WORKERS COMPENSATION COMMISSION

STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter Number:	**M1-1107/20**
Appellant:	**Joanne Bramble**
Respondent:	**House With No Steps**
Date of Decision:	**20 August 2020**
Citation:	**[2020] NSWWCCMA 134**

Appeal Panel:	
Arbitrator:	**Catherine McDonald**
Approved Medical Specialist:	**Prof Nicholas Glozier**
Approved Medical Specialist:	**Dr Michael Hong**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 19 June 2020 Joanne Bramble lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Wasim Shaikh, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 26 May 2020.

2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):

    - the assessment was made on the basis of incorrect criteria,
    - the MAC contains a demonstrable error.

3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out being that in s 327(3)(d). The Appeal Panel has conducted a review of the original medical assessment but limited to the grounds of appeal on which the appeal is made.

4. The Workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5).

RELEVANT FACTUAL BACKGROUND

6. Ms Bramble was employed by the House With No Steps (HWNS) as a disability support worker to provide care and assistance to residents of a group home in the Forster area. It is accepted that she suffered a psychological injury as a result of events in her workplace, relying on a date of injury of 1 January 2020.

7. Ms Bramble sought permanent impairment compensation, relying on a report of Dr T O Clark dated 4 September 2019. Dr Clark assessed 17% whole person impairment (WPI). HWNS's insurer arranged for Ms Bramble to be examined by Dr G Vickery who reported on 27 February 2020. Dr Vickery did not agree that Ms Bramble's condition had reached maximum medical improvement.

8. Ms Bramble attended a consultation with the AMS by video conference on 19 May 2020. The AMS assessed 7% WPI. Ms Bramble appealed from that assessment. He assessed Ms Bramble in class 2 for in all of the scales in the Psychiatric Impairment Rating Scale (PIRS) except employability in which he assessed her in class 3.

PRELIMINARY REVIEW

9. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.

10. As a result of that preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination because the MAC does not disclose an error.

EVIDENCE

11. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

12. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

SUBMISSIONS

13. Both parties made written submissions. They are not repeated in full, but have been considered by the Appeal Panel.

14. In summary, Ms Bramble submitted, through her solicitor, Ms Hunt, that the AMS erred in making the PIRS assessments that he did and that he failed to set out a path of reasoning to explain why he had preferred a lower rating. She submitted that the assessments made by the AMS were "glaringly improbable" (see *Ferguson v State of New South Wales*[1] (*Ferguson*)).

15. In respect of several of the PIRS scales, Ms Bramble sought to provide evidence in her submissions which does not appear in her statement.

16. With respect to self-care and personal hygiene, Ms Bramble said that the "evidence before the AMS gave rise to a class 3 impairment rating." She said that she lived with her ex-husband who was previously able to attend to his own self-care but now has palliative care nurses so that she does not provide much assistance. She said that she lives in a mess and misses meals. Ms Bramble said that she has not commenced strength and yoga workouts as noted by the AMS, rather that she had attempted an online yoga tutorial on two occasions but was unable to concentrate to continue and that she walked only the length of four houses before returning home. She said that the AMS did not provide a path of reasoning to show why he chose the lower class.

[1] [2017] NSWSC 887 at [24].

17. Ms Bramble said that the AMS made the same error with respect to social and recreational activities, because she only socialises with her daughter and two close friends and the AMS failed to take into account the fact that she no longer engages in her previous hobbies, citing walking, swimming, sewing, shopping, gardening and catching up with friends.

18. Ms Bramble submitted that the AMS should have agreed with Dr Clark in assessing her in class 3 for concentration, persistence and pace. She "submits" that she told the AMS that she plays a game on her phone for two to three hours a day but only for 10 to 15 minutes at a time. She submitted that the AMS failed to engage with her case which is clearly articulated in her statement and medical evidence, citing *Rodger v De Gelder*[2] (*De Gelder*). Ms Bramble contrasted the findings of the AMS with those of Dr Clark.

19. With respect to employability, Ms Bramble submitted that the evidence before the AMS showed that she has had no capacity for any employment for more than two years and that she suffers panic attacks and has difficulty communicating with and meeting new people. She submitted that the AMS failed to show his path of reasoning to a rating in class 3.

20. Ms Bramble submitted that she should be re-examined by a member of the Panel.

21. In reply, HWNS submitted that the AMS's ratings in each of the classes was consistent with the evidence available to the AMS and that a difference of opinion between the AMS and Dr Clark did not amount to a demonstrable error or use of incorrect criteria, citing *Mahenthirarasa v State Rail Authority of New South Wales*[3] (*Mahenthirarasa*). It noted that Ms Bramble made submissions alleging that the AMS recorded an incorrect history and said that those alleged errors were not demonstrable errors because they were not clear from the face of the certificate, relying on *Pitsonis v Registrar Workers Compensation Commission*[4] (*Pitsonis*). With respect to employability, HWNS noted that Ms Bramble's general practitioner, Dr Hebbard, considered that the roles of enrolled nurse, community welfare worker/welfare support worker or medical receptionist were suitable for Ms Bramble in July 2019. Those were the roles that Ms Bramble told Dr Vickery she was applying for.

FINDINGS AND REASONS

22. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.

23. In *Campbelltown City Council v Vegan*[5] (*Vegan*) the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

The MAC

24. The AMS took a very concise history of the injury and the past treatment Ms Bramble has undergone. With respect to present treatment, the AMS wrote:

> "Ms Bramble has recently started seeing Lynette Lewis, psychologist. She advises that sessions commenced in relation to support to manage personal problems, such as the terminal illness of her ex-husband, and her involvement

[2] [2015] NSWCA 211 at [85]-[86].
[3] [2007] NSWSC 22.
[4] [2008] NSWCA 88.
[5] [2006] NSWCA 284.

in his care. More recently, there have been discussions of Ms Lewis taking on treatment in relation to work matters."

25. The AMS recorded:

> "Ms Bramble is currently resident between three locations. She has her own home in Forster, with her ex-husband, and in the past three months would have spent six weeks looking after him, with a terminal illness. Approximately four weeks in the past three months have been spent at a girlfriend's place in Gosford. The other two weeks have been spent at her daughter's place in Sydney, where she was at the time of assessment.
>
> Ms Bramble describes the presence of low mood, with worsening in the morning and late evening. She experiences anxiety, not only in relation to return to work in disability, but also surrounding her future. She has panic like experiences. She does not like going to crowded environments. She advises that her sleep is disturbed, and this is despite the use of occasional sedative medications. She has previously had ideations of self-harm, but these have not been recent.
>
> Ms Bramble is capable of living independently, and also provides much assistance to her ex-husband in Forster. She does "pretty much everything" including cooking meals, cleaning the house, and doing the washing. She tries to go for a walk and has recently commenced strength and yoga workouts. She notes that her eating habits can be inconsistent, but she does eat when she is hungry. She showers regularly.
>
> She is able to leave the house by herself. She resides between Gosford, Forster and Sydney. She enjoys playing puzzles and would at times watch movies or a Netflix show. She reports that she has not attended to any social events.
>
> Ms Bramble can travel between Sydney, Gosford and Forster. She can drive for up to three hours, listening to the radio/music. She does not like going in public transport, where she experiences anxiety."

26. Ms Bramble told the AMS that Dr Clark was in error to record that she was in a relationship. He recorded that she gets along well with her daughter and a friend. With respect to her ability to concentrate he noted:

> "Ms Bramble notes that she struggles to concentrate for long periods and can be distractible. She can, however, be "hooked in" to puzzles on a phone for two to three hours at a time. She can focus when driving for long periods. She can manage money herself. She can focus in doing cooking and household work."

27. With respect to employment, Ms Bramble told the AMS that she did not want to return to work in the field of disability though she had applied for positions in nursing and pathology/blood collection. He said:

> "This was an issue in the past when she was a blood collector, and experienced essential tremor, but she has learnt to manage the same. She notes that if she returns to such work, she would be 'reasonably good at it', and has applied for 'all kinds of positions and hours'."

28. The AMS set out his findings on his mental state examination:

> "Ms Bramble was interviewed via video conference. She was appropriately presented. She could provide a fluent history. She was emotional on several occasions. She appeared anxious but was not agitated. Her insight and judgment were fair. Her concentration appeared optimal, and she could focus well. She had decent recall, although struggled with dates. Her insight and judgment were fair."

29. When considering if there should be an allowance for the effect of treatment, the AMS said:

> "Ms Bramble's impairment is 7% WPI. She has received psychiatric treatment, but I do not believe there would be much deterioration if these were to be withdrawn, and I do not believe there has been a substantial elimination of impairment with treatment, and therefore no further reductions apply."

30. The AMS diagnosed major depressive disorder. He attached his PIRS rating form, providing the basis for his assessment.

31. The AMS explained where his assessment differed from that of Dr Clark:

> "His PIRS rating table does not explain why particular impairment categories are met.
>
> • He provides a rating of Class 3 in self-care, noting "she lives in a mess", which is not an adequate description. Ms Bramble is clearly capable of living independently, and also of looking after her ex-husband with a terminal illness. This does not equate to a Class 3 impairment.
> • Dr Clarke provides an impairment of Class 3 in the category of travel, noting that she prefers to travel accompanied. As discussed in the report, Ms Bramble is clearly capable of travelling independently between Forster, Gosford and Sydney. She does not have her partner accompany her, and is not in a relationship.
> • Dr Clarke provides a rating of Class 3 in the category of concentration, noting emotional lability interfering with her concentration – this is not an adequate description. Ms Bramble is capable of focussing for extended periods when playing puzzles or driving for long distances. She was capable of focussing well during the assessment.
> • I also note Dr Clarke seemingly misunderstood Ms Bramble's relationship status."

Legal principles

32. In *Vegan*, the Court of Appeal said that factual errors do not reflect the application of incorrect criteria which are errors in the use of the Guidelines. The Registrar did not accept that this ground was capable of being made out.

33. In *Pitsonis*, the worker argued that the AMS made errors in the recording and use of aspects of the history recorded at the examination. The Court of Appeal said:

> "Those dependent on the applicant showing that the doctor failed to record or to record correctly things she had told him face a double difficulty. They are not demonstrable on the face of the Certificate. And they seek, in effect to cavil at matters of clinical judgment in that matters unrecorded are likely to be matters on which the specialist placed no weight. The same can be said about factual matters recorded in one part of the Certificate that did not translate into the decision favourable to the applicant now contended for."

34. The alleged errors in the history taken by the AMS are presented as submissions rather than evidence. There is no application to admit fresh evidence. However, even if the worker's evidence on those matters appeared in a statement, it would not be admissible. The Court of Appeal considered an appeal panel's decision to decline to permit a worker to rely on additional medical evidence being a statement from a worker about the conduct of the examination by an AMS in *Lukacevic v Coates Hire Operations Pty Limited*[6]. Hodgson JA said:

> "A dispute by the worker as to the history set out in the certificate, or the observations made by the AMS, can readily be raised; and it could be raised honestly or dishonestly, on strong or flimsy grounds. Having regard to the matters I have set out, in my opinion it would be reasonable for an AP not to admit evidence raising such a dispute unless that evidence had substantial *prima facie* probative value, in terms of its particularity, plausibility and/or independent support. Otherwise, simply by raising such a dispute, going to a matter relevant to the correctness of the certificate, a worker could put the AP in a position where it had to have a further medical examination conducted by one of its members. I do not think this would be in accord with the policy of the *WIM* Act."[7]

35. Those matters about which Ms Bramble has sought to correct the history provided to the AMS cannot be taken into account.

36. The decision quoted by HWNS in *Mahenthirarasa* was overturned on appeal[8], however the passage on which HWNS relies is from the second reading speech when the legislation was introduced:

> "A demonstrable error would essentially be an error for which there is no information or material to support the finding made – rather than a difference of opinion."

37. Campbell J described the task of the AMS in *State of New South Wales v Kaur*[9]*(Kaur)*:

> "In *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; 252 CLR 480, the High Court of Australia dealt with the nature of the jurisdiction exercised by a medical panel under cognate Victorian legislation. The legislation is not entirely the same but it is broadly similar in purpose. Allowing for some differences, the High Court said at page 498 [47]:
>
> > 'The material supplied to a medical panel may include the opinions of other medical practitioners, and submissions to the Medical Panel may seek to persuade the Medical Panel to adopt reasoning or conclusions expressed in those opinions. The Medical Panel may choose in a particular case to place weight on the medical opinion supplied to it in forming and giving its own opinion. It goes too far, however, to conceive of the functions of the panel as being either to decide a dispute or to make up its mind by reference to completing contentions or competing medical opinions. The function of a medical panel is neither arbitral or adjudicative: It is neither to choose between competing arguments nor to opine on the correctness of other opinions on that medical question. The function is in every case to perform and to give its own opinion on the medical question referred to it by applying its own medical experience and its own medical expertise.'
>
> Not all of this, as I have said, is apposite in the context of the New South Wales legislation. In particular it is obvious that approved medical specialists are required to decide disputes referred to them by the process of medical assessment. Even so, it is not necessary that approved medical specialists should sit as decision makers

[6] [2011] NSWCA 112.
[7] At [78].
[8] [2008] NSWCA 101.
[9] [2016] NSWSC 346.

choosing between the competing medical opinions put forward by the parties. Essentially, the function is the same as that described by the High Court in *Wingfoot Australia*. That is to say, their function is in every case to form and give his or her own opinion on the medical question referred by applying his or her own medical experience and his or her own medical expertise. It is sufficient, as their Honours pointed out at [55], that:

> 'The statement of reasons… explain the actual path of reasoning in sufficient detail to enable the Court to see whether the opinion does or does not involve any error of law.'"

38. Ms Bramble relied on *Ferguson v State of New South Wales*[10] (*Ferguson*) which she said "establishes" that intervention by an Appeal Panel is justified if, among other things, the assessment in a particular class was "glaringly improbable." When considering the decision of the Appeal Panel Campbell J said:

> "The Appeal Panel accepted that intervention was only justified: if the categorisation was glaringly improbable; if it could be demonstrated that the AMS was unaware of significant factual matters; if a clear misunderstanding could be demonstrated; or if an unsupportable reasoning process could be made out. I understood that all of these matters were regarded by the Appeal Panel as interpretations of the statutory grounds of applying incorrect criteria or demonstrable error. One takes from this that the Appeal Panel understood that more than a mere difference of opinion on a subject about which reasonable minds may differ is required to establish error in the statutory sense."[11]

39. In the circumstances of that case, His Honour said:

> "If one concentrates upon the conclusions expressed at [42], it is clear that the Appeal Panel regarded the case as one of demonstrable error in the certificate because on the clinical findings made by the AMS, the Appeal Panel regarded the case as *necessarily falling* below Class 3. This is evident from the implicit finding that the assessment of the AMS is plainly unreasonable in as much as it necessarily fell outside the range of his 'wide discretion'; that his finding was 'glaringly improbable'; and, that 'there is *no evidence* which indicates a degree of seriousness upon which a moderate impairment depends' (my emphasis).
> …
> In my judgment the material before the AMS *could* support a Class 3 rating or assessment for impairment of social functioning; that is to say, a moderate impairment of social functioning. And the Appeal Panel's decision that it *could not* is an error of law. Given that the Appeal Panel's reasons form part of the record (s 69(4) *Supreme Court Act 1970* (NSW)), the error is an error of law on the face of the record. Had that error of law not been made, the Appeal Panel's decision might have been different by reason of the possibility that assessing the matter according to law it may then have confirmed the AMS's assessment."[12]

40. Harrison AsJ cited Ferguson in *Parker v Select Civil Pty Ltd*[13] (*Parker*) and said that the passage cited at [37] above supported the conclusion that "there has to be more than a difference of opinion on a subject about which reasonable minds may differ to establish error in the statutory sense."

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[10] [2017] NSWSC 887.
[11] At [24].
[12] At [30] and [33].
[13] [2018] NSWSC 140.

41. Her Honour said[14]:

> "To find an error in the statutory sense, the Appeal Panel's task was to determine whether the AMS had incorrectly applied the relevant Guidelines including the PIRS Guidelines issued by WorkCover. Even though the descriptors in Class 3 are examples not intended to be exclusive and are subject to variables outlined earlier, the AMS applied Class 3. The Appeal Panel determined that the AMS had erred in assessing Class 3 because the proper application of the Class 2 mild impairment is the more appropriate one on the history taken by the AMS and the available evidence.
>
> The AMS took the history from Mr Parker and conducted a medical assessment, the significance or otherwise of matters raised in the consultation is very much a matter for his assessment. It is my view that whether the findings fell into Class 2 or Class 3 is a difference of opinion about which reasonable minds may differ. Whether Class 2 in the Appeal Panel's opinion is more appropriate does not suggest that the AMS applied incorrect criteria contained in Class 3 of the PIRS. Nor does the AMS's reasons disclose a demonstrable error. The material before the AMS, and his findings supports his determination that Mr Parker has a Class 3 rating assessment for impairment for self-care and hygiene, that is to say, a moderate impairment of self-care and hygiene..."

PIRS Tables

42. Dr Clark examined Ms Bramble on 3 September 2019, one year and nine months after she ceased work. Dr Vickery saw her for HWNS on 17 February 2020 and did not consider that she had reached maximum medical improvement because she had not undertaken psychiatric treatment.

43. The appointment with the AMS took place on 19 May 2020, more than eight months after Dr Clark's examination. The AMS noted that Ms Bramble had recently started treatment with a new psychologist and that her medication had been changed. It is reasonable that her condition had changed by the time she saw the AMS and he was required to assess her as she presented on the date of his examination.[15]

44. Ms Bramble did not make any submissions with respect to the assessment by the AMS in class 2 for social functioning or class 2 for travel. Those assessments were different to those made by Dr Clark who assessed her in class 1 for social functioning and class 3 for travel. The first of those assessments was based on Dr Clark's misunderstanding or assumption that she had formed a new relationship. He said that she required to be driven which is at odds with the history taken by the AMS.

45. The history in Ms Bramble's statement dated 18 February 2020 with respect to travel is also different to that recorded by the AMS. That also suggests some improvement in her condition.

46. The Panel notes that the assessments for social functioning and travel were appropriate on the basis of the history taken by the AMS. While less socially active than before, Ms Bramble maintains relationships with her daughter and a long-term female friend, travelling by car to stay with them for extended periods. A "work friend" accompanied her to the examination by Dr Clark. Her evidence is silent about the nature of her relationship with her ex-husband with whom she shares a house and to whom she provides assistance.

[14] At [70]-[71].
[15] Guidelines at [1.6].

Self-care and personal hygiene

47. The AMS rated Ms Bramble in class 2 for self-care and personal hygiene. He said:

> "Mild impairment. Ms Bramble is capable of living independently, and also provides much assistance to her ex-husband in Forster. She does "pretty much everything" including cooking meals, cleaning the house, and doing the washing. She tries to go for a walk and has recently commenced strength and yoga workouts. She notes that her eating habits can be inconsistent, and she can miss meals. She showers regularly."

48. Even if the reference to stretching and yoga is removed, assessment in class 2 was open to the MAS. It is clear that Ms Bramble is able not only to live independently but is able to provide some care for her ex-husband. Dr Clark assessed her in class 3 because of her history that she "lives in a mess." That is insufficient, when taken with the other matters on which the AMS relied, to demonstrate an error by the AMS, and that he could not describe her impairment as mild.

49. The assessment in class 2 was open to the AMS.

Social and recreational activities

50. The examples given in the guidelines for assessing social and recreational activities refer to those activities which involve a degree of interaction with others.[16] Dr Clark assessed Ms Bramble in class 2, as did the AMS. Despite Dr Clark's assessment, Ms Bramble argues that she should have been assessed in class 3.

51. Some of Ms Bramble's preferred recreational activities are essentially solitary but that is consistent with the history in her statement that the recreational activities she enjoyed before the injury were sewing, gardening, walking and swimming. Her social interaction is curtailed but, importantly, Ms Bramble is able to leave her house unaccompanied. That is, she can go out without a support person - one of the important example activities in the PIRS to distinguish between classes 2 and 3.

52. The assessment made by the AMS was open to him and is consistent with that made by Dr Clark.

Concentration, persistence and pace

53. Ms Bramble argued that the AMS was required to engage with her clearly articulated case, relying on *De Gelder*, a case with respect to assessment by a review panel under the *Motor Accidents Compensation Act 1999.* The role of the review panel is different to that of the AMS, because it is require to consider whether relevant injuries were caused by the motor vehicle accident. The Court of Appeal noted authorities to the effect that the failure by an administrative decision maker to respond to a substantial argument was a failure to accord natural justice. In that case, the Court found that the review panel had failed to engage with contemporaneous evidence as to the causation of an injury to the defendant's thoracic spine.

54. Ms Bramble said that the AMS failed to provide reasons which engaged with the case clearly articulated in her statement and her medical evidence. The submission reflects a misunderstanding of the principle cited and of the task of the AMS. The role of the review panel in *De Gelder* involved an assessment of causation and the Court found it had not considered the relevant evidence in performing that task.

[16] *Ballas v Department of Education (State of New South Wales*) [2020] NSWCA 86.

55. Ms Bramble said that the AMS made findings consistent with her statement and Dr Clark in that he said she struggles to concentrate for long periods and is easily distractible, which was inconsistent with his assessment.

56. In an assessment under the Guidelines, the AMS was required to assess Ms Bramble on the day on which she presented, taking relevant medical evidence into account. The AMS was required to comment on other medical reports to indicate where he agreed or differed but he was not required to accept or reject the opinions contained in them – see *Kaur*.

57. Dr Clark gave exceptionally brief reasons for assessing Ms Bramble in class 3, saying that she was emotionally labile which interfered with her concentration. He noted that she was avoidant and irritable during the consultation. None of this describes someone who could *only* be rated as someone who is moderately impaired when applying the guidelines

58. The AMS assessed Ms Bramble in class 2, accepting that she struggles to concentrate for long periods, can be distracted and may struggle to pass a TAFE course within the normal time frame. Even leaving aside the disputed history with respect to doing puzzles, the factors relied on by the AMS support that assessment. He considered her ability to manage money, focus on tasks whilst driving and doing household tasks.

59. The AMS also relied on his own observations of Ms Bramble's ability to concentrate during the assessment. Those observations are important. Many of the matters which the AMS was required to consider were based on the history provided. When assessing concentration, persistence and pace the AMS was able to and required to make observations based on Ms Bramble's interaction with him during the examination. He observed that "her concentration appeared *optimal* (our emphasis), and she could focus well". Although he noted "she had decent recall" he did observe she "struggled with dates,"

60. Based on the history and the observations recorded made by the AMS, his assessment in class 2 was open to him.

Employability

61. Ms Bramble said that the AMS had failed to set out his path of reasoning, saying that she had had no capacity for any form of employment for over two years and that she still suffered panic attacks. However, in the following paragraph, Ms Bramble said that there is evidence that she is capable of working more than 20 hours per fortnight or two days at a time. She said that the AMS failed to provide the path of reasoning to his determination that she was assessed in class 3 for employment.

62. The AMS recorded that Ms Bramble "did not want to return to work in the field of disability" but that she had applied for positions in nursing and pathology collection and that she noted she "would be reasonably good at it". The AMS repeated those observations and said in the PIRS Table that class 3 was relevant because it was unlikely she could work full time. The examples in the PIRS Table relevant to class 3 include an ability to work less than 20 hours per week in a less skilled role.

63. Ms Bramble's preference not to work in the field of disability is not relevant to her capacity and her assessment of her capacity is at odds with that of her general practitioner.

64. Ms Bramble's general practitioner, Dr Hebbard noted on 18 March 2019 that Ms Bramble was "not able to find work locally" which suggests that Ms Bramble may have been seeking employment at that time. Dr Hebbard approved a staged return to work plan proposed by a rehabilitation provider on 6 April 2019. On 15 April 2019, Dr Hebbard certified that Ms Bramble had capacity for some work for eight hours a day on two days per week.

65. Dr Hebbard agreed on 8 July 2019 that roles identified as a result of a vocational assessment were suitable, being an enrolled nurse, community worker/welfare support worker and medical receptionist.

66. At the time of his examination in September 2019, Dr Clark did not consider that Ms Bramble was capable of her previous role or alternative work. He did not provide any reasons for that assessment. He said that she would need "expert rehabilitation." By the time of Dr Vickery's examination in February 2020, Ms Bramble had applied for work as an enrolled nurse or medical receptionist.

67. Assessment in class 3 is consistent with Dr Hebbard's certificate. The roles for which Ms Bramble has applied are no less skilled than her previous work though would generally be less stressful. The history obtained by the AMS is consistent with his assessment – particularly Ms Bramble's self-assessment that she would be reasonably good at pathology collection and that she has applied for "all kinds of positions and hours.". Though his reasons are brief, they are adequate to reveal the reason he gave that assessment.

SUMMARY

68. The assessments made by the AMS were consistent with the application of the Guidelines and the fact that another assessor may have reached a different determination does not mean that the AMS erred, consistent with the decisions in *Ferguson* and *Parker*.

69. While the MAC contains all that is necessary to understand the decision and the path of reasoning which led to it, the findings that he made would have been easier for Ms Bramble to comprehend if the AMS had explained his observations and conclusions in further detail.

70. For these reasons, the Appeal Panel has determined that the MAC issued on 26 May 2020 should be confirmed.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

A MacLeod

Ann MacLeod
Dispute Services Officer
As delegate of the Registrar