

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 5867/19
Applicant: Evan Michaels
Respondent: Kincare Health Services Pty Limited
Date of Determination: 16 March 2020
Citation: [2020] NSWCC 79

The Commission determines:

1. The respondent will pay the applicant the following weekly sums:
 - (a) For the first 13 weeks from 18 May 2018 to 16 August 2018 pursuant to s 36: \$1,446.31;
 - (b) Thereafter from 17 August 2018 and continuing pursuant to s 37: \$1,217.95;
 - (c) The respondent will pay the applicant's s 60 expenses upon production of accounts/receipts and/or HIC documentation;
 - (d) I remit this matter to the registrar for referral to an Approved Medical Specialist for an assessment of whole person impairment on the following bases:
 - (i) Date of injury: 18 May 2017 (deemed)
 - (ii) Matters for assessment: Psychological/psychiatric injury
 - (iii) Evidence:
 - (1) Application to Resolve a Dispute and attached documents;
 - (2) Application to Admit Late Documents dated 22 January 2020;
 - (3) Reply and attached documents;
 - (4) Application to Admit Late Documents and attached documents dated 4 February 2020;
 - (5) A copy of these reasons.

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

John Wynyard
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 JOHN WYNYARD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Evan Michaels, the applicant, brings an action against Kincaire Health Services Pty Limited, the respondent for weekly payments, s 60 expenses and lump sum compensation for a psychological injury caused by employment with the respondent on a deemed date of 18 May 2017.
2. Section 74, 78 and 287A notices issued and an Application to Resolve a Dispute (ARD) and Reply were duly lodged.

ISSUES FOR DETERMINATION

3. The parties agree that the following issue remain in dispute:
 - (a) Was employment the substantial (or the main) contributing factor to Mr Michael's condition?

PROCEDURE BEFORE THE COMMISSION

4. The matter was heard at Wyong on 12 February 2020. The applicant was represented by Mr Ty Hickey of counsel instructed by Ms Kakala and Mr Lachlan Robinson of counsel appeared for the respondent. I am 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 have 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 dispute.

EVIDENCE

Documentary Evidence

5. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) ARD and attached documents;
 - (b) Application to Admit Late Documents (ALD) dated 22 January 2020 from the applicant;
 - (c) Reply and attached documents;
 - (d) ALD dated 4 February 2020 from the respondent.
6. The transcript will show that Mr Hickey applied to have the medico-legal reports of Dr Tanveer Ahmed excluded from the evidence, which application was unsuccessful.

Oral Evidence

7. No application was made regarding oral evidence.

FINDINGS AND REASONS

8. The PIAWE was agreed at \$1522.44, and the parties indicated that a general order for s 60 expenses would suffice in the event that I found in favour of Mr Michaels.
9. Mr Michaels made two statements dated 14 June 2018 and 3 November 2019.

10. It is not necessary to deal with the detail of these statements as the respondent did not challenge the allegations contained therein. Mr Michaels is also supported by a statement from his partner, Chloe Stevens dated 27 November 2019, and a former director of the respondent company, Mr Lindsay Heatley, dated 16 September 2019.
11. To paraphrase, Mr Michaels was a registered nurse, and was employed as regional manager for the respondent, a provider of health services to the community. On 18 May 2018, he became so distressed by the incompetence of the company that he developed his current psychological state.
12. It is common ground that the applicant is now so severely mentally disabled that he has no current work capacity.
13. As noted above, the sole issue in this case relates to the effect, if any, of a pre-existing psychological condition suffered by Mr Michaels. In his first statement Mr Michaels said:¹

"33 The only medical/health issue I have is that I suffered from depression. This is a hereditary condition. I have not suffered depression, or anything related whilst working for any employer in the past, except that now and again I may feel down about an issue at work or in my personal life.

34 Depression has not affected my work performance. I have never taken time off work due to depression or anxiety."

14. Mr Michaels described it in his statement of 3 November 2019:²

"I have suffered from depression in the past, which was after the divorce. I was put on medication, being put on Sertraline. That was prescribed by another doctor in Newcastle, which was a bulk billing super clinic. I was on the medication from 2014 up until 2018. The only reason I took it for so long, was because it was not reviewed and I was feeling fine and feeling good on it and it did not affect my work and I continued on as normal.

17. I did not see any counsellors or psychologists during that time and was just reviewed by the GP who popped me on generic anti-depressants.

18. In the 6 months prior to May 2018, I was feeling great. I had a thriving social life and happy with myself and Chloe.

15. As to his psychological condition prior to commencing with the respondent, Mr Michaels also said:³

"13. Prior to my current injury subject of this claim, I really loved going to the beach and surfing and kite boarding and doing anything to do with the water. I would go 3-4 times a week. I loved going for a jog down on the beach. I enjoyed going out with friends a lot as we had just had Charlie and we would go out for dinner and see friends and attend BBQ's and have a few drinks."

16. Mr Michaels described his work history. He said:⁴

"My employment history since leaving school include working at Pro Dive, working as a Deck Hand and Scuba Diving Guide for about 3 years, in Nelson Bay. I then went back to Uni, and did a year of study to do my HSC and did 3 years of an undergrad Bachelor's Degree.

¹ ARD page 5

² ARD page 17

³ ARD page 17

⁴ ARD pages 18-19

24. I then started working for NSW Health, as a Registered Nurse (RN) in Newcastle. I moved around with NSW Health for a number of years and moved to Sydney and worked as an RN. I finished working with NSW Health in 2015. I then started working for the Australian Defence Force, working in a dual role as a Registered Nurse and Nurse Unit Manager, at Richmond. That was in 2016 to 2017.

25. My qualifications, prior to working with KinCare Community Services Pty Ltd included; a Bachelor's Degree in Nursing. I started working in 2015 through two Masters Degrees but stopped doing them when I started working for [the respondent], and I have not completed them."

17. Mr Michaels commenced with the respondent in August 2017. He had separated from his wife in 2014, after a seven year marriage which bore three children. "Chloe" was a reference to his present partner, Ms Chloe Stevens, with whom he had a son, born in 2018. Their relationship commenced, she said, just over 2.5 years prior to her statement of 27 November 2019, just over 2.5 years before. She said:⁵

"Prior to commencing work for KinCare in August 2017, Evan excelled with work, study, and family life. Evan enjoyed engaging with family and friends, regularly attending outings and was proactive with life in general. He had a positive outlook and enjoyed a number of hobbies. There were no issues with activities of daily living.

12. In Evan's prior employment, he worked extremely well under pressure, including job stress in the military environment, late nights, a complex role, and a long commute. There were no signs of concern in any area of his life. I have attached a work reference from his prior employer to confirm this.

13. Once employed with KinCare there was a noticeable change in Evan, job stress appeared to be severe and the hours of work were much higher than they were meant to be."

18. Ms Stevens then described Mr Michaels' deterioration as he encountered more inept managerial practices that, she said, made him increasingly distressed and withdrawn. She mentioned that Mr Michaels had complained that he was bullied by an employee of the respondent, Ms Deb Fraser, and that he felt he was being intentionally isolated by her.
19. Ms Stevens made no mention of any prior psychological condition experienced by Mr Michaels. She was present, she said, for "multiple" medical appointments and assessments. She was present when Mr Michaels was interviewed by the medico-legal experts on both sides. Dr Christopher Canaris was retained by Mr Michaels, and Dr Tanveer Ahmed for the respondent. Both experts are consultant Psychiatrists.
20. Mr Lindsay Heatley gave a statement on 16 September 2019.⁶ Mr Heatley was Mr Michaels' director between August 2017 and January 2018, when he resigned from his position with the respondent. He said:
- "During my employment I observed the following. From the commencement of his role, I have observed Evan to be a capable case manager. He performed his role with compassion and integrity, evidenced by feedback from multiple stakeholders."
21. Mr Hartley described some of the difficulties he observed. He said there was "an unsatisfactory level of orientation and the guidance from [the respondent] for such a complex position." He said that the respondent did not allow for adequate orientation or further development and support. There was, he said, a "preventable increase" in workload, and low role clarity.

⁵ ALD 22 January 2020 page 2

⁶ ARD page 31

22. He witnessed Mr Michaels speaking on behalf of himself and his colleagues about unmanageable workloads, and he recalled Mr Michaels expressing concern for his own welfare if things were not changed.

23. Mr Hartley remembered "multiple" team meetings with the Central Home Care Package and Health Manager, Deborah Fraser. At these meetings Mr Michaels voiced concerns for his own mental health because of work conditions. Mr Hartley said:

"These concerns were met with disdain."

24. Dr Canaris reported on 17 July 2019 and 28 October 2019. Dr Canaris took a history that was consistent with the evidence of the applicant, Ms Stephens and Mr Heatley. So far as Mr Michaels' pre-existing condition was concerned he said:

"He had been diagnosed with depression while divorcing from his wife some five years ago. He recalls that at the time his mood was quite low "and I was worrying about the kids - worried about my future..." However, he had continued to work full time without undue difficulty and the following year moved to Sydney and started a new job and continued to study for his master's degree apart from a break of a number of months. His then GP had started him on sertraline and he continued on a dose of 100 mg daily. He felt he had responded well to treatment ("I don't know if it was the medication or time...") He had been with his wife some seven years and had initiated the divorce saying, "She was a very narcissistic person – I was tired of living that way." He was worried whether he would be able to maintain his relationship with his children."

25. Dr Canaris considered the question of the extent of the contribution made by the circumstances of Mr Michaels' employment to his injury. In his first report of 17 July 2019 he said:⁷

"He may have some vulnerability to depression given his problems at the time of his divorce some years previously. However, he had made a good recovery from this and I note that the problems he described in his workplace would have sufficed to have caused a psychological in the absence of vulnerability."

26. In his second report of 28 October 2019, Dr Canaris said:⁸

"If your client has provided a broadly accurate history, his reported workplace difficulties were inherently likely to carry a substantial risk of psychological injury irrespective of any vulnerability he may have had."

27. In the absence of any other potential cause for Mr Michaels' condition other than his pre-existing depression, the opinion of Dr Canaris is consistent with a finding that the workplace difficulties were the main contributing factor to the injury. Whether it was a contraction of his present condition or, as I think more likely, the aggravation of his pre-existing condition, his employment was the main contributing factor to the injury. The precise nature is not a matter that I have been asked to decide.⁹

28. Dr Ahmed also wrote two reports, dated 3 August 2018 and 6 September 2019. In his first report Dr Ahmed also took a consistent history of Mr Michaels' employment and the subsequent onset of his psychological condition.¹⁰

29. Dr Ahmed noted that he had available to him "correspondence received from insurer EML. This included multiple statements from co-workers, questions and further background."

⁷ ARD page 75

⁸ ARD page 80

⁹ See *Inghams Enterprises Pty Limited v Belokoski* [2017] NSWCCPD 15

¹⁰ Reply page 37

30. These sources were not identified further, and Mr Hickey objected, as noted above, to the admissibility of Dr Ahmed's reports. In conformance with recognised Commission policy, and because the laws of evidence do not apply in the jurisdiction, I allowed the reports of Dr Ahmed to be admitted, although noting that Mr Hickey's objections may well affect the weight I put on those reports.

31. As to any pre-existing condition, Dr Ahmed said, having recorded that Mr Michaels was divorced some three and a half years before:

"I note he was already on the antidepressant, Sertraline 100 mg, when he begun the job. He was not engaged in counselling. He began seeing a counsellor soon after the divorce, with symptoms of anxiety, panic and depressed mood."

32. Dr Ahmed was then asked a series of questions by the insurer, which Dr Ahmed answered:¹¹

"1. Please confirm the date of the initial onset of the psychological symptoms and your opinion as to the cause of these symptoms. Please confirm if based on the factual information whether these events are likely to have caused a psychological injury.

Mr Michaels said he was already on Sertraline and had a pre-existing depressive episode approximately three years prior to beginning his work. He said, within a few months, he started experiencing it as very difficult and was declining psychologically. In my view, the onset of his symptoms could be seen as within two or three months of his beginning his role. This has more to do with his underlying vulnerabilities rather than something specific about the job itself."

33. Dr Ahmed gave the following diagnosis:

"His diagnosis satisfied the criteria for a major depression characterised by depressed mood, heightened anxiety, cognitive deficits and an overall decline on social and occupational functioning. He has a past history of major depression also. There is a likelihood in my opinion that he had not entirely recovered."

34. Dr Ahmed was asked if Mr Michaels' employment had been a substantial contributing factor to his current psychological condition. He said:

"It is unlikely that his employment was a substantial contributing factor. He already had a pre-existing history, suffered symptoms within a few months and has not recovered in spite of ceasing the job for almost two months. This suggests that while he struggled with the nature of the job, the causes are broader."

35. Dr Ahmed was asked:

"In your opinion do you believe Evan has suffered an aggravation to a pre-existing or underlying condition? If yes, do you believe that work was the main contributing factor to this aggravation?"

36. Dr Ahmed's answer was:

"Yes, in my view, he has suffered an aggravation to pre-existing depressive disorder. However, this aggravation was not primarily caused by his employment. It has more to do with his pre-existing illness and personality which rendered him incapable of coping with the pressures of an otherwise reasonable job. If the challenges were primarily related to the pressures of job, he would have shown a more consistent recovery since leaving."

¹¹ Replay page

37. Dr Ahmed then made some comments about the facts which presumably came from the documents made available to him, but not lodged within the Commission. He noted that there were inconsistencies in that Mr Michaels said he was not adequately trained, but that he did not attend training sessions. Where those allegations came from was not explained by Dr Ahmed, and there is no evidence before me to that effect. Dr Ahmed noted that Mr Michaels “did not have a clear response to this” during the interview. That conclusion was also difficult to understand, as there was no reference to training elsewhere in Dr Ahmed’s report.
38. Dr Ahmed stated that Mr Michaels’ workload was “either normal or less than his other colleagues”, an assumption which is also not otherwise proven in the evidence. Dr Ahmed then said:

“...what is more likely is that he already had symptoms and vulnerabilities before beginning the role which rendered him incapable of managing a relatively ordinary workload.”
39. Again, the assumption that Mr Michaels had been “managing a relatively ordinary workload” has no basis in fact on the evidence before me, and indeed has been contradicted.
40. In his second report of 6 September 2019, Dr Ahmed noted that Mr Michaels was then 33 and living with his partner and their one year old child. Dr Ahmed referred to a hospital admission “late last year” when Mr Michaels took an overdose of insulin and was admitted to Wyong Hospital. He was followed up by the Acute Care Team attached to the Central Coast Health Service.
41. Dr Ahmed expressed “every sympathy” for Mr Michaels whom he found to be highly distressed and requiring ongoing treatment. Dr Ahmed found it “difficult to see the level of [Mr Michaels’] decline being related to a sense of overwork” and experiencing a highly traumatic range of emails and interactions with managers. Dr Ahmed thought it significant that Mr Michaels was in the job for “barely” more than a year.
42. On 10 August 2018 the insurer issued a section 74 notice, citing Dr Ahmed’s first report, and relying not only on his opinion that employment had not been a substantial contributing factor, but also that Mr Michaels had been managing a relatively ordinary workload, which was either normal or less than his other colleagues.
43. A further notice was issued pursuant to section 78 on 21 September 2019. This confirmed the earlier section 74 notice, and relied on Dr Ahmed’s second report confirming that employment was not the main contributing factor to Mr Michaels injury.
44. It can be seen that implicit in Dr Ahmed’s opinion was a conclusion that Mr Michaels had been managing a “relatively ordinary workload”, and that there was “a likelihood” that Mr Michaels had not “entirely” recovered from a depressive episode of three and a half years ago following his divorce. His employment was neither a substantial contributing factor, nor the main contributing factor as, Dr Ahmed asserted, Mr Michaels condition had more to do with underlying vulnerabilities than anything specific about the job itself.
45. These assumptions have not been established on the evidence. The respondent elected not to lodge any factual report or statements from the named employees whose incompetence and bullying was said to be the cause of Mr Michaels’ condition. No evidence has been advanced in the face of the allegations made by Mr Michaels and Mr Hartley of unmanageable workloads.
46. Further, Dr Ahmed did not refer to the facts and circumstances upon which he based his opinion that Mr Michaels had not entirely recovered from his depressive episode, which occurred in 2014. The only evidence related to Mr Michaels’ continuing to take his antidepressant medication, but Dr Ahmed did not engage with the explanation given by Mr Michaels, nor did he engage with the evidence of both Ms Stevens and Mr Michaels that prior to commencing work with the respondent in August 2017 Mr Michaels showed no sign of any concern in any area of

his life. Ms Stevens described his positive outlook, his engagement with hobbies, and his ability to work well under pressure. Mr Michaels also described his active and outgoing lifestyle prior to his injury with the respondent. Moreover, Dr Ahmed failed to engage with Mr Michaels' work history subsequent to his divorce, in which he worked full time, amongst other places, for the military in a managerial capacity, whilst pursuing two master's degrees.

47. Mr Hickey submitted that Dr Ahmed's opinion amounted to no more than an ipse dixit, and I agree that for the above reasons they may be described as such. They have no weight, and were obviously obtained with the assistance of documents that the respondent in its wisdom eventually chose not to rely on. It is clear that an investigator, Mr Jason Glynn, was appointed to examine Mr Michaels' claims, as he took Mr Michaels' first statement, and it is probable that a factual investigation into Mr Michaels' allegations was also carried out. The respondent has not denied Mr Michaels' claims, and accordingly I accept that the somewhat regrettable incompetency described by Mr Michaels and Mr Heatley actually occurred. The attempts by Dr Ahmed to present the conduct of the respondent as being unremarkable have not been proved, and the premise upon which he based his opinions has accordingly been undermined.
48. Usually, such a finding must lead to an award in favour of the applicant, Mr Michaels.
49. However, the respondent briefed counsel to argue that, notwithstanding the above deficiencies in his reports, Dr Ahmed's opinion was made within a fair climate, as I understood the import of Mr Robison's submissions, and was to be preferred over that of Dr Canaris.
50. Mr Robison accepted that the applicant's evidence was not challenged, and he conceded that the issue therefore concerned causation, in the sense of whether employment had been shown to be the main contributing factor, as required by s 4(b)(ii) of the 1987 Act.
51. Mr Robison referred to Mr Michaels' first statement, in which he stated that his only health issue was that he suffered from depression, which was a hereditary condition. Mr Robison did not engage with the remainder of Mr Michaels' statement, which denied that any depression or related illness had ever caused him to take time off work.
52. Mr Robison referred to a comment by Dr Gregory Pearson, Dr Michaels' treating Psychiatrist, that Mr Michaels acknowledged a family history of depression, caused it would seem by his sister suffering severe neurofibromatosis.¹²
53. Mr Robison then spent considerable time referring to references in the clinical notes that demonstrated the extent of Mr Michael's pre-existing condition.
54. I was referred to handwritten clinical notes by Ms Tilda Patton dated 25 May 2018, which I found to be of no assistance, being concerned as they were with treatment and not causation.
55. I was referred to a 59 page copy of hospital health records from Gosford Hospital regarding an admission between 17 May 2018 and 30 September 2018.¹³ The records revealed that Mr Michaels came to the Emergency Department after having thoughts of self-harm. "Thought to drive off bridge, when at work."
56. It was noted that he had been "depressed all year. Has to work 16 hour days. Too much to do in eight hours, doesn't want to let down the patients. 'Work stress'. WorkCover is investigating the case."
57. The entry then referred to a "DHS in 2016. Stressed, consumed alcohol and took work insulin to OD. Regretful of this now."¹⁴

¹² ARD page 94

¹³ ARD page 123

¹⁴ ARD page 127

58. Mr Robison submitted that whether there were one or two events involving self-harm, it demonstrated a life threatening level of symptomatology and the existence of a prior condition.
59. I was also taken to the records of Nepean Hospital, which showed an admission on 17 January 2017 - some eight months before Mr Michaels commenced employment. The progress notes stated that Mr Michaels was a healthcare worker with Mental Health Unit experience and insight. He had drunk 1.5 bottles of Chardonnay and was feeling suicidal. An ambulance had been called by a concerned person and Mr Michaels showed some reluctance to be taken to hospital - there had been "multiple toing and froing between paramedics and [Mr Michaels]."¹⁵
60. The notes also revealed that Mr Michaels said he had a "one-year depression, PTSD," and that he was affected by alcohol - "EtOH today". The notes also recorded that Mr Michaels had "not slept for days."
61. I was referred to clinical records going back to 2006 which confirmed Mr Michaels' first statement, that Mr Michaels was no stranger to depression.
62. It is pertinent to note that this material was contained in documents produced under direction and lodged in an ALD dated 4 February 2020. It follows that neither medico-legal expert was aware of this added history, and neither had Mr Michaels or Ms Stevens had an opportunity to comment on it.
63. This evidence, it was submitted, was a "strong indication" of Mr Michaels' suicidal tendencies. Mr Robison submitted that Dr Canaris did not refer to the admission to Gosford Hospital of 17 May 2018, and his opinion accordingly was of little weight. This submission however overlooks Dr Canaris' second report which was in response to Dr Ahmed's report of 6 September 2019. Dr Ahmed's report contained an account of Mr Michaels' admission to Gosford Hospital on 17 May 2018. Dr Canaris' failure to comment on that admission might equally well have been an indication that he considered that it had no bearing on his opinion, coming as it did after Mr Michaels had suffered his psychological injury. Mr Robison's submission does not sustain the inference he seeks to draw, and I reject it as mere speculation.
64. Mr Robison was correct when he indicated that the January 2017 admission to Nepean Hospital was a relevant fact. It was not alluded to by either Mr Michaels or Ms Stevens, and Mr Robison's submission that their evidence was tarnished thereby had some initial attraction, in view of the protestations that Mr Michaels had no concerns in his life at the time he commenced with the respondent. I also note that whilst Mr Michaels said in his first statement that his depression was hereditary, Dr Canaris was of the view that it had been caused by the divorce in 2014, which also appeared to be the thrust of Mr Michaels' second statement.
65. With regard to the latter inconsistency, I do not think Dr Canaris' opinion is tainted by the two versions of the cause of Mr Michaels' pre-existing condition in the present context. They are not necessarily contradictory, in that they both recognise a pre-existing psychological condition, and they do not detract from the evidence that demonstrates that Mr Michaels was asymptomatic prior to the onset of his condition after experiencing the incompetence of the respondent's management.
66. With regard to the alleged inconsistencies in the evidence of Mr Michaels and Ms Stevens, the same observations apply. There was clearly an episode which occurred some seven months prior to the commencement of employment. The notes, taken whilst Mr Michaels was still under the influence, recorded a one year depression and PTSD, and are also relevant to my determination. There are however two matters that satisfy me that I may accept Dr Canaris' opinion that employment was the main contributing factor to Mr Michaels' injury, as I have found.

¹⁵ ALD (respondent) page 80

67. Firstly, Mr Michaels' evidence in his first statement that he had never taken time off work because of his condition, which has not been contradicted, shows a level of symptomatology that he was able to function with, in a high stress managerial capacity. His academic and work record testify to that fact.

68. Secondly the psychological injury from which Mr Michaels now suffers is of a different magnitude. It is common ground that he now has no current work capacity, and the effect of this injury has been quite catastrophic. Whilst his vulnerability – again a matter of common ground between Dr Ahmed and Dr Canaris - might or might not be relevant to an AMS assessing lump sum compensation, this escalation in his impairment has not been hitherto observed. Dr Jodie Ralph, Mr Michaels' GP, reported on 17 May 2019 that:¹⁶

"I knew Evan prior to this injury and whilst he suffered from a mild depression this was a different level of illness. This current illness presents as a great reduction in functioning ability as well as having a traumatic element."

69. Neither Mr Michaels' nor Ms Stevens' evidence has been challenged regarding Mr Michaels' state of mind when he began work for the respondent. Mr Michaels said that during the six months prior to May 2018 "I was feeling great. I had a thriving social life and happy with myself and Chloe." Like the expert witnesses, neither lay witness had an opportunity to comment on the Nepean Hospital admission, as I have observed. Regardless of any explanation for the admission, the evidence shows that at the time he commenced work, Mr Michaels was asymptomatic.

70. No argument was raised that Mr Michaels is anything but totally incapacitated or has any current work capacity. The PIAWE was agreed at \$1,522.44.

71. Accordingly the respondent will pay the applicant the following weekly sums:

- (a) For the first 13 weeks from 18 May 2018 to 16 August 2018 pursuant to s 36: \$1446.31
- (b) Thereafter from 17 August 2018 and continuing pursuant to s 37: \$1217.95
- (c) The respondent will pay the applicant's s 60 expenses upon production of accounts/receipts and/or HIC documentation
- (d) I remit this matter to the registrar for referral to an AMS for an assessment of whole person impairment on the following bases:
 - (i) Date of injury: 18 May 2017 (deemed)
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 - (5) A copy of these reasons.

¹⁶ ALD (applicant) page 89

