

19 March 2014

Anthony Jordan
Fyi-request-1481-38ca7976@requests.fyi.org.nz

Dear Mr Jordan

Thank you for your email of 19 February 2014. You have posed two questions to ACC in respect of the definition of the term “clinical evidence”. I will deal with each of these in turn below. However, before doing so, I note that your letter asks ACC to express an opinion on the issues you have raised. This can be contrasted to a request for official information held by the Corporation at the time of the request. For that reason, your letter has not been treated in terms of the requirements of the Official Information Act 1982, but as a matter of general correspondence.

Question 1

Please explain when the statement lack of or no “clinical evidence” is likely to be used when replying to cover and entitlement.

Please note that I have taken your question to relate to the situation where ACC advises a client that there is either insufficient, or no, clinical evidence to support a claim for cover or a related entitlement.

In accordance with the Accident Compensation Act 2001 (the Act), upon receiving a claim for cover, ACC is required to determine whether the client has sustained a personal injury in terms of Part 2 of the Act.¹ Where cover is granted, ACC is then charged with determining whether there is a causative link between the covered injury and any entitlement sought.

In order to undertake those tasks ACC is required to have regard to any relevant clinical evidence which might either support, or refute, either the claim, or any related entitlement, being accepted.

Clinical evidence comes in many forms, for example it may consist of (but is not limited to), clinical assessment, clinical records, various forms of clinical imaging, and the interpretation of, or suitably qualified opinion on, all of those.

An important point to understand is that for the purpose of the decisions ACC makes under the Act, any clinical evidence it relies on needs to have been generated by either one of the registered health providers set out in section 6 of the Act,² or, one of the other suitably qualified health care providers referred to in that section.

¹ <http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100676.html>

² <http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100103.html>

In answer to your question, when considering a claim or entitlement, where there is either insufficient, or no, clinical evidence of the type described above, this will be communicated to the client as the reason their request for cover or entitlement has been declined.

Question 2

Naturally if one was to read "there is no clinical evidence available" this would be ambiguous. Does the corporation agree or deny that there may be some conditions that are unable to be viewed solely with current imaging technology.

Given the definition of "clinical evidence" set out above, ACC does not accept that in the context of a decision made under the Act, the term "there is no clinical evidence available" can be construed to be ambiguous.

With regard to whether there are medical conditions which are unable to be viewed with current imaging technology, this is not a matter ACC can properly comment on. In saying this I note that any clinical evidence on which ACC relies, needs to be based on accepted and current clinical knowledge and understanding. As such, it cannot consist of an unfounded premise, or be a matter of pure speculation. This is to ensure that the decision making processes ACC follows in respect of cover, and entitlements, are fair and robust.

Please contact me at jason.tamm@acc.co.nz if you have any queries about this letter.

If you're unhappy with ACC's response, you may make a complaint to the Office of the Ombudsman. You can call them on 0800 802 602 between 9am and 5pm on weekdays, or write to:

The Office of the Ombudsman
PO Box 10 152
WELLINGTON 6143

Yours sincerely



Jason Tamm
Senior Advisor