



Supreme Court of New Zealand

7 July 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**MCGRATH V ACCIDENT COMPENSATION CORPORATION
(SC 127/2010)
[2011] NZSC 77**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The appellant, Ms McGrath, has been receiving weekly compensation from the Accident Compensation Corporation since badly injuring her ankle. The Corporation required her to undertake vocational independence assessment under the provisions of the Accident Compensation Act 2001 to assess whether she was capable of working for 35 hours a week (the level at which vocational independence was attained under the legislation at the time). If vocational independence is assessed to have been achieved, weekly compensation payments end.

The legislation provides under s 110(3)(a) that the Corporation cannot require someone receiving weekly compensation to undergo assessment for vocational independence unless he or she is “likely to achieve vocational independence”. Ms McGrath applied to the High Court for judicial review of the Corporation’s requirement that she undertake vocational independence assessment on the basis that the statutory condition that she was “likely to achieve vocational independence” was not met. She relied on reports from her general practitioner and reports from a medical practitioner specialising in pain management that the 15 hours she was currently working in a sedentary occupation were the limit of what she could manage.

Ms McGrath was unsuccessful in obtaining judicial review in the High Court and, on appeal, in the Court of Appeal. Both Courts took the view that the Corporation had experience of similar cases and medical information on its files relating to Ms McGrath on which it could reasonably take the view that she was “likely” to attain vocational independence. In addition, the Court of Appeal considered that it was not necessary that vocational independence be likely at the time of assessment, and that the assessment might be undertaken with a view to considering what further rehabilitative steps should be considered, in achieving the eventual outcome of vocational independence.

The Supreme Court has unanimously allowed Ms McGrath’s appeal. It has held that s 110(3)(a) sets a threshold for exercise of the Corporation’s power to require vocational independence assessment. Such threshold has been adopted by the legislature in apparent recognition of the fact that vocational independence assessments may be intrusive and burdensome. Contrary to the approach apparently favoured in the High Court and Court of Appeal, which both suggested that the standard of scrutiny on judicial review was not “high”, the Supreme Court held that the responsibility of the Court on judicial review is to ensure that the legislative condition is fulfilled.

At the time it gave notice, the Corporation had no current medical information or opinion contrary to the assessments of Ms McGrath’s medical practitioners upon which it could reasonably conclude that achievement of vocational independence was likely. The medical reports relied on in the lower Courts were out of date and overtaken by the current opinions provided by Ms McGrath. Nor did they address the chronic pain experienced by Ms McGrath, which was the basis upon which her doctors had certified that 15 hours per week was her work limit. The experience of the case officer dealing with Ms McGrath provided no foundation for differing from the current medical opinion.

Contrary to the view expressed in the Court of Appeal, the Supreme Court considered that the statute required likelihood of vocational independence to be as at the date of referral for assessment. At the date the Corporation gave notice to Ms McGrath that she was required to undergo vocational independence assessment, the statutory condition that vocational independence was then reasonably in prospect was not met.

The Supreme Court has accordingly allowed the appeal and quashed the notice requiring Ms McGrath to undertake vocational independence assessment.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545