

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 53/20
Applicant: Ian Barrett
Respondent: Newcastle City Council
Date of Determination: 21 April 2020
Citation: [2020] NSWCC 123

The Commission determines:

1. The Respondent pay the Applicant's section 60 expenses in respect of the provision of hearing aids upon production of accounts and/or receipts in accordance with the applicable Workcover Hearing Aids Fee Order.

A statement is attached to this determination setting out the Commission's reasons for the determination.

Jane Peacock
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JANE PEACOCK, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Sufian

Abu Sufian
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. By Application to Resolve a Dispute (the Application), the applicant, Mr Ian Barrett, seeks compensation under section 60 of the *Workers Compensation Act 1987* (the 1987) in respect of the provision of hearing aids as a result of injury on the form of industrial deafness deemed to have occurred on 19 July 2019.
2. The respondent is Newcastle City Council (the Council). The Council was self- insured at the relevant time by Council of the City of Newcastle for the purposes of workers compensation.
3. The Council denied liability for the claim for hearing aids.

ISSUES IN DISPUTE

4. There is no dispute that Mr Barrett has suffered injury in the form of industrial deafness or sensorineural loss which is agreed deemed to have occurred on 19 July 2019 and that the Council is the last noisy employer.
5. Mr Barrett seeks an order under section 60 of the 1987 Act in respect of the provision of hearing aids as a result of the injury deemed to have occurred on 19 July 2019.
6. The Council disputes that hearing aids are reasonably necessary as a result of the injury agreed deemed to have occurred on 19 July 2019. The Council seeks that an award be made in its favour.
7. In the event Mr Barrett is successful the parties agree on the form of order as follows:

“The Respondent pay the Applicant’s section 60 expenses in respect of the provision of hearing aids upon production of accounts and/or receipts in accordance with the applicable Workcover Hearing Aids Fee Order.”

PROCEDURE BEFORE THE COMMISSION

8. The parties attended a conciliation arbitration by telephone on 18 March 2020. The parties were both legally represented by counsel. Mr Barret was represented by Mr Parker of counsel and the Council was represented by Mr McMahon of counsel. Conciliation took place however the parties were unable to come to a resolution of the matter. I’m satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I’ve used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the entire dispute.

EVIDENCE

Documentary evidence

9. The following documents filed on behalf of each party were admitted into evidence before the Commission by consent and taken into account in making this determination:

For Mr Barrett:

- (a) The Application and all documents attached.

For the Council:

- (a) The Reply and all documents attached

Oral evidence

10. Mr Barrett did not seek leave to adduce further oral evidence.
11. The Council did not seek leave to cross-examine Mr Barrett.

FINDINGS AND REASONS

12. There is no dispute that Mr Barrett suffered an injury at work in the form of industrial deafness or sensorineural hearing loss. There is no dispute that the Council was the last noisy employer.
13. Mr Barrett seeks an order under section 60 of the 1987 Act for hearing aids.
14. The Council disputes that hearing aids are reasonably necessary as a result of the injury deemed to have occurred on 19 July 2019.
15. I must determine, on the balance of probabilities, whether the treatment in the form of hearing aids is reasonably necessary as a result of injury deemed to have occurred on 19 July 2019. This determination must be made on the evidence and in accordance with the law.
16. Section 60 (1) of the 1987 Act provides as follows:

“60 Compensation for cost of medical or hospital treatment and rehabilitation etc

- (1) If, as a result of an injury received by a worker, it is reasonably necessary that—
- (a) any medical or related treatment (other than domestic assistance) be given, or
 - (b) any hospital treatment be given, or
 - (c) any ambulance service be provided, or
 - (d) any workplace rehabilitation service be provided,

the worker’s employer is liable to pay, in addition to any other compensation under this Act, the cost of that treatment or service and the related travel expenses specified in subsection (2).”

17. Deputy President Roche in *Diab v NRMA* [2014] NSWCCPD 72 (*Diab*) provided a useful summary of the authorities dealing with whether medical expenses are “reasonably necessary” as a result of injury as required under section 60 and set out the approach that is to be adopted.
18. Deputy President Roche in *Diab* said as follows:
“76. The standard test adopted in determining if medical treatment is reasonably necessary as a result of a work injury is that stated by Burke CCJ in *Rose v Health Commission (NSW)* (1986) 2 NSWCCR 32 (*Rose*) where his Honour said, at 48A—C:

3. Any necessity for relevant treatment results from the injury where its purpose and potential effect is to alleviate the consequences of injury.
 4. It is reasonably necessary that such treatment be afforded a worker if this Court concludes, exercising prudence, sound judgment and good sense, that it is so. That involves the Court in deciding, on the facts as it finds them, that the particular treatment is essential to, should be afforded to, and should not be forborne by, the worker.
 5. In so deciding, the Court will have regard to medical opinion as to the relevance and appropriateness of the particular treatment, any available alternative treatment, the cost factor, the actual or potential effectiveness of the treatment and its place in the usual medical armoury of treatments for the particular condition.’
77. The Commission has applied this test in several cases (see, for example, *Ajay Fibreglass Industries Pty Ltd t/as Duraplas Industries v Yee* [2012] NSWCCPD 41 at [67]).
 78. In addition, the Commission has been guided by, and generally followed, the decision of Burke CCJ in *Bartolo v Western Sydney Area Health Service* [1997] NSWCC 1; 14 NSWCCR 233 (*Bartolo*), where his Honour said, at 238D:

‘The question is should the patient have this treatment or not. If it is better that he have it, then it is necessary and should not be forborne. If in reason it should be said that the patient should not do without this treatment, then it satisfies the test of being reasonably necessary.’
 79. The Arbitrator quoted and applied these statements in the present matter. Subsequent appellate authority suggests that this approach may not be strictly correct.
 80. The Court of Appeal considered the meaning of ‘reasonably necessary’ in *Clampett v WorkCover Authority (NSW)* (2003) 25 NSWCCR 99 (*Clampett*). That case concerned whether proposed home modifications for a paraplegic were ‘reasonably necessary’ having regard to the nature of the worker’s incapacity. Grove J (Meagher and Santow JJA agreeing) noted that the trial judge had sought guidance from *Rose and Pelama Pty Ltd v Blake* (1988) 4 NSWCCR 264 (*Pelama*), another decision by Burke CCJ where his Honour applied the principles discussed in *Rose* and *Bartolo*.
 81. Grove J referred to the dictionary definition of ‘necessary’ as being ‘indispensable, requisite, needful, that cannot be done without’ (Shorter Oxford English Dictionary, 3rd ed) and ‘that cannot be dispensed with’ (Macquarie Dictionary).
 82. His Honour added, at [23]–[24]:

‘23. The essential issue is what effect flows from conditioning such qualities as “reasonably”. The consequence is to moderate any sense of the absolute which might otherwise be conveyed by the word “necessary” if it stood alone. In order to contemplate such moderation it is apt to consider surrounding circumstances, but the question to be addressed is whether modification of a worker’s home, having regard to the nature of the worker’s incapacity, is reasonably necessary. In contemplation of what might be “reasonably necessary” there is this statutory obligation specifically to have regard to the nature of the worker’s incapacity. It provides emphasis towards moderating the meaning of “necessary” in this context.

24. The statute does not inhibit inquiry as to what may be thought reasonable in all, or in any particular, circumstances but its terms clearly point to predominant attention being paid to the nature of the worker's incapacity. In my opinion, to reject the appellant's proposal on the basis that expenditure is to be made on premises of which he is a weekly tenant is an elevation rather than a moderation of the meaning of "necessary".
83. It is important to remember that Grove J's reference in the above passages was in the context of a claim for home modifications under s 59(g). That subsection is restricted to claims for modification of the worker's home or vehicle directed by a medical practitioner 'having regard to the nature of the worker's incapacity' (emphasis added). Apart from s 59(f), which deals with care (other than nursing care), there is no such restriction in the other subsections in s 59.
84. In *Wall v Moran Hospitals Pty Ltd t/as Annandale Nursing Home*, Burke CCJ, unreported, Compensation Court of NSW, 30 June 2003, Burke CCJ acknowledged (at [10]) that, contrary to *Rose* and *Pelama*, *Clampett* held that the word 'reasonably' was 'effectively used as a diminutive and moderated the effects of the word "necessary"'.
85. The approach in *Clampett* is consistent with the modern approach to statutory interpretation, which is to construe the language of the statute, not individual words (*Sea Shepherd Australia Limited v Commissioner of Taxation* [2013] FCAFC 68 per Gordon J (Besanko J agreeing)). Thus, 'reasonably necessary' is a composite phrase in which necessity is qualified so that it must be a reasonable necessity (Giles JA (Campbell JA agreeing) in *ING Bank (Australia) Ltd v O'Shea* [2010] NSWCA 71 at [48] (*O'Shea*)). The Court, Bathurst CJ, Beazley and Meagher JJA, followed this approach in *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2012] NSWCA 445 at [113] (*Moorebank*).
86. Reasonably necessary does not mean 'absolutely necessary' (*Moorebank* at [154]). If something is 'necessary', in the sense of indispensable, it will be 'reasonably necessary'. That is because reasonably necessary is a lesser requirement than 'necessary'. Depending on the circumstances, a range of different treatments may qualify as 'reasonably necessary' and a worker only has to establish that the treatment claimed is one of those treatments. A worker certainly does not have to establish that the treatment is 'reasonable and necessary', which is a significantly more demanding test that many insurers and doctors apply. Dr Bodel and Dr Meakin were both wrong to apply that test.
87. Giles JA added (at [49] in *O'Shea*) that the qualification whereby the necessity must be reasonable calls for an assessment of the necessity having regard to all relevant matters, according to the criteria of reasonableness. His Honour was talking in the context of whether an easement should be granted under s 88K of the *Conveyancing Act* 1919, which provides that 'the Court may make an order imposing an easement over land if the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement'. However, his Honour's observations are applicable in the present matter and are clearly consistent with *Clampett*.
88. In the context of s 60, the relevant matters, according to the criteria of reasonableness, include, but are not necessarily limited to, the matters noted by Burke CCJ at point (5) in *Rose* (see [76] above), namely:
- a. the appropriateness of the particular treatment;
 - b. the availability of alternative treatment, and its potential effectiveness;

- c. the cost of the treatment;
- d. the actual or potential effectiveness of the treatment, and
- e. the acceptance by medical experts of the treatment as being appropriate and likely to be effective.

89. With respect to point (d), it should be noted that while the effectiveness of the treatment is relevant to whether the treatment was reasonably necessary, it is certainly not determinative. The evidence may show that the same outcome could be achieved by a different treatment, but at a much lower cost. Similarly, bearing in mind that all treatment, especially surgery, carries a risk of a less than ideal result, a poor outcome does not necessarily mean that the treatment was not reasonably necessary. As always, each case will depend on its facts.

90. While the above matters are 'useful heads for consideration', the 'essential question remains whether the treatment was reasonably necessary' (*Margaroff v Cordon Bleu Cookware Pty Ltd* (1997) 15 NSWCCR 204 at 208C). Thus, it is not simply a matter of asking, as was suggested in *Bartolo*, is it better that the worker have the treatment or not. As noted by French CJ and Gummow J at [58] in *Spencer v Commonwealth of Australia* [2010] HCA 28, when dealing with how the expression 'no reasonable prospect' should be understood, '[n]o paraphrase of the expression can be adopted as a sufficient explanation of its operation, let alone definition of its content'."

19. As Deputy President Roche said in *Diab* each case will depend on its own facts.

20. Turning then to an examination of the evidence in this case.

21. Mr Barrett gave evidence in an undated but signed statement. He gave evidence about his exposure to noise in the course of his employment with the Council. This is not the subject of dispute. He gave evidence about his deteriorating hearing loss over time and his struggles in day to day life as a consequence:

"Over time I've noticed worsening hearing loss. I'm unable to attribute this to any cause other than my employment. I find that I have the TV and radio up quite loud and have been told by people that I tend to talk very loudly. If I'm in a group with background noise I will struggle to hear what people say."

22. Mr Barret gave evidence that he was prompted by his family to get his hearing tested which he undertook and the benefits he found from a trial of hearing aids as follows:

"On prompting of my family I consulted with Bay Audio who undertook a hearing test which did show hearing loss. It was suggested this may well be work related. They in fact provided me with a hearing aid for use for around an hour whilst I was walking around the shopping centre. The hearing aid was really good and I was told I was not talking as loud and I was hearing things a lot better. I could hear far more clearly and would very much like to proceed with a claim for industrial deafness to claim the cost of hearing aids."

23. He was not cross-examined about his evidence.

24. Mr Barrett gave evidence in a further statement dated 30 December 2019 as follows:

- "1. I refer to my earlier statement.
- 2. I understand Dr Fernandez has suggested that I would not benefit from hearing aids. Certainly those people that I have consulted with respect to my hearing loss have recommended that I should trial hearing aids, I would very much like to trial hearing aids.

3. When I'm talking one on one with someone in a quiet room, I do not feel the need for hearing aids. This changes when there is more than one person in the room or where there is any level of background noise. This is most apparent in a pub or club situation or at a function where there might be people tackling, laughing and background noise. Nevertheless, I do experience problems with hearing even when there are multiple parties in a conversation.
4. The problem that I experience is that it is difficult to follow the conversation and I tend to not hear what is being said and often have to ask people to repeat what they have said. I find this awkward and embarrassing. Quite often I will choose not to actively participate in a conversation if I have lost the thread of what is being spoken about. There was a recent event where I attended a Christmas Party for my wife's work. There were 28 people at a long table and I found that I could not follow what other people were saying unless they were literally sitting next to me. This was awkward because the conversations were extending up and down the table and again, I felt left out of the discussions. I find that I need to focus very intensely on people when they talk to me and often have to try and follow what they are saying by looking at their lips. This is not perfect and I feel that it can also be awkward for the person I am talking to when I am watching them so intensely.
5. When I talk on my mobile phone, I will tend to put the phone on speaker so that I can adjust the volume to a level where I can easily comprehend what is being said. If I have to put the phone to my ear, I will have the same problems and won't be able to follow what is being said.
6. At home I tend to have the TV turned up far louder than anyone else in the household. I have also been told that I talk too loudly and have often been told by my family and friends to talk more softly.
7. I have 10 grandchildren between the ages of 2 and 13 and I find hearing kids' voices particularly female voices who tend to be softer quite challenging.
It is awkward and disappointing that I have to repeat myself and can't talk as freely as I would like to with my grandchildren.
8. I also experience some level of tinnitus in my ears and the constant ringing seems to also impact my hearing and may block me being able to hear myself or hear other people.
9. I would very much like to trial hearing aids and believe they can lead to some improvement to the quality of my life. In this regard, my partner has hearing aids and they have been of great benefit to her and to our communication more generally. I am also aware of a number of co-workers and friends that have benefited from hearing aids."

25. Mr Barrett was not cross-examined about his evidence. He has given clear evidence about the deleterious effect on his quality of life as a result of his hearing difficulties. He has difficulty hearing conversation and participating meaningfully in conversation in the presence of background noise. He has the TV turned up loud and has difficulty on the phone. His family and friends tell him he talks too loudly. He can't talk freely with his grandchildren because he has difficulty hearing them and this is both awkward and disappointing for him. He experiences awkwardness and embarrassment in social settings such as at his wife's Christmas party where he couldn't hear people properly and felt left out of conversation as a consequence. This evidence is consistent with that reported by Mr Barrett to the medical professionals whose reports are in evidence in these proceedings.

26. Mr Barrett wants hearing aids to ameliorate the deleterious effects that his hearing difficulties have on his day to day life.

27. Mr Barret relies upon a report by Ms Jessica Borindo, Clinical Audiologist, dated 1 May 2019. Mr Barrett consulted Ms Borindo on 1 May 2019 and she performed an audiogram. She provided a copy of that audiogram attached to her report of 1 May 2019. With the benefit of her audiogram, she notes that Mr Barrett presented with “sloping mild-moderate sensorineural hearing loss bilaterally”. Based on the audiogram results and the history taken by her, she considers that Mr Barrett “is a candidate for the “technically advanced hearing instruments to correct hearing g loss sustained whilst on the job due to industrial noise exposure.”
28. She notes a discussion with Mr Barret about his hearing needs as well as his cosmetic concerns. She identifies the hearings aids she considers best meet his treatment needs noting:

“This is because he reports a lot of difficulty hearing in situations where there is background noise, as well as hearing clarity with softly spoken voices.”
29. Mr Barret also relies on the opinion of Dr Dhasmana, Ear, Nose & Throat Specialist Industrial Deafness, who provided a report dated 16 July 2019.
30. Dr Dhasmana records that she examined Mr Barrett on 16 July 2019 and assessed impairment using the NSW Workers Compensation Guidelines (4th Edition) (the Guidelines) and AMA5 Guides as well as the 1988 NAL tables.
31. Dr Dhasmana noted she reviewed Mr Barrett’s undated statement of evidence wherein he gave evidence about the beneficial effects of the hearing aids he trialled. She also reviewed Ms Borindo, audiologist’s report of 1 May 2019 and her audiogram of same date.
32. Dr Dhasmana records a history of noise exposure with the Council.
33. She records a detailed history which includes the following:

“Tinnitus: Yes. Constant. It is similar to “cicadas” And worse when in quiet areas such as when trying to sleep.”
Telephone: right ear;
Hearing problem in social surroundings: Yes
Television: Has to be turned up.”
34. Dr Dhasmana conducted a physical examination of both ears.
35. Dr Dhasmana carried out audiometric tests herself noting:

“Audiometric tests carried out by me with properly calibrated equipment and in a soundproof booth, showed bilateral high frequency sensorineural hearing loss. The configuration is probably consistent with the diagnosis of acoustic trauma.”
36. She answers the question “the relationship between the condition found on examination and the injuries sustained in the accident” as follows:

“Answer: Mr Barrett’s response to hearing test was consistent and repeatable. The clinical and hearing tests are consistent with history of noise exposure causing hearing loss in both ears.”
37. Dr Dhasmana goes onto assess permanent impairment at 8% WPI as a result of acoustic trauma after allowing for presbycusis correction and allowing a 4% for severe tinnitus in accordance with the guidelines.

38. She was asked: “Your opinion as to whether bilateral hearing aids are a reasonably necessary treatment expenses” to which she answered:

“Hearing aids recommendation: Bilateral Digital Hearing Aids with tinnitus masking features as recommended by a qualified audiologist”.

39. Mr McMahon for the council submitted that Dr Dhasmana simply deferred her view to that of the audiologist. I am not persuaded by this submission where Dr Dhasmana clearly records that she has physically examined Mr Barrett, she has performed her own audiogram, the results of which are recorded by her and are noted as found to be repeatable and, as well, she has taken a detailed history of the functional difficulties Mr Barrett experiences in day to day life which is consistent with his evidence in these proceedings. Mr McMahon also submitted that Dr Dhasmana has not explained her recommendation for hearing aids. Dr Dhasmana’s opinion must be read as a whole. Her recommendation for hearing aids is based on the history taken including the functional difficulties reported by Mr Barret, her clinical examination and her audiological findings of sensorineural loss and her assessment of impairment as a result of injury. It is on this basis that her clinical judgment that hearing aids are reasonably necessary as a result of injury is made.

40. The council relies on the opinion of Dr Fernandes, Ear, Nose, Throat and Facial Plastic Surgeon, who provided reports dated 22 August 2019 and 25 September 2019.

41. Dr Fernandes saw Mr Barret at the Council’s request on 21 August 2019 and noted that he “complained of a gradual and progressive hearing loss that he attributed to his exposure to loud industrial noise over a period of time in the workplace”.

42. Dr Fernandes took a consistent history of occupational noise exposure and considered that the Council was the last noisy employer. This is not in dispute.

43. Dr Fernandes took a history of present symptoms recording:

“Hearing impairment: gradual, progressive and bilateral for approximately 15 years”. He notes tinnitus: for 2 years, constant maskable, high pitched, does not disturb his sleep pattern, does not interfere with activities of daily living and he has not sought medical treatment for same”.

44. Dr Fernandes undertook a clinical examination of Mr Barrett.

45. He noted current functional status:

“Mr Ian Barrett states he has difficulty understanding conversation in the presence of background noise, has the television turned up causing discomfort to fellow viewers and has difficulty understanding on the telephone.

46. I note this history of functional difficulties is consistent with that recorded by the clinical audiologist Ms Borindo and Specialist ENT Dr Dhasmana.

47. Dr Fernandes comes to the following diagnosis:

- “1. Noise induced hearing loss in the treble frequencies and
2. An excess loss of uncertain origin (non-occupational) in the lower middle frequencies and
3. Age related hearing loss and
4. An additional excess loss of unknown origin (non noise induced)”

48. Dr Fernandes conducted his own audiogram and records the results.

49. Dr Fernandes assessed permanent impairment at 3% WPI after making a presbycusis correction. Despite the history of tinnitus, he did not make an addition for tinnitus.

50. He expressed the following opinion on hearing aids:

“Hearing aids are not reasonable and necessary as a result of the compensable injury as, in the audiogram that I obtained, it appears that the speech reception frequencies are not significantly affected. Also the speech reception thresholds are 90% at 55dB on the left and 95% at 55 dB on the right.”

51. Counsel for Mr Barrett pointed out that Dr Fernandes has addressed the wrong test. Counsel for the Council said this amounted to “nit picking”.

52. Dr Fernandes has addressed the wrong test in his report dated 21 August 2019. Section 60 does not specify a requirement that the treatment be reasonable *and* necessary. The treatment has to be “reasonably necessary” as a result of injury. Deputy President Roche pointed this out in *Diab*:

“Reasonably necessary does not mean ‘absolutely necessary’ (*Moorebank* at [154]). If something is ‘necessary’, in the sense of indispensable, it will be ‘reasonably necessary’. That is because reasonably necessary is a lesser requirement than ‘necessary’. Depending on the circumstances, a range of different treatments may qualify as ‘reasonably necessary’ and a worker only has to establish that the treatment claimed is one of those treatments. A worker certainly does not have to establish that the treatment is ‘reasonable and necessary’, which is a significantly more demanding test that many insurers and doctors apply. Dr Bodel and Dr Meakin were both wrong to apply that test.”

53. Dr Fernandes provided a further report at the request of the Council’s lawyers on 25 September 2019 in which he answered a series of questions.

54. He writes at the start of the report:

“As mentioned in my initial report and reiterated here:
In making the assessment for hearing aids, account is taken of the following matters:
(his paragraph numbering does not appear to relate to be correct but is repeated here)
8. The range of frequencies affected by the hearing loss
9. the degree of hearing loss at individual frequency particularly those involved in speech reception (0.5,1,1.5, 2 KHz)
10. the higher frequencies being mainly concerned with intelligibility
11. hearing aid assessment cannot be based solely on the total percentage losses”

55. Dr Fernandes then goes onto provide a response to specific questions as follows:

“1. Can you please provide us with a supplementary report to fryer explain they relevance if speech recognition thresholds findings and what this means in terms of the needs for hearing aids in this particular worker’s case”

(a) Mr Barrett has asymmetric hearing loss. The hearing loss of the left side only is indicative of the noise induced component. On the left side the speech reception threshold (SRT) is 90% at 55dB. This is adequate for hearing normal conversation. the decline occurs at 2KHz to 50dB at 3KHz. Besides, various other clues- context of topic, lip movement, stress and intonation, familiarity with speakers etc are also available in a conversation to improve the understanding.

(b) My Audiogram shows, that on both sides, up to 2KHz (the actual speech reception thresholds), the hearing thresholds are under 20dB. Such low thresholds in the speech reception thresholds are not benefited by hearing aids.

2. Can you also please explain how the needs for hearing aids is normally assessed in terms of relevant factors and variables?

“inter alia, this includes the following:

1. Causation
2. need for further investigation
3. type of hearing loss
4. the average loss at the speech reception frequencies
5. the speech reception thresholds
6. The magnitude of the losses in the low frequencies in relation to the high frequencies and the gradient of decline
7. The distribution of the losses, linearity/nonlinearity of the losses at the adjacent frequencies
8. Other obvious psychosocial factors

Please comment on the particular circumstances of the worker's case, including your findings and assessment in opining hearing aids are not reasonable necessary as a result of the industrial deafness injury
See Q1”

56. Dr Fernandes has opined that Mr Barrett has adequate hearing for hearing normal conversation and that he has available other clues to assist him as follows:

“Besides, various other clues- context of topic, lip movement, stress and intonation, familiarity with speakers etc are also available in a conversation to improve the understanding.”

57. Mr Barrett has given clear evidence that if he is in a quiet room with one other person then he can follow the conversation and he does not need hearing aids. Mr Barrett's clear evidence is that he encounters problems whenever there is background noise and when there is conversation in a group setting. The cues Dr Fernandes says are available to Mr Barrett (context of topic, lip movement, stress and intonation, familiarity with speakers etc) are not available in social settings such as pubs and clubs or social settings such as at his wife's Christmas party. Mr Barrett has given clear evidence about the difficulties with hearing conversation that he faces in these situations about which he was not cross-examined. He finds these situations awkward and embarrassing. It is disappointing to him that he can't hear his grandchildren properly. It is difficulties such as these that the treatment in the form of hearing aids is sought to address.

58. Mr Barrett gives clear uncontradicted evidence that he has difficulty hearing conversations in the presence of background noise and in social settings. This is consistent with the reports he made to each of the medical professionals who saw him and provided reports in this matter.

59. He gives clear uncontradicted evidence that he trialled hearing aids and they were of benefit to him. He gives evidence about trialling them whilst walking around a shopping centre.

60. Mr McMahon for the council said, “we don't know anything about the shopping centre”. Going to a shopping centre is a common activity of daily living. Mr Barrett gave evidence that he was benefited when he undertook this activity with the assistance of the trial hearing aids. He said he could hear more clearly and he was told he was not talking as loudly.

61. Dr Fernandes says that the speech pathologies are not “significantly” affected. There is no explanation of what “significantly” means in this context. It is clear that the speech pathologies are affected although in Dr Fernandes view this affect is not significant and Mr Barrett can rely on other conversational clues in normal conversation. However, Mr Barrett has given clear and consistent evidence that he struggles to hear conversation in the presence of background noise. He has given evidence that he was able to hear more clearly in the shopping centre when he trialled hearing aids.
62. I have to determine, on the balance of probabilities, whether hearing aids are reasonably necessary as a result of the injury deemed to have occurred on 19 July 2019.
63. When I weigh all of the evidence in the balance, I prefer for the reasons set out above the evidence given by Mr Barret supported by the opinion of the audiologist Ms Borindo and the ENT Dr Dhasmana to the opinion of Dr Fernandes.
64. I am satisfied on the balance of probabilities that hearing aids are reasonably necessary treatment as a result of the injury deemed to have occurred on 19 July 2019.
65. In the event that this was my finding, the parties agreed on the following form of order:
 - (a) The Respondent pay the Applicant’s section 60 expenses in respect of the provision of hearing aids upon production of accounts and/or receipts in accordance with the applicable Workcover Hearing Aids Fee Order.

