WORKERS COMPENSATION COMMISSION

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

Matter Number:	**M1-3464/19**
Appellant:	**Rachel Brown**
Respondent:	**Playhouse Pre-School Pty Ltd**
Date of Decision:	**13 March 2020**
Citation:	**[2020] NSWWCCMA 51**

Appeal Panel:	
Arbitrator:	**John Wynyard**
Approved Medical Specialist:	**Dr Michael Hong**
Approved Medical Specialist:	**Dr Lana Kossoff**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 7 November 2019, Rachel Brown, the appellant, lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Bradley Ng, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 22 October 2019.

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. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.

4. The WorkCover Medical 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 WorkCover Medical 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 Guides) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5). "WPI" is reference to whole person impairment.

RELEVANT FACTUAL BACKGROUND

6. On 14 October 2019, the delegate of the Registrar sent an amended referral to an AMS seeking an assessment of WPI caused by psychological/psychiatric disorder on 28 July 2015.

7. Ms Brown commenced work for the respondent when she moved to the Central Coast in 2014, working as an Early Childhood Carer. She worked for three days per week. When she commenced employment she was on antidepressants, as she had in the past suffered from post-natal depression with the birth of her son and depression during pregnancy with one of her daughters. She has three children.

8. Ms Brown ceased taking antidepressants about four months prior to July 2015.

9. On 29 July 2015, Ms Brown had hitherto had no problems with the job. However on that date a parent arrived to collect his three year old daughter, whose shoes had gone missing. The parent, the three year old's father, threw two punches into the child's chest which Ms Brown and another parent witnessed. Ms Brown became quite distressed and reported to her employer. She finished her shift and went home when she rang Child Services and the Police. She was asked to supply further details which she did the following day, but two days later saw her GP because of her continuing distress.

10. Ms Brown attempted to return to work on the basis that she did not have to interact with that particular father, but she was only at work for one week when there was a dispute with her boss about the rescheduling of her roster to avoid the father.

11. Ms Brown then received a warning letter about her performance from her boss which came as a sudden shock to her. She did not return to work.

12. Ms Brown was under the care of a psychologist for the remainder of 2015 and saw rehabilitation providers.

13. In December 2015, Ms Brown moved with her children to Queensland as a relationship had developed with a partner who lived there. She worked as an Early Childhood Teacher in Brisbane between December 2015 and June 2016, three days a week and working close to the hours she was working prior to her 2015 injury.

14. Ms Brown was not coping well so far as her contact with parents was concerned, but she enjoyed being with the children. She began seeing a Psychiatrist Dr Johannes Scheepers and a Psychologist, Amy Kwan.

15. She had various medications.

16. She separated from her partner in March or April 2016, remaining friends with the partner.

17. She remained working as an Early Childhood Teacher in Queensland, but developed anxiety and sensitivity about child abuse stories or rumours.

18. There was a further incident where she had to deal with Child Services, in which she had to report something she had heard but did not see. She became suspicious about a mother abusing her child and she decided to cease working.

19. Ms Brown at that stage became depressed and suicidal.

20. Ms Brown moved back to New South Wales in late 2016 to Tuncurry to live with her sister. At this time Ms Brown had a recurrence of longstanding back pain.

21. She saw Dr Koller, Psychiatrist, and another Psychologist, Ms Silvia Hill, every month.

22. Ms Brown was admitted four times to the local private psychiatric hospital in Taree for Post-Traumatic Stress Disorder and Depression, the last admission being in June 2018.

23. At the time she was assessed by the AMS, Ms Brown's psychiatrist was Dr Neale and she had trialled a range of medications over the period of her treatment. At the time of the assessment her two daughters were aged nine and seven. The nine year old had behavioural issues although she was doing well academically. She was seeing a Child Psychiatric and was being given medication.

24. The AMS assessed a 6% WPI. He deducted 1/10th pursuant to s 323 of the 1998 Act due to the pre-existing history of depression. He also deducted a further 1% in relation to the chronic low back pain which affected Ms Brown's mood and mental state. This resulted in a final WPI of 5%.

PRELIMINARY REVIEW

25. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the WorkCover Medical Assessment Guidelines.

26. The appellant did not request to be re-examined by a Panel AMS.

EVIDENCE

Documentary evidence

27. 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.

Medical Assessment Certificate

28. 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

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

FINDINGS AND REASONS

30. 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.

31. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 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 Grounds of Appeal

Incorrect Criteria

32. The AMS was said to have applied incorrect criteria as it was alleged that he failed to assess Ms Brown's WPI in accordance with the Guides "and/or apply the criteria stipulated in them…."

33. We were referred to *Marina Pitsonis v Registrar Workers Compensation Commission* [2008] NSWCA 88 (*Pitsonis*) in that regard.

34. Submissions were then made regarding four of the six categories set out in Chapter 11 of the Guides as the Psychiatric Impairment Rating Scales (PIRS).

35. It is convenient at this point to consider the approach required by chapter 11 of the Guides, as considered by the authorities.

The Psychiatric Impairment Rating Scale (PIRS)

36. The Psychiatric Impairment Rating Scale is established as the rating criteria for assessing psychiatric/psychological impairment, by virtue of Chapter 11 of the Guides. Chapter 11 sets out six categories of behaviour to be considered, each being divided into five classes, ranging in seriousness from 1 to 5. Class 1 relates to a situation where there is no psychological deficit, or a minor deficit attributable to the normal variation in the general population. Class 5 pertains to a person who is totally impaired.

37. Chapter 11.12[1] provides:

> "Impairment in each area is rated using class descriptors. Classes range from 1 to 5, in accordance with severity. The standard form must be used when scoring the PIRS. The examples of activities are examples only. The assessing psychiatrist should take account of the person's cultural background. Consider activities that are usual for the person's age, sex and cultural norms."

38. The assessor is required to classify each category, and to apply the resulting scores as set out in Chapter 11[2].

39. The assessment of psychiatric disorder has been considered in a number of cases. In *Ferguson v State of New South Wales*[3] Campbell J was concerned the case where the Medical Appeal Panel had revoked the MAC on the basis that the finding by the AMS had been glaringly improbable. His Honour found that the Panel had fallen into jurisdictional error. He said at [23]:

> "By reference to *NSW Police Force v Daniel Wark* [2012] NSWWCCMA 36, the Appeal Panel directed itself that in questions of classification under the PIRS:
>
> > "… the pre-eminence of the clinical observations cannot be underrated. The judgment as to the significance or otherwise of the matters raised in the consultation is very much a matter for assessment by the clinician with the responsibility of conducting his/her enquiries with the applicant face to face".
>
> 24. 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.
>
> 25. The Appeal Panel also, with respect, correctly recorded that in accordance with Chapter 11.12 of the Guides "the assessment is to be made upon the behavioural consequences of psychiatric disorder, and that each category within the PIRS evaluates a particular area of functional impairment": Appeal Panel reasons at [37]. The descriptors, or examples, describing each class of impairment in the various categories are "examples only": see *Jenkins v Ambulance Service of New South Wales* [2015] NSWSC 633 [*Jenkins*]. The Appeal Panel said "they provide a guide which can be

[1] Guides page 55.
[2] See 11.15-11.21 at Guides p 65 and Table 11.7 at Guides page 66.
[3] [2017] NSWSC 887 (*Ferguson*).

consulted as a general indicator of the level of behaviour that might generally be expected": Appeal Panel reasons at [37]."

40. In *Glenn William Parker v Select Civil Pty Ltd*,[4] another case regarding assessment of psychiatric disorder, Harrison AsJ cited [23] of *Ferguson* with approval at [65]. Her Honour said at [66]:

> "In relation to Classes of PIRS 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. (*Ferguson* [24])….."

41. In *Jenkins* Garling J said at [73]:

> "It was a matter for the clinical judgment of the AMS to determine whether the impairment with respect to employability was at the moderate level, as he did, or at some other level. But, in seeking judicial review, a mere disagreement about the level of impairment is not sufficient to demonstrate error of a kind susceptible to judicial review."

42. It is accordingly necessary for the Panel to be satisfied that the assessment by the AMS in this category was erroneous in one of the following ways (to use the reference by Campbell J in *Ferguson*):

    (a) if the categorisation was glaringly improbable;
    (b) if it could be demonstrated that the AMS was unaware of significant factual matters;
    (c) if a clear misunderstanding could be demonstrated; or
    (d) if an unsupportable reasoning process could be made out.

43. Applying these principles, we turn to Ms Brown's submissions.

Self-care and personal hygiene

44. With regard to the category of self-care and personal hygiene it was submitted that the AMS erred by finding a Class 2 value rather than a Class 3. We were referred to the relevant examples contained within the category and the history taken by the AMS.

45. This category is defined at Table 11.1:[5] Class 2 provides:

> "Mild impairment: able to live independently, looks after self adequately, although may look unkempt occasionally; sometimes misses a meal or relies on take-away food".

46. The Class 3 definition provides:

> "Moderate impairment: Can't live independently without regular support. Needs prompting to shower daily and wear clean clothes. Does not prepare own meals, frequently misses meals. Family member or community nurse visits (or should visit) 2-3 times per week to ensure minimum level of hygiene and nutrition".

47. The AMS said in his PIRS assessment:

> "Ms Brown can care for herself to a degree. She may neglect herself occasionally and may rely on takeaway meals. However she presented generally well today with good grooming and hygiene. She was also able to look after two children.

[4] [2018] NSWSC 140.
[5] Guides page 56.

> This would go against a severe impairment. Her history is consistent with mild impairment."

48. In the body of his report, the AMS said, in describing Ms Brown's current symptoms:[6]

> "She was starting to brighten up and do more. She was more motivated. She was only showering every few days, but recently shaved her legs. She felt that this was an accomplishment as she was now starting to look after herself."

49. We were referred to Ms Brown's statement of 8 July 2019, in which she said:[7]

> "30. I no longer take care of myself the way that I should. Often I will not shower for days. I struggle to prepare meals. I don't bother with makeup and will often wear the same clothes for days at a time.
>
> 31. "I have a cleaner that cleans for 2 hours a week because I to do things".

50. We were also referred to conclusions reached by Ms Brown's medico-legal referee Dr Thomas Oldtree Clark, Consultant Psychiatrist, in his report of 4 June 2018:[8]

> "…She sunk into a gloom, where she cannot even cope with domestic tasks. She can wash clothes and do some chores but knows she is neglecting her responsibilities. ……
> She has lost 5 kgs in weight…"

51. We were also referred to a report by the respondent's expert, Dr Yajuvendra Bisht, Psychiatrist, of 17 May 2019 who said:[9]

> "She is able to self-care but requires prompting at time [sic]."

52. We were advised that it was 'important to note" that this evidence was consistent with the history taken by the AMS. The error made by the AMS was said to be that "the evidence unambiguously demonstrated" that Ms Brown had the requisite criteria stipulated in Table 11.1 for a class 3 value.

53. It was also submitted that in noting that Ms Brown was able to look after two children, the AMS introduced irrelevant matters to that category and in any event ignored the fact that Ms Brown was not able to look out for her children without difficulty and needed the assistance of her sister.

54. The respondent made some global submissions in response and referred to *Glenn William Parker v Select Civil Pty Ltd,* which we have discussed above, as to the approach a Medical Appeal Panel should adopt in examining a MAC in this type of injury - particularly that mere disagreement did not constitute error.

55. The reference to the submissions by Ms Brown concerning self-care and personal hygiene, the respondent submitted that the Class 2 valuation given by the AMS was consistent with the reported history and clinical findings made by him. To paraphrase the contention, the finding by the AMS was that Ms Brown had started to brighten up and was more motivated. The respondent submitted that the support of Ms Brown's sister did not suggest that she could not live independently without that support.

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[6] Appeal papers page 41.
[7] Appeal papers page 64.
[8] Appeal papers page 103.
[9] Appeal papers page 167.

56. The respondent also referred to the fact that Ms Brown was able to do the laundry and cooking although ordered takeaway about twice a week.

Discussion

57. Ms Brown has submitted that the AMS failed to assess her WPI in accordance with the Guides "and/or" apply the criteria stipulated in them.

58. This submission is, with respect misconceived, as is illustrated by Ms Brown's reliance on *Pitsonis.* We assume that the appellant was relying on the observations made by Mason P as to the interpretation of the expression "incorrect criteria."

59. From [40] Mason P, McColl and Bell JJA agreeing, said:

> "40 The expression '*incorrect criteria'* is undefined in the Act. In *Campbelltown City Council v Vegan* [2004] NSWSC 1129, Wood CJ at CL referred (at [58]) to a statement in the minister's Second Reading speech to the effect that s 327(3)(c) was designed to cover circumstances where the Guides themselves had been incorrectly applied. His Honour observed (at [59]) that this tended to suggest that the '*criteria'* upon which assessment is to be based are to be found in any relevant guides including guides issues by WorkCover. At [60] his Honour observed that this view drew support from the requirement in s322(1) that the assessment is to be made '*in accordance with the WorkCover Guidelines'*.
>
> 41 The Chief Judge's decision went on appeal to this Court (*Campbelltown City Council v Vegan* (2006) 67 NSWLR 372, [2006] NSWCA 284). Basten JA, with whose reasons McColl JA agreed said (at 391[95]) that, while it was arguable that factual errors made by an approved medical specialist, as recorded in the Certificate, may be 'demonstrable errors' within s327(3)(d), they would not usually satisfy the 'incorrect criteria' ground. His Honour observed that the latter ground:
>
> > 'must refer to such matters as the tests set out in the Guidelines, where they are applicable'."

60. The relevant guideline in psychiatric injury is Chapter 11.12. Its terms expressly provide that the activities described in the Tables relating to each category of the rating scale are examples only. As has been seen, on the authority of *Ferguson* and *Jenkins*, Chapter 11.12 has been interpreted to mean that the activities described within the several Tables are not exclusive criteria, but rather descriptors, or examples, which are a general indicator of the level of behaviour that might generally be expected.

61. Applying that interpretation, we find firstly, that the evidence relied on by Ms Brown is not persuasive. Ms Brown lives independently and cares for her children. These matters are not indicative of a class 3 value. Such a finding carries with it the need for regular support (including people visiting her) and an inability to live independently, which the evidence does not support.

62. Secondly, the AMS found an improvement in Ms Brown's condition, and that she was more motivated. He found she had brightened up and could do more, and in doing so he has exercised his clinical judgment as to his assessment during the consultation.

63. Thirdly, the observations by Dr Clark had been made in his report of 4 June 2018, and were not apposite to Ms Brown's condition on 15 October 2019. Moreover, when Dr Clark assessed Ms Brown on 30 May 2018, she was an inpatient at the Mayo Clinic in Taree for treatment for her psychiatric condition, where she had been admitted on 21 May 2018, and was not discharged until 6 June 2018. We note further that Ms Brown was admitted again as an inpatient to the Mayo Clinic between 20 June 2018 and 28 June 2018 for further treatment.[10] Her condition was accordingly quite labile at that stage, and not stable.

[10] Appeal papers pages 271 and 245.

Dr Clark's assessment on 4 June 2018 we find to be of very little probative weight as a result, as Ms Brown had not at that stage reached maximum medical improvement. Her admission was because she was suffering from "worsening depression and anxiety."[11] Ms Brown has had no further admissions since June 2018 and her condition has accordingly stabilised since.

64. The reliance on Dr Bisht's report of 17 May 2019 was misconceived, as he found only a class 2 value.[12]

65. It has not been alleged that the AMS was unaware of any significant factual matters, nor that there was any misunderstanding between Ms Brown and himself, nor that his reasoning process was unsupportable.

66. We note that although it was submitted that Ms Brown was unable to look after her children "without difficulty," nonetheless it was conceded that she was in fact so able. In assessing a claimant's ability an AMS is not concerned with whether a person can perform a task happily, or with difficulty, but with the fact that such ability is actually shown. The AMS was aware that Ms Brown had five sisters, and that two of them lived nearby and helped with the children.[13] There was no suggestion however that their assistance amounted to the sort of intervention envisaged by a class 3 finding. The AMS was seized of all of these matters, and concluded that Ms Brown suffered from a class 2 value. We find no error in his having done so.

Social and recreational activities

67. With regard to the category of social and recreational activities, Ms Brown claimed again that the AMS incorrectly valued her as a Class 2 rather than Class 3.

68. In his PIRS table the AMS found:[14]

> "Ms Brown is starting to participate in some activities with her children outside of the family home. She is able to go out by herself at times. She is less reliant on family members.
>
> She is able to attend church. She is able to go out to dinner with her children. This would be consistent with mild impairment."

69. Ms Brown referred to the findings of the AMS that she had "started to participate" in activities with her children outside the family home. This was said to be the application of incorrect criteria because the definition in Class 2 provided that there had to be a finding that Ms Brown had "occasionally" been going to social events which the evidence did not sustain.

70. We were referred again to comments made in Ms Brown's statement of 8 July 2019 and comments made by Dr Clark and Dr Bisht on 4 June 2018 and 17 May 2019 respectively.

71. Ms Brown said that she rarely attended events unless her sister came with her and forced her to go.[15] Dr Clark commented that Ms Brown was withdrawn and disinterested, and Dr Bisht recorded that she would attend functions with her children rarely, as she became anxious.

72. The respondent referred to the comments by the AMS that Ms Brown was starting to participate in activities outside the family home, and to go out by herself at times. The respondent referred to the observations by the AMS regarding her ability to drive to the

[11] Appeal papers page 273.
[12] Appeal papers page 171.
[13] Appeal papers page 43.
[14] Appeal papers page 50.
[15] Appeal papers page 25.

airport at Foster and fly to Sydney by herself, drive her children to school and other similar activities.

Discussion

73. A class 2 value describes the following activities pursuant to Table 11.2:

> "Class 2 Mild impairment: occasionally goes out to such events eg without needing a support person, but does not become actively involved (eg dancing, cheering favourite team)."

74. Class 3 provides:

> "Class 3 Moderate impairment: rarely goes out to such events, and mostly when prompted by family or close friend. Will not go out without a support person. Not actively involved, remains quiet and withdrawn."

75. For the above reasons we reject the appellant's semantic argument that the AMS applied incorrect criteria because he did not say "occasionally", but said "starting to go out." It assumes that strict compliance is required with the descriptors, and in any event we find the submission to be made with an eye too keenly attuned to the perception of error.[16]

76. Again, the assessment is a matter for the AMS, who has a wide discretion by virtue of Chapter 11.12 of the Guides. It has not been alleged that he was unaware of any relevant fact, or that he had misunderstood the evidence. His reasoning was clear, and made in the context of a thorough and accurate account of the relevant material before him. The appellant's ground is rejected.

Travel

77. In his PIRS table, the AMS found:

> "No deficit was noted. Ms Brown can travel with her children from Foster to Camden to see a medical specialist. She flew down today for this assessment. There were no problems."

78. The AMS noted under "social activities/ADL":[17]

> "…. Sometimes she went to the movies with her sister. Sometimes she took her children to the park. On weekends she saw her family. She recently started going to church and attended an Anglican church every Sunday with the children. She felt safe in church. She might go out for dinner with the children occasionally. She spent time with them, doing their activities and gymnastics.
>
> ……In the local area, Ms Brown noted that she had support from sisters. She flew in from Foster for today's appointment and one sister was looking after the children. Another sister met her at Sydney airport and accompanied her to the CBD for today's appointment. Ms Brown herself was able to drive from the airport to home and vice versa.
>
> …Ms Brown was able to travel by herself from Foster. She was able to drive from Foster to Camden to see her daughter's psychiatrist. She was able to do grocery shopping, although this was quite variable…"

[16] See *Bojko v ICM Property Service Pty Ltd* [2009] NSWCA 175 @ [36] per Handley JA.
[17] Appeal papers page 43.

79. Ms Brown submitted that the Class 1 value given by the AMS was incorrect, as the AMS had, in noting that Ms Brown was able to drive herself to the airport at Foster and travel in an aircraft by herself to Sydney, failed to take into account that her sister met her at Sydney airport and took her to the CBD for the assessment hearing. This was "translucent evidence" of the fact that Ms Brown had a deficit in regard to travel.

80. The respondent submitted that the definition of a Class 1 rating was satisfied by Ms Brown's ability to travel by herself as the AMS recorded. The respondent also alluded to Ms Brown's ability to go to the movies with her sister, take her children to the park, see her family on weekends and attend church on Sunday.

Discussion

81. Table 11.3 provides for the following activities for class 1:

> "Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: Can travel to new environments without supervision."

82. Class 2 is described as:

> "Class 2 Mild impairment: can travel without support person, but only in a familiar area such as local shops, visiting a neighbour."

83. The appellant submissions in this category must also be rejected. As we have noted, the AMS was aware of the factual matters raised by Ms Brown. It seems that he did not regard them as being indicative of anything more than a minor deficit and of not sufficient moment to warrant a "mild" class 2 value. Whilst Ms Brown disagreed, the basis of the disagreement was no more than a mere difference of opinion and did not raise any of the errors which we discussed earlier. There was no misunderstanding, no factual error, and no unsupportable reasoning process evident in the reasons given by the AMS.

Social functioning

84. In his PIRS table, the AMS said:

> "There have been major relationship problems but I do note that Ms Brown has a pattern of unstable relationships pre-injury. She is currently not in a relationship. She is somewhat distant from her siblings. She has a reasonable relationship with her children. She has a very distant relationship with her ex-partner. All of this would be consistent with mild impairment."

85. Table 11.4 relates to social functioning. The AMS gave a class 2, whereas Ms Brown argued for a class 3 valuation. Class 2 provides:

> "Class 2 Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships."

86. The descriptors for class 3 are:

> "Class 3 Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children."

87. With regard to social functioning, Ms Brown submitted that the AMS failed to have regard to her statement that in February 2016 she completely lost her libido and became short tempered and intolerant. She said in her statement:[18]

[18] Appeal papers page 64.

> "In May 2015, I was dating but the relationship broke down. In February 2016, due to my PTSD and depression, I completely lost my libido and have become short tempered and intolerant."

88. The respondent referred to the AMS's observation that there had been major relationship problems but that was a pattern that pre-existed the injury. The history of Ms Brown moving to the Central Coast to be near her family and the history of the relationship between early 2015 and March or April 2016 were relevant to the Class 2 valuation given by the AMS.

Discussion

89. The assertion by Ms Brown that the AMS had failed to have regard to her statement is without foundation. There is a presumption that a person carrying out an administrative function will have complied with all his obligations[19]. Implicit in such a presumption is the assumption that an AMS will have read all the material supplied to him. Presumptions are, of course, rebuttable but there is no evidence before us that the AMS failed to have regard to Ms Brown's statement regarding the breakdown of her relationship in 2016. The premise of this submission is misconceived.

90. An AMS is not required to refer to every piece of evidence before him/her and indeed is not required to discuss evidence that has no weight. The statement Ms Brown relies upon we regard as having very little weight. A self-diagnosis by a person suffering from a psychiatric condition is not a matter of much relevance when an AMS is asked to give an impartial assessment relying on his experience, his clinical knowledge and his training in this specialised branch of medical science.

91. It is in fact correct that Ms Brown had a pattern of unstable relationships prior to her injury. The AMS was entitled to make such use of that fact as he thought relevant in assessing this particular category. His opinion was that it carried a class 2 value. It has not been shown that he fell into error by so doing. An AMS is entitled, indeed required, to make an assessment on all the material before him, including the impression he gains during the interview process itself. The appellant has a different opinion as to the degree of her impairment in this category to that of the AMS. It is, however, no more than that. The categorisation was not glaringly improbable, the AMS was aware of the factual matters raised in this category, which for the reasons given we do not regard as being significant, the appellant was unable to point to any misunderstanding, nor could she establish that the reasoning by the AMS was unsupportable. The appellant has not demonstrated error regarding this category.

Demonstrable error

92. Ms Brown then submitted that the AMS had made a demonstrable error because he had noted various medical reports but "at no point did the AMS indicate that he had considered the applicant's statement".

93. Ms Brown therefore concluded that the AMS had in fact "failed to consider relevant evidence" which he was obliged to do. We were referred to *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40.

94. Proceeding on the assumption that the grounds of her submission had been established, Ms Brown then asserted, unremarkably, that such primary evidence "ought not to have been ignored." This failure had impugned the whole of the decision of the AMS, it was asserted.

95. We were referred to a "specific example", the failure by the AMS to clarify or elaborate in the remainder of his MAC, his reference to Ms Brown's statement that she had a cleaner for two hours per week. This rendered the statement "essentially irrelevant to the applicant's accidental injuries." This in turn, it was alleged, meant that the cleaner "was not a fact that was considered when categorising the applicant pursuant to the PIRS". If, on the other hand

[19] See *Jones v The Registrar WCC* [2010] NSW SC 481 per James J @ [36] and [50].

bracket as we understood the appellant, the AMS had not ignored her statement regarding the cleaner, it would have "impacted" on his assessment of whole person impairment.

96. The respondent submitted that there was no obligation on the AMS to specifically indicate that he had considered Ms Brown's statement. Moreover, it would be more appropriate for him to rely on Ms Brown's presentation at the assessment hearing rather than a statement which had been signed some months before and which had been prepared with the assistance of her legal advisers.

Discussion

97. There is, with respect, a fundamental misperception with regard to these submissions. It is apparent that the appellant was referring to that part of the MAC that dealt with other medical opinions at [10c]. The template heading for that subparagraph of reads:[20]

> **"my brief comments regarding the other medical opinions and findings submitted by the parties and, where applicable, the reasons why my opinion differs."**

98. The reason that the AMS did not refer to Ms Brown's statement, is that he was not asked to. We agree with the appellant that if she had been able to establish that the AMS had failed to consider her statement then a demonstrable error would have been established. However, the appellant is mistaken to assert that there was any obligation on the AMS to specifically indicate that he had read the statement. Whilst in cases involving psychological injury the face-to-face interview is of prime importance to an AMS, he is obliged to consider a claimant's statement, as indeed he is obliged to consider all the evidence before him. We have referred to this obligation when discussing the presumption of regularity above, and we adopt those comments in relation to the appellant's present submissions.

99. As we also observed earlier, presumptions may be rebutted, but there is nothing before us that would indicate that the AMS had failed in his fundamental task of reading all the material upon which he was to base his opinion. As we have indicated, the AMS has prepared a detailed and considered MAC in which he has gone to some lengths to discuss the evidence before him. As was conceded during the appellant's submissions, the AMS did refer to her statement in any event, when he mentioned the cleaner. The appellant argued that this evidence was of such moment that it should have "impacted" on the remainder of the assessment. We do not share that view, and neither, it is clear, did the AMS. He gave a detailed report of his interview with Ms Brown, and recorded her account of her history with particular care.

100. For these reasons, the Appeal Panel has determined that the MAC issued on 22 October 2019 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*.

J Burdekin

Jenni Burdekin
Dispute Services Officer
As delegate of the Registrar

[20] Appeal papers pages 46-48.