[2] Mr Mann's appeal was filed on 11 June 2021, in the District Court, by his advocate Ms Koloni. The Notice of Appeal set out grounds related to the Reviewer's decision of 11 May 2021, and contained no reference to the jurisdiction of the Court to hear the appeal. Over the course of the ensuing two years, Mr Mann's appeal was the subject of case conferences, joint memoranda filed by Ms Koloni and the Corporation's counsel, and Court Minutes, and no reference was made by Ms Koloni to the Court's jurisdiction to hear the appeal. On 31 March 2023, Ms Koloni filed submissions related to the Reviewer's decision of 11 May 2021, and these contained no reference to the Court's jurisdiction. On 2 April 2023, the Corporation's counsel filed submissions which had no notice of a query about the Court's jurisdiction and were therefore related only to the merits of the appeal. A date for the hearing was set, and no submissions on jurisdiction related to Mr Mann's appeal were filed by his advocate prior to the hearing.

[3] Immediately prior to the start of the scheduled hearing on 1 June 2023, Mr Mann and Ms Koloni decided that Mr Mann (who had been provided with an audio-visual link so as to attend the hearing remotely) would not attend the hearing, and that Ms Koloni would speak to his appeal on his behalf.

[4] At the start of the hearing, Ms Koloni submitted as follows. The District Court has no jurisdiction to hear Mr Mann's appeal, as it is not a competent or unbiased court to hear accident compensation appeals. The District Court is part of a system that is funded by the Accident Compensation Corporation. There is a question as to the nature and validity of the District Court Rules that apply to the Court's ACC jurisdiction. Because the District Court is not a competent court with jurisdiction over accident compensation appeals, its judgments in relation to accident compensation matters are therefore null and void.

[5] The Court then invited counsel for the Corporation to respond to Ms Koloni's submissions. Ms Becroft advised that she was present to discuss Mr Mann's appeal, and would not engage in issues of jurisdiction.

[6] The Court then advised Ms Koloni that it was satisfied that it had jurisdiction under the Accident Compensation Act, and invited Ms Koloni to present submissions relating to Mr Mann's appeal. Ms Koloni declined to do so.

[7] The Court then invited Ms Becroft to present the Corporation's submissions on Mr Mann's appeal, which she proceeded to do.

[8] At the conclusion of Ms Becroft's submissions, the Court invited Ms Koloni to respond to these submissions. Ms Koloni declined to do so, and asked the Court to adjourn the proceedings so that the issue of jurisdiction was addressed. The Court then closed the proceedings.

[9] This Court hereby declines Ms Koloni's request for an adjournment of Mr Mann's appeal. This Court has jurisdiction under section 149(1) of the Accident Compensation Act 2001 (the Act), which provides that a claimant may appeal to the District Court against a review decision or a review decision as to an award of costs and expenses under section 148. Mr Mann's appeal was lodged in the District Court, by Ms Koloni, against a review decision which included a costs award. Section 150 of the Act provides that an appeal under section 149 is dealt with in accordance with the District Court Rules made under section 228 of the District Court Act 2016, as modified by the (Accident Compensation) Act and any regulations made under it. The District Court is not funded by the Accident Compensation Corporation.

[10] In terms of section 161(3)(b) of the Act, appellants are required to prosecute appeals with due diligence. In terms of regulation 10(2) of the Accident Compensation (Review Costs and Appeals) Regulations 2002, a Judge may make any directions that appear adapted to secure the just, expeditious, and economical disposal of the appeal proceedings.

[11] This Court, having provided Mr Mann's advocate with a lengthy opportunity to present evidence and prepare submissions, and to appear and provide submissions at a scheduled hearing, will decide the appeal on the material provided. This material includes submissions made on Mr Mann's behalf by Ms Koloni at the review hearing, in the Notice of Appeal, and in subsequent written submissions.

Background

[12] Mr Mann was born in 1971. From the age of 16, he suffered from psoriasis.[1] He worked for the New Zealand Army and Air Force and as a fireman in the New Zealand Fire Service, and then worked in a clerical position until he was made redundant in September 2012.

[13] On 22 September 2012, Mr Mann was moving furniture and lifting a refrigerator into a moving truck when he pulled his back. He sustained a lumbar sprain and thoracic sprain and was granted cover.

[14] On 21 January 2013, Mr Mann suffered back, neck, wrist and hand injuries in an accident. He received cover for neck sprain, thoracic sprain and left wrist sprain. He was subsequently certified unfit in relation to those injuries, but he was not an earner and so was not entitled to weekly compensation. From January 2013, he received a sickness benefit.

[15] On 25 March 2013, Dr Anthony Gear, Rheumatologist, diagnosed Mr Mann with severe and extensive psoriasis which was inadequately controlled; arthralgias mainly involving his hands, wrists, shoulders, neck, back, knees, ankles and feet; and coeliac disease, Scheuermann's disease,[2] acute renal failure and hypertension.

[16] On 5 July 2013, Mr Mann was seen by Dr Jurriaan de Groot, Consultant Physician in Rehabilitation Medicine. Dr de Groot diagnosed mechanical lumbar pain (intermittent and activity dependent) without lumbosacral nerve root compromise, and a range of other conditions including depressive illness, migraine, headaches, and quality of life/vocational issues. Dr de Groot noted that Mr Mann had experienced gradually worsening low back pain since the accident and had been trialling different forms of analgesia. He had also received some physiotherapy input as well as acupuncture and deep tissue massage. Dr de Groot noted some pre-existing issues (Scheuermann's disease, psoriasis and underlying seronegative arthritis), all of which would be playing a role in symptoms which were starting to

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1 Psoriasis is an immune system condition in which skin cells form scales and itchy, dry patches.
2 Scheuermann's disease is a structural deformity of the vertebral bodies and spine.

look like a pain disorder. Dr de Groot made various analgesic and treatment recommendations.

[17] On 24 July 2013, the Corporation funded a pain management referral for a functional reactivation programme.

[18] On 23 August 2013, the Corporation approved some home and community support services (home help) to assist Mr Mann with housework.

[19] By October 2013, the functional reactivation programme was completed. However, Mr Mann did not attend 4 of the 9 scheduled appointments and both the provider and the Corporation found it difficult to contact Mr Mann to discuss his non-attendance.

[20] During 2013, Mr Mann was also receiving treatment for generalised psoriasis and psoriatic arthritis. WINZ certification confirmed that Mr Mann was claiming a sickness benefit in relation to severe psoriasis, reflex sympathetic dystrophy and depression. Reports also indicate that Mr Mann was mentally unwell and was seen by a Crisis Team.

[21] On 11 October 2013, Dr Jerry Varghese, Consultant Psychiatrist, provided a psychiatric review which advised that Mr Mann's main concerns revolved around a lack of control over his pain. Diagnoses of chronic low back pain and reactive depressive mood were made.

[22] On 28 November 2013, Dr de Groot provided a follow-up report. He described Mr Mann's back pain as likely multifactorial, although acknowledged the marked exacerbation following the fall in January. Dr de Groot made further recommendations in regard to treatment, noting that, to make inroads with pain management, there would likely need to be simultaneous involvement from a community mental health team.

[23] On 17 January 2014, Mr Mann made a suicide attempt and was injured in a serious motor vehicle accident. He received cover for contusion of the left knee, and right shoulder sprain.

[24] The Corporation funded further psychological services in 2014, but there were again instances where Mr Mann did not show up to appointments.

[25] On 25 March 2014, Mr Guy Breakwell, a Psychologist from the Alcohol and Other Drug Service, provided an assessment report. He described the onset of a chronic pain condition that "coincided with a fall from a deck in January 2013". He said that the condition had severely interrupted Mr Mann's life and caused significant disability and distress. Mr Breakwell noted that Mr Mann had an addiction to "legal highs". Mr Breakwell recommended treatment with a multidisciplinary approach and considered that it could be funded through the Corporation. Meanwhile, the Corporation continued to fund psychological services.

[26] On 22 April 2014, Dr de Groot reported again following a further meeting with Mr Mann. Dr de Groot outlined Mr Mann's belief that he had a mechanical issue and that he wanted an MRI scan to investigate further. Dr de Groot did not think that scanning was indicated. Nevertheless, Dr de Groot noted that he had made a case for a scan on therapeutic grounds (to exclude pathology), and the Corporation had agreed to fund that scan. Unfortunately Mr Mann had not attended the first appointment made. Dr de Groot advised that he did not wish to see Mr Mann alone again, because he (Dr de Groot) felt threatened.

[27] On 9 May 2014, an MRI scan was undertaken. Dr Pat Capasso, Radiologist, reported that the scan showed mild facet joint degenerative changes, with no disc herniation, spinal canal narrowing or foraminal conflict noted.

[28] On 14 May 2014, Dr de Groot confirmed in a report that the MRI results for Mr Mann were normal, with no evidence of any compression, and therefore there was no surgical solution for Mr Mann's back pain.

[29] In September 2014, further psychological services were approved by the Corporation.

[30] On 13 October 2014, the Corporation declined further funding for acupuncture. However, on 17 October 2014, the Corporation approved a further 12 weeks of home help support, and provided Mr Mann with a walking stick and a kitchen trolley.

[31] In late 2014, Mr Mann was offered a Training for Independent Living programme. The provision of home help was extended through to September 2015.

[32] In January 2015, the Training for Independence programme was approved, and this included further psychology input. This programme continued through 2015, with a provider change in October 2015, when Mr Mann moved from Palmerston North to Rotorua.

[33] On 22 July 2015, Mr Mann's left knee (injured in January 2014) required an operation. On 30 July 2015, complications from the operation required treatment. Mr Mann was covered for an operation wound dehiscence following right popliteal bypass graft.

[34] On 22 December 2015, Mr Mann fell from his motorised scooter in Rotorua, and further damaged his lower back. He was granted cover for back contusion.

[35] On 15 March 2016, Dr Ian Wallbridge, Pain Specialist, provided a report. He referred to the 2013 accident, and also a car accident in 2014 when Mr Mann "drove his car purposefully off a cliff in an attempt to kill himself secondary to his frustration with his condition and ACC's treatment of himself". Dr Wallbridge diagnosed chronic (widespread) pain syndrome, substance abuse, opiate dependence, and possible statin side effect. Dr Wallbridge recommended reducing some of Mr Mann's medication and considering a three-week inpatient regime at Queen Elizabeth Hospital.

[36] In April 2016, Mr Mann's file was reviewed by a Rehabilitation Advisor, Ms Rachel Miller. She recommended a pain specialist review to consider causation

and incapacity. Both the Training for Independence programmes, and psychology independent of that programme, continued through 2016.

[37] On 23 July 2016, Mr Mann was walking to his house when he slipped in the mud. He was granted cover for sprain of his medial collateral ligament of the left knee.

[38] On 5 August 2016, Mr Mann was walking down steps when he slipped and further damaged his left knee. He was granted cover for sprain of cruciate ligament of his left knee.

[39] In August 2016, Ms Vicki Gould, Occupational Therapist, undertook a social rehabilitation needs assessment (SRNA) to review the suitability of a scooter for which Mr Mann sought funding.

[40] On 24 October 2016, Dr Darren Malone, Psychiatrist, undertook a psychiatric report. He diagnosed a mood disorder, cannabis and synthetic cannabis dependency (in remission), alcohol dependency (in remission), a pain disorder with a general medical condition (Scheuermann's disease and psoriatic arthritis), and psychological factors. Dr Malone did not think that there was any injury-related explanation for Mr Mann's widespread pain, and suggested that the Corporation seek an opinion from a pain specialist.

[41] On 7 November 2016, Ms Jo Clarkson, Branch Advisor Psychology, reviewed Mr Mann's file. She did not think that an extensive pain management programme would be useful for Mr Mann, and also questioned the extent to which the covered injuries were playing a role in Mr Mann's ongoing pain:

> There is much evidence that Mr Mann's pain reflects a somatic expression of psychological distress against a background of adversity and trauma, but there is not a strong causal link with his index injury although it is highly likely that stress related to his index accident and injuries, consequences of his suicide attempt and other psychological stressors, will exacerbate his pain due to increased physiological response.

[42] On 22 February 2017, Mr Mann tripped over and jarred the right side of his body. He was granted cover for lumbar sprain.

[43] On 14 October 2017, Mr Mann tripped and fell forward onto his left knee and twisted it. He was granted cover for acute meniscal tear, left medial, contusion, left knee and lower leg, and sprain of medial collateral ligament of the knee.

[44] On 22 November 2017, Mr Mann suffered further injuries to his right knee and right shoulder. He was granted cover for sprain of the medial collateral ligament of the right knee, and sprain of the right shoulder and upper arm.

[45] Following those injuries, an application for an assessment for lump sum compensation was made. The application was made in relation to injuries suffered in January 2013, January 2014 and November 2017.

[46] On 12 December 2017, Mr Chris Ngar, Orthopaedic Surgeon, provided a report in relation to Mr Mann's right shoulder and right knee. Mr Ngar advised that recent scans showed no rotator cuff full thickness tear, but showed the presence of bursitis and AC joint degeneration and thinning of the articular cartilage over the medial compartment of the knee. His impression overall was that Mr Mann's psoriatic problem was getting more systemic.

[47] On 6 April 2018, a Transport for Independence assessment was undertaken by Mr Craig Harington. He considered various options, including the provision of a mobility scooter and continuing the use of taxis and natural supports. The purchase of a vehicle was ruled out because Mr Mann did not have a valid licence.

[48] On 14 May 2018, Mr Sims, Orthopaedic Surgeon, reported on Mr Mann's knee. Mr Sims did not think that there was any obvious knee injury suffered at the time of the 2013 accident. He noted that an MRI had demonstrated mild tricompartmental chondral changes consistent with arthropathy. Mr Sims described this as an inflammatory arthropathy rather than a specific traumatic lesion.

[49] On 21 May 2018, Mr Mann stepped off his exercycle, slipped and fell, twisting and hurting his right thigh and hip. He was granted cover for sprain of his right hip and thigh.

[50] On 25 May 2018, the Corporation confirmed, for the purposes of lump sum assessment, that it could assess the 2013 and 2014 injuries, but not the more recent 2017 injuries because they had not yet stabilised.

[51] On 17 August 2018, Dr Michelle Todd, who was undertaking the impairment assessment, wrote to the Corporation noting that there needed to be further clarity around what injuries were covered and what were not. Dr Todd queried whether Mr Mann's claim should be considered as a mental injury (chronic pain disorder secondary to a medical condition and psychological features). The lump sum assessment was therefore deferred, and the Corporation subsequently sought further medical information.

[52] On 18 June 2019, Dr Ben Cheesman undertook an impairment assessment and arrived at a final whole person impairment rating of 0%. He said that, whilst there was impairment present, it did not correlate with any of the covered injuries.

[53] On 2 July 2019, the Corporation advised that a lump sum payment was declined.

[54] On 8 August 2019, Dr Thomas Armingeat, Consultant Rheumatologist, examined Mr Mann, and certified that he had chronic spinal pain. Dr Armingeat noted the imaging confirming sacroilitis suggesting spondyloarthropy (psoriatic arthritis), but that it showed no inflammatory signs at present and was controlled by medication. Dr Armingeat further noted that the pain started very suddenly after an accident on 21 January 2013 and this explained the major part of his symptoms.

[55] On 10 November 2019, Ms Koloni, for Mr Mann, applied for a late review of the Corporation's 2 July 2019 decision. On 11 November 2019, the Corporation accepted the late review application.

[56] On 25 October 2019, Mr Mann slipped and fell backwards onto a stairway, hurting his lower back and left shoulder. He was granted cover for sprain of his shoulder and upper arm, contusion, back, and lumbar sprain.

[57] On 25 November 2019, Ms Kylie Hughes, Clinical Advisor, reviewed the various injury claims, and did not think that Mr Mann's ongoing needs were causally related to any of the covered injuries. She noted that the clear opinion on file (expressed by Mr Ngar and Dr Cheesman) was that Mr Mann's current symptoms were related to his psoriatic problems.

[58] On 23 January 2020, at a case conference, it was suggested that a medical case review be undertaken to clarify what the covered injuries were. That was subsequently agreed to by Mr Mann and the review application for the Corporation's lump sum compensation decision was withdrawn.

[59] On 31 January 2019, a Reviewer confirmed that the review of the Corporation's decision of 2 July 2019 was dismissed for want of jurisdiction, as the dispute had been settled by agreement and the review withdrawn, and costs were awarded in relation to the review.

[60] On 18 June 2020, Ms Koloni, for Mr Mann, requested another social rehabilitation needs assessment. There were also ongoing requests for transport assistance. The Corporation sought further notes from various providers.

[61] On 31 July 2020, a review application was filed citing an unreasonable delay in undertaking a social rehabilitation needs assessment.

[62] On 31 August 2020, Mr Bryan Thorn, Orthopaedic Surgeon, completed a medical case review, after meeting with Mr Mann and Ms Koloni. Mr Thorn noted at the outset that he was asked specifically to address injuries which occurred on 21 January 2013, 17 January 2014 and 22 November 2017. Mr Thorn advised:

> *1. What was the original accident event and what was the injury or condition caused by this event?*
>
> This was a fall from a deck 21.1.13 when he was intoxicated, landing heavily on his back on a concrete surface 2 metres below. There was no fresh bony damage revealed by imaging at the time, but this incident appeared to have triggered a significant chronic pain syndrome which has been aggravated on a number of occasions subsequently.
>
> You have asked what the injury was - this was certainly a direct blow type of injury to his torso in particular and although no acute bony injury was shown,

significant soft tissue damage could well have been caused, but we have no imaging modality to confirm that. We have to rely on clinical examination findings from people that may have seen him at the time. The injury did however certainly seem to trigger a chronic pain syndrome.

2. What's the client's current condition or diagnosis?

The current condition is a man with widespread pain problems involving multiple parts of his anatomy. I pointed out shoulder, knee, hip, ankle, wrist and spinal problems with a background of apparent psoriatic arthritis. Radiological evidence of early osteoarthritis of the left hip and medial compartment of the right knee. Chronic tendon problems in the left shoulder.

The diagnosis is a poorly controlled chronic pain syndrome, some of which could be modified if he was to receive more focused treatment on his arthritic hip and knee for example.

3. Is the client's current condition, diagnosis, symptoms, level of function, or incapacity caused by the original accident event?

Yes it appears to have been so, but amplified by the numerous subsequent events recorded in his schedule of claimant injuries of which there are many.

4. What's the relationship between the current condition or diagnosis and the following injuries?

10022232227 DOA: 21.10.13 Diagnosis: S571. Thoracic sprain, S570. Neck sprain, S520z Wrist sprain NOS - Left.

10025895316 DOA: 17.1.14 Diagnosis: S800 Contusion of knee - left, S50y. Shoulder sprain NOS - right.

10042044832 DOA: 22.11.17 Diagnosis S541. Sprain of medial collateral ligament of knee, S50. Sprain of shoulder and upper arm.

To answer this I think we have to acknowledge the significant effect of the initiating injury 21.1.13 before which this man appeared to have been busy and active, fully employed through various jobs and his whole life has taken a significant downturn. Some of this may be due to other injuries and the poorly controlled pain and other psychological difficulties which I see have been mentioned throughout his file. I don't think the further injuries of 17.1.14 and 21.11.17 necessarily brought upon new things other than perhaps focus on further bodily parts, which had already been shown to be showing signs of degenerative change. …

6. Are there any non-injury related conditions impacting on incapacity, and if so, to what degree?

The presence of psoriasis may lead him to have inflammatory joint disease which would be managed pharmaceutically and perhaps with some physiotherapy input.

7. Are there any conditions caused by gradual process?

> I would regard the osteoarthritis of his left hip and right knee to be a gradual onset of degenerative change. I cannot rule out the role of injury particularly in his right knee, but it would be generally accepted that the majority of degenerative arthritis of the type seen on his imaging, would have a more non-specific constitutional reason than one or other specific injury.
>
> *8. What injuries were sustained on the accident dates of 10022232227 DOA: 21.1.13, 1005895316 DOA: 17.1.14, 10042044832 DOA: 22.11.17*
>
> I think has already been answered in that I don't think any specific further injuries could be pinned to the actual three injury dates you have listed, whereas Shane and his Advocate have pointed out, there have been multiple incidence all of which may have contributed to a greater or lesser extent and to what we finally see.

[63] On 8 September 2020, Mr Thorn's report was reviewed by Ms Hughes, Clinical Advisor who noted:

> In his MCR Mr Thorn has not identified any new structural injuries for consideration of cover. He has stated that the client's fall on 2013 "appeared to have triggered a significant chronic pain syndrome." However, Mr Thorn has also identified that the client has psoriatic arthritis – a chronic pain condition. This has previously been identified by external providers as the cause of the client's symptoms, and not accident related pathology.
>
> While Mr Thorn has stated that the accident triggered chronic pain, he has been unable to identify any structural injury to attribute this to, or given any evidence that this event had not aggravated a pre-existing condition (the client's psoriatic arthritis). …
>
> There is, therefore, no additional structural diagnosis offered for cover, and the report provides no clinical evidence to contradict previous external opinion that the client's pain relates to a non-accident related condition (psoriatic arthritis).

[64] On 11 September 2020, Mr Rodney Gordon, Orthopaedic Surgeon, provided a report. He described Mr Mann as quite severely debilitated. He was concerned that he was myelopathic[3] and arranged for further MRI scans of the cervical and lumbar spine to be undertaken.

[65] On 21 September 2020, Mr Mann's file was examined by Ms Suzanne Blanch, Technical Specialist. Given the advice recently obtained, Ms Blanch thought it appropriate to decline the request for a social rehabilitation needs assessment and any further request for taxi transport. Ms Blanch also recommended that the Corporation issue a fresh decision confirming the injuries covered and noting that no

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[3] Myelopathy is the result of compression of the spinal cord and nerve roots caused by inflammation, arthritis, bone spurs and spinal degeneration due to aging

other additional injuries/conditions had been identified as being caused by the accidents.

[66] On 23 September 2020, the Corporation issued a decision confirming the existing cover as follows: (1) 10022232227 - thoracic sprain, neck sprain and left wrist sprain; (2) 1005895315 - left knee contusion and right shoulder sprain; and (3) 10012044832 - right shoulder sprain and right knee medial collateral ligament sprain. The Corporation noted that, as there was no change to the covered injuries, it would not be referring Mr Mann for another impairment assessment.

[67] On 23 September 2020, the Corporation issued a decision declining a social rehabilitation needs assessment and ongoing transport assistance, on the basis that the request for support was not a result of a covered injury.

[68] On 30 September 2019, Dr Sally Murdoch, GP, reported to the Corporation that Mr Mann had ongoing need for assistance with transportation; had limited ability to walk any distance and could not drive as did not have a vehicle; and needed ongoing funding to help with transport at this stage.

[69] On 17 January 2020, Dr Michael Grant, GP, confirmed Mr Mann's need for ongoing transport for his multiple conditions, the need to attend appointments, and the serious affect it would have on his ability to improve if he could not attend; and asked the Corporation to continue the transport support.

[70] On 15 October 2020, Ms Koloni filed a review application against the Corporation's 23 September 2020 decisions. She also filed a review application citing a failure to issue a decision, noting unreasonable delay to make a decision on entitlement to an individual rehabilitation plan (IRP).

[71] On 22 October 2020 and 5 November 2020, the first unreasonable delay review (lodged on 31 July 2020) proceeded before a Reviewer.

[72] On 5 November 2020, Mr Gordon attended on Mr Mann and provided a report which noted:

> Shane persists in having pain all over his body. He has pain in his neck, his shoulders, his thoracic spine, his lumbar spine, his left hip and both knees.
>
> He has psoriasis and has some cellulitis and inflammation of his right leg.
>
> He was recently admitted to the hospital with some type of kidney problem and I am unsure of the details of this.
>
> The MRI scan of the cervical spine shows some very mild degenerative change at the C5/6 level but there is no evidence of spinal cord compression, myelomalacia, or nerve root compression at any level. The spine is well preserved.
>
> The lumbar spine MRI scan shows well preserved discs at all levels and some very mild arthritic change in the facet joints at L4/5 and LS/51.
>
> There is no evidence of him ever having any injury to his cervical spine or his lumbar spine. He was very unaccepting of this fact.
>
> He has quite severe pain and stiffness of his thoracic spine. He also has stiffness and limitation of movement of his left shoulder and mild limitation of movement and some pain in his right shoulder.
>
> The thoracic bone was injured in 2013. His shoulder was injured in a separate injury and I do not have the details of this.
>
> I would like to have MRI scans of his thoracic spine and his left shoulder.

[73] On 9 November 2020, the Reviewer issued a decision dismissing the first unreasonable delay review application for want of jurisdiction, noting that the Corporation had recently issued a decision declining the social rehabilitation needs assessment, thus rendering the unreasonable delay issue moot. The Reviewer declined to award costs on the basis that Mr Mann did not act reasonably in applying for the review.

[74] On 17 December 2020, Mr Gordon provided a further report advising:

> Shane complains of mid-thoracic pain and left shoulder pain.
>
> In the thoracic spine and there Schmorl's nodes in the midthoracic area and 3 of the vertebrae with some mild wedging consistent with Sherman's disease. An old compression fracture cannot be fully ruled out but there is nothing that requires any operative intervention.
>
> In his left shoulder there is significant bursitis and there is thinning of the supraspinatus tendon. There is no arthritis and there is no full-thickness rotator cuff tear.

> He would benefit from a subacromial steroid injection to reduce the inflammation in this area and it would also benefit from rotator cuff strength exercises to try to depress the humeral head within the glenoid.

[75] On 24 March 2021, the review of the Corporation's 23 September 2020 decisions proceeded before a Reviewer. On 11 May 2021, the Reviewer dismissed the review application. He found that the Corporation's decision of 23 September 2020, declining to provide Mr Mann with a needs assessment and transport assistance, was correct, and that the Corporation was not obliged to issue a decision in a timely manner in response to Mr Mann's request for an IRP. The Reviewer also made a decision on costs, allowing them in part.

[76] On 11 June 2021, a Notice of Appeal was filed.

[77] At appeal, the parties agreed to seek further evidence from Mr Thorn in order to address Mr Mann's concerns that he (Mr Thorn) had not been properly briefed in regard to Mr Mann's history of accidents. There were significant delays in advancing the referral. At one point, Mr Mann elected not to be seen by Mr Thorn again. Various other orthopaedic surgeons were then approached, and a number of referrals were declined.

[78] On 31 August 2022, the Corporation's Clinical Advisory Panel ("CAP") provided a report. The CAP comprised four Orthopaedic Surgeons, one General Surgeon, a Physiotherapist and an Occupational and Environmental Medicine Specialist. The CAP reported:

> The CAP did our best to consider Mr Mann as a whole person, as he requested, taking many factors into account. The CAP acknowledged Mr Mann's pain and distress and the enormous impact on his activities, lifestyle and his quality of life.
>
> The CAP noted that Mr Mann's medical conditions - especially his psoriatic arthritis, sacroiliitis, Scheuermann's disease and widespread osteoarthritis- probably have a contribution to Mr Mann's current presentation with chronic persistent pain and distress. Mr Mann also has other medical conditions, including kidney and gastrointestinal problems, and the contribution of these is uncertain.
>
> Mr Mann's multiple medical conditions are based on genetic and other medical factors and not causally related to any of his accidents or trauma.

> Mr Mann's current problems are very complex and are most likely to be related to multiple factors, including his biopsychosocial issues. There was no objective evidence of any post-traumatic contribution.
>
> The CAP concluded that a causal link between Mr Mann's current pain, symptoms and disability and his 59 ACC-covered claims, or any combination or cumulation of these, could not be established. …

[79] Mr Mann subsequently agreed to a re-referral to Mr Thorn. On 8 November 2022, Mr Thorn provided a further report, having received further information including notes related to Mr Mann's 1993, 1994, 1995, 2003 and 2007 claims. Mr Thorn reported as follows:

> *1. What are the conditions responsible for Mr Mann's symptomatology?*
>
> This appears to be fairly widespread chronic pain syndrome without there being specific evidence of injury particularly to his spinal column. The changes of Scheuermann's disease in the thoracic spine are non-injury related. Symptoms of this condition can be variable from person-to-person, some people barely being aware of any problems whatsoever, and others seemingly having quite significant pain. I don't believe these changes necessarily make it more likely he will have pain related to trauma.
>
> *2. In your view, what is the most likely cause of the conditions identified at 1) above? Please explain with reference to the available evidence.*
>
> I find it very difficult to comment on the most likely cause of the conditions identified, other than to say there is no xray or MRI scan evidence of disc or bony damage in this gentleman's spinal column, but note has been made of some degenerative changes around the left hip and right knee, which generally would be accepted as non-traumatic in origin.
>
> *3. Which, if any, of the conditions identified at 1) above have the potential to impact Mr Mann's ability to transport himself?*
>
> I don't think one can isolate any one or more of these conditions, or indeed any one or more of the accidents/injuries to be responsible for Mr Mann's ability to transport himself. I do make the comment that when he attended he was using a walking stick and indeed the same note was made by his General Practitioner when she was asked about Mr Mann's need for a wheelchair and that he had presented to her surgery, and indeed to mine, using a walking stick. Using a wheelchair is very much a subjective matter and I don't think there are any objective findings which would support the need for this man to need such, in particular, no evidence of loss of lower limb function, e.g. on a neurological or nerve compression basis, which would lead to loss of use of the legs, inability to weight bear etc.
>
> *4. In your August 2020 report, you noted that the 2013 accident had "triggered" a chronic pain syndrome. Can you please expand on what you meant by the word "triggered"?*

> We do know that some people with pre-existing pain issues will often find their symptomatology worsens with another incident or accident without us necessarily being able to demonstrate structural changes such as evidence of fractures, disc injury etc. It is as if that person has used up all their reserves in terms of managing with chronic pain and it doesn't take too much to trigger a worsening in the situation, hence I think there may be some sense in the commonly used phase, "the straw that breaks the camel's back".

Relevant law

[80] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that "personal injury" does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that "accident" means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes 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.

[81] Section 67 of the Act provides:

> 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.

[82] In *Johnston*,[4] France J stated:

> [11] It is common ground that, but for the accident, there is no reason to consider that Mr Johnston's underlying disc degeneration would have manifested itself. Or at least not for many years.
>
> [12] However, in a passage that has been cited and applied on numerous occasions, Panckhurst J in *McDonald v ARCIC* held:
>
> > "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 covered. The fact that it is the event of an accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle.

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

> The accident did not cause the degenerative changes, it just caused the effects of those changes to become apparent ..."
>
> [13] It is this passage which has governed the outcome of this case to date. Although properly other authorities have been referred to, the reality is that the preceding decision makers have concluded that Mr Johnston's incapacity through back pain is due to his pre-existing degeneration and not to any injury caused by the accident.
>
> [14] … I consider it important to note the careful wording in the McDonald passage. The issue is not whether an accident caused the incapacity. The issue is whether the accident caused a physical injury that is presently causing or contributing to the incapacity.

[83] In *Ambros*,[5] the Court of Appeal envisaged the Court taking, if necessary, a robust and generous view of the evidence as to causation:

> [65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense …
>
> …
>
> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture … Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence …

[84] In *Sparks*,[6] Judge Ongley stated:

> [29] By s26(2) and (4) of the Injury Prevention, Rehabilitation, and Compensation Act 2001, personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection, or by the ageing process. 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. In the present case therefore, the appellant has to be able to point to evidence demonstrating that the condition, as it was when the

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

6 *Sparks v Accident Compensation Corporation* [2006] NZACC 45.

need for surgery was identified in August 2004, was substantially and effectively caused by the covered injury and not by a pre-existing process.

[85] In *Stewart*,[7] Judge Barber stated:

> [33] The cases consistently highlight that the question of causation cannot be determined by a matter of supposition. There must be medical evidence to assist the respondent Corporation, and now the Court, to determine that question. A temporal connection, in itself, will be insufficient. There needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injury. In this case the evidence does not establish this.

[86] In *Bloomfield*,[8] Judge Joyce noted:

> [18] In this case, and when all is rendered down, the extension of cover claims pursued on appeal by Mr Bloomfield rest mainly on the foundation of a temporal connection argument. On occasion, a temporal connection may be of significance in the context of other, helpful to a claimant, evidence. But the mere presence of such a connection will usually do no more than raise the post hoc ergo propter hoc fallacy.

[87] In *Sarten*,[9] Judge Barber stated:

> [26] I have referred above to the onus of proof on the appellant and the standard of proof. 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.

[88] In *Marshall*,[10] Judge Cadenhead stated:

> [36] The appellant has not supplied any contemporaneous medical evidence to establish that she sustained any injuries on these dates or any other date that has been identified by the appellant. …

[89] Section 148(2) provides:

> Whether or not there is a hearing, the reviewer—
>
> (a) must award the applicant costs and expenses, if the reviewer makes a review decision fully or partly in favour of the applicant:
>
> (b) may award the applicant costs and expenses, if the reviewer does not make a review decision in favour of the applicant but considers that the applicant acted reasonably in applying for the review: …

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7 *Stewart v Accident Compensation Corporation* [2003] NZACC 109.
8 *Bloomfield v Accident Compensation Corporation* [2014] NZACC 1.
9 *Sarten v Accident Compensation Corporation* [2004] NZACC 2.
10 *Marshall v Accident Compensation Corporation* [2005] NZACC 219.

[90] Schedule 1 of the Accident Compensation (Review Costs and Appeals) Regulations 2002 (as amended) provides a scale of costs and expenses on review. Costs can be awarded for preparing and lodging an application for review; relevant and necessary reports by registered specialists and persons with a recognised qualification to express a competent view on a matter in issue; and other expenses reasonably incurred associated with a hearing, such as transport to a hearing, time off work for an applicant, and disbursements such as photocopying.

[91] In *Kacem v Bashir*,[11] Tipping J stated in the Supreme Court:

> [32] … a general appeal is to be distinguished from an appeal against a decision made in the exercise of a discretion. In that kind of case the criteria for a successful appeal are stricter: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong.

Discussion

The Corporation's 23 September 2020 decisions

[92] Between September 2012 and October 2019, Mr Mann suffered a number of injuries for which he was granted cover. On 23 September 2020, the Corporation confirmed to Mr Mann that he had cover for: thoracic sprain, neck sprain and left wrist sprain; left knee contusion and right shoulder sprain; and right shoulder sprain and right knee medial collateral ligament sprain. On the same day, the Corporation issued a decision declining a social rehabilitation needs assessment (SRNA) and ongoing transport assistance, on the basis that the request for support was not a result of a covered injury

[93] The central issue in this case is whether, as at 23 September 2020, there was a causal link between Mr Mann's ongoing symptoms and his covered injuries, thus imposing on the Corporation an obligation to undertake further assessments relating to the provision of rehabilitation. If Mr Mann had an ongoing entitlement to rehabilitation, then it follows that there was a need for a current IRP; if he did not have this entitlement, there was no need for a current IRP.

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[11] *Kacem v Bashir* [2010] NZSC 112; [2011] 2 NZLR 1.

[94] Section 67(1) provides that, for there to be entitlements, there has to be cover granted by the Corporation, and so entitlement to rehabilitation is not available in respect of non-covered injuries or conditions. In order to obtain cover (and resulting entitlements), Mr Mann needs to establish that his condition resulted from a personal injury by accident, which does not, in principle, include personal injury caused wholly or substantially by a gradual process or disease.[12] If medical evidence establishes that Mr Mann had pre-existing degenerative changes which were brought to light or which became symptomatic as a consequence of an accident, it can only be injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered.[13]

[95] Ms Koloni, for Mr Mann, submits as follows. Mr Mann has been the victim of a number of accidents, and he attributes his ongoing pain to those accidents. The Corporation has let Mr Mann down and not considered him as a whole person. Ms Hughes relied on fundamentally flawed reports, based on inaccurate information which was not up to date, was not complete and was misleading. The last SRNA was in 2016, and Mr Mann has since moved house twice and no longer has flatmates or other support, and his injuries have deteriorated. He has also had a further five accidents and suffered further injuries as a result. The Corporation has an obligation to reassess Mr Mann, as his circumstances have changed, and the Corporation has a duty of care to ensure that he can achieve the best life and living standards, in consideration of his covered injuries. Mr Mann wants to receive the necessary transport that his entitlements afford him, due to all his covered injuries, so that he can be independent and mobilised to attend treatments and domestic activities, as and when needed.

[96] This Court notes the above submissions. However, the Court refers to the following medical evidence which preceded the Corporation's decision of 23 September 2020 declining a social rehabilitation needs assessment.

[97] First, in March 2013 (around two months after Mr Mann's January 2013 lumbar and thoracic sprain), Dr Gear, Rheumatologist, diagnosed Mr Mann with

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12 Sections 20(2)(a) and 26(2) of the Act.
13 See *Johnston* note 4 above, at [12].

severe and extensive psoriasis which was inadequately controlled; arthralgias mainly involving his hands, wrists, shoulders, neck, back, knees, ankles and feet; and coeliac disease and Scheuermann's disease.[14]

[98] Second, in July 2013, Dr de Groot, Consultant Physician in Rehabilitation Medicine, noted pre-existing issues (Scheuermann's disease, psoriasis and underlying seronegative arthritis), all of which would be playing a role in symptoms which were starting to look like a pain disorder. In November 2013, Dr de Groot described Mr Mann's back pain as likely multifactorial.

[99] Third, in May 2014, Dr Capasso, Radiologist, reported that an MRI scan showed mild facet joint degenerative changes, with no disc herniation, spinal canal narrowing or foraminal conflict noted.

[100] Fourth, in March 2016, Dr Wallbridge, Pain Specialist, diagnosed chronic, widespread pain syndrome, substance abuse, opiate dependence, and possible statin (cholesterol-lowering drug) side effect.

[101] Fifth, in October 2016, Dr Malone, Psychiatrist, diagnosed a mood disorder, a pain disorder with a general medical condition (Scheuermann's disease and psoriatic arthritis), and psychological factors. Dr Malone did not think that there was any injury-related explanation for Mr Mann's widespread pain.

[102] Sixth, in November 2016, Ms Clarkson, Branch Advisor Psychology, advised that there was much evidence that Mr Mann's pain reflected a somatic (bodily) expression of psychological distress against a background of adversity and trauma, but there was not a strong causal link with his index injury.

[103] Seventh, in December 2017, Mr Ngar, Orthopaedic Surgeon, advised that recent scans of Mr Mann's right shoulder and right knee showed no rotator cuff full thickness tear, but showed the presence of bursitis and AC (shoulder) joint degeneration and thinning of the articular cartilage over the medial compartment of

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[14] Ibid see n2

the knee. Mr Ngar's impression overall was that Mr Mann's psoriatic problem was getting more systemic.

[104] Eighth, in May 2018, Mr Sims, Orthopaedic Surgeon, reported that there was no obvious knee injury suffered at the time of Mr Mann's 2013 accident. Mr Sims noted that an MRI had demonstrated mild tricompartmental chondral changes consistent with arthropathy; and Mr Sims described this as an inflammatory arthropathy rather than a specific traumatic lesion.

[105] Ninth, in June 2019, Dr Cheesman, Occupational Physician, undertook an impairment assessment of Mr Mann, and advised that, whilst there was impairment present, it did not correlate with any of the covered injuries.

[106] Tenth, in August 2019, Dr Armingeat, Consultant Rheumatologist, examined Mr Mann, and certified that he had chronic spinal pain, and that the imaging confirming sacroilitis suggesting spondyloarthropy (psoriatic arthritis).

[107] Eleventh, in August 2020, Mr Thorn, Orthopaedic Surgeon, advised that Mr Mann's injury in 2013 triggered a significant chronic pain syndrome which has been aggravated on a number of occasions subsequently. Mr Thorn reported that Mr Mann's currently had widespread pain problems involving multiple parts of his anatomy, with a background of apparent psoriatic arthritis, radiological evidence of early osteoarthritis of the left hip and medial compartment of the right knee, and chronic tendon problems in the left shoulder.

[108] This Court also refers to the following medical evidence which was provided after the Corporation's decision of September 2020.

[109] First, in November 2020, Mr Gordon, Orthopaedic Surgeon, reported that Mr Mann had psoriasis and has some cellulitis, some very mild degenerative change at the C5/6 level, and some very mild arthritic change in the facet joints at L4/5 and LS/51, but there was no evidence of him ever having any injury to his cervical spine or his lumbar spine. In December 2020, following MRI scans of Mr Mann's thoracic spine and left shoulder, Mr Gordon provided a report confirming that

symptoms in the thoracic spine were consistent with Scheuermann's disease and symptoms in the left shoulder were consistent with bursitis. Mr Gordon did not identify that Mr Mann's ongoing symptoms were directly as a result of any covered sprain injuries.

[110] Second, in August 2022, the Corporation's CAP (comprising four Orthopaedic Surgeons and three other medical specialists) concluded that a causal link between Mr Mann's current pain, symptoms and disability and his ACC-covered claims, or any combination or cumulation of these, could not be established. The CAP found no objective evidence of any post-traumatic contribution. The CAP considered that Mr Mann's medical conditions, especially his psoriatic arthritis, sacroiliitis, Scheuermann's disease and widespread osteoarthritis, had probably contributed to Mr Mann's current presentation with chronic persistent pain and distress.

[111] Third, in November 2022, Mr Thorn confirmed that Mr Mann suffered from a fairly widespread chronic pain syndrome without there being specific evidence of injury particularly to his spinal column. Mr Thorn noted that the changes of Scheuermann's disease in the thoracic spine were non-injury related, and that some degenerative changes around the left hip and right knee would be generally accepted as non-traumatic in origin. Mr Thorn advised that some people with pre-existing pain issues often find that their symptomatology worsens with another incident or accident, without necessarily being able to demonstrate structural changes such as evidence of fractures or disc injury.

[112] In light of the above medical evidence, this Court finds that, as at the Corporation's decision of 23 September 2023, Mr Mann's range of covered injuries were no longer causative of his ongoing issues, which are categorised by pain and contributed to by a range of non-injury related factors. In that Mr Mann's ongoing health issues were not caused by his covered injuries, he was not entitled to entitlements in relation to these issues. The Court therefore finds that it was appropriate for the Corporation to decline to fund further social rehabilitation assessment. The Court finds as a consequence that, because Mr Mann was not entitled to rehabilitation, no IRP (Individual Rehabilitation Plan) was required, and so the Corporation cannot be held responsible for any delay in this regard.

The Reviewer's 11 May 2021 decision on costs

[113] The Reviewer noted that the costs claimed by Mr Mann were as follows: (1) Review 7050191: $917.27; (2) Review 7050192: $1,002.97; and (3) Review 7050193: $1,088.81.

[114] The Reviewer ultimately concluded that the first review had not been reasonably brought, given that Mr Mann had not been in receipt of either social or vocational rehabilitation for several years. The Reviewer found that, in that context, it was unreasonable for Mr Mann to bring an unreasonable delay application.

[115] The Reviewer found that the reviews relating to assessments were reasonably brought, and concluded that Mr Mann was entitled to: Review 7049192: $765.86; and Review 7049193: $643.69 (totalling $1413.55).

[116] The Reviewer set out the items for which costs were not awarded as follows:

(a) Two sets of costs for attending the case management conference on 14 December 2020 (one fee was allowed for attending the case management conference for the SRNA review);

(b) Two sets of costs for appearing at the review hearing on 15 April 2021 (the appearance fee was split between the SRNA review and the transport assistance review);

(c) Two sets of costs for disbursement of expenses/office (one charge was allocated for disbursement of expenses/office to the SRNA review);

(d) Two sets of costs for disbursement of expenses – telephone, emails (this charge not allowed in addition to the disbursement of expenses – office charge);

(e) Two sets of costs for appearance at hearing; second hour – 15 April 2021 (the Reviewer's records and the recording of the hearing showed that the review hearing lasted for an hour);

(f) Travel costs for medical case review appointment;

(g) Travel to Rotorua, Rotorua Taxi Company; and

(h) Travel – General Practitioner appointment with Dr Michael Grant.

[117] Ms Koloni has not provided submissions in support of her objection to the Reviewer's award of costs. The only information provided in this regard was that contained in the Notice of Appeal which states that the appellant objects to the decision regarding the Reviewer's award of costs for the three review hearings, and seeks review costs to be approved as per the discretion of the Court.

[118] Review costs are at the discretion of the Reviewer and are governed by the Accident Compensation (Review Costs and Appeals) Regulations 2002. The criteria for a successful appeal regarding the exercise of discretion are stricter than in the case of a general appeal. The criteria are: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) he decision is plainly wrong.[15] This Court's assessment of the Reviewer's findings in relation to review costs reveals that none of these criteria has been met.

Conclusion

[119] In light of the above considerations, the Court finds that:

(a) As at 23 September 2020, the Corporation did not have an obligation to Mr Mann to undertake further assessments relating to the provision of rehabilitation, as, by that stage, there was not a causal link between his symptoms and his covered injuries; and

(b) In that Mr Mann did not have an ongoing entitlement to rehabilitation, there was no need for a current IRP, and so the Corporation cannot be held responsible for any delay in this regard; and

(c) In the review decision of 11 May 2021, the Reviewer appropriately exercised his discretion in relation to the award of review costs.

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15 See *Kacem v Bashir,* note 11 above, at [32].

[120] The decision of the Reviewer dated 11 May 2021 is therefore upheld. This appeal is dismissed.

[121] I make no order as to costs.

P R Spiller
District Court Judge

Solicitors for the Respondent: Medico Law.