



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

17 September 2013

[REDACTED]
Street

AUCKLAND 1

Dear Mr [REDACTED]

Complaint: Dr D [REDACTED]
Our ref: C12HDC [REDACTED]

Thank you for your letters dated 26 April 2013 and 30 April 2013. I apologise for the delay in responding to you. I understand that you are disappointed with the Deputy Commissioner's decision to take no further action on your complaint.

Complaint

On 22 July 2012 you made a complaint about a Work and Income New Zealand (WINZ) related medical assessment conducted by general practitioner, Dr D [REDACTED] on 17 June 2010. You raised the following concerns:

- You stated that Dr [REDACTED]'s conduct during the examination was inappropriate: his line of questioning resembled an interrogation rather than an examination, he was unsympathetic, he did not give you sufficient opportunity to explain your health issues, did not appropriately consider the evidence you provided, he conducted the examination with a prejudicial mindset, and the examination took only 12 minutes.
- You stated that Dr [REDACTED]'s report to WINZ contained inaccurate information, and that his assessment and report were not evidence based, unfair, unprofessional and biased. You state that WINZ relied on Dr [REDACTED]'s report, while ignoring other relevant medical information.
- You stated that Dr [REDACTED] is not appropriately qualified to conduct an assessment of a client with your particular medical conditions.
- You stated that Dr [REDACTED] did not follow the guidelines set out in the Ministry of Social Development's resource manual, "Guide for Designated Doctors."

In assessing your complaint, this Office requested a response and information from Dr [REDACTED]. Dr [REDACTED] provided an initial response on 20 September 2012. This Office contacted Dr [REDACTED] to ask him to provide a further response to address certain

issues raised in your complaint that Dr [redacted]'s initial response had not covered. That additional response was received from Dr [redacted] on 27 November 2012.

On 24 April 2013 the Deputy Commissioner wrote to inform you of her decision to take no further action on your complaint, pursuant to section 38(1) of the Health and Disability Commissioner Act 1994 (the Act).

Your concerns

You have since written to this Office expressing your dissatisfaction with the Deputy Commissioner's decision. You have raised the following concerns:

- The Medical Appeals Board (the Board) was not an alternate appeal option for you, because:
 - you believe that it is biased against claimants;
 - it cannot and does not address issues that this Office should address (for example, Dr [redacted]'s conduct); and
 - you were not successful in your appeal to the Board, as the Deputy Commissioner appeared to believe.
- This Office did not put all of your concerns to Dr [redacted]
- The Deputy Commissioner's decision letter did not address all of your concerns.
- This Office did not consider all of the evidence you supplied in support of your complaint.
- Dr [redacted]'s response was insufficient, and only related to his "usual conduct".
- This Office did not follow the principles of natural justice in considering your complaint.

My response

We have carefully considered all the information provided and thoroughly reviewed the file relating to your complaint. Having considered all the circumstances of this case, I am of the view that the Deputy Commissioner's decision to take no further action on your complaint remains appropriate.

In relation to your concern that this Office did not appropriately consider the information you supplied, I am satisfied that all relevant information has been considered during the assessment of your complaint.

You also expressed concern that only part of your complaint was put to Dr [redacted]. I can assure you that a copy of your entire complaint was provided to Dr [redacted] by this Office on 18 September 2012. I enclose a copy of that letter, and of Dr [redacted]'s initial response, for your information.

I acknowledge that complaints that relate to a non-treating doctor contracted as an assessor to a third-party may fall within the Commissioner's jurisdiction under the Act. However, I note that most of your concerns relate to the processes and policies of WINZ and of the Board. Such matters are outside the jurisdiction of this Office and are more appropriately dealt with by the agencies concerned, or through appeal rights to entities such as the High Court and the Ombudsman.

Even where jurisdiction can be established, the Commissioner and Deputy Commissioners have a number of options open to them in deciding how best to resolve such complaints. One such option is to take no further action pursuant to section 38 of the Act. The discretion under section 38 is wide and allows the Commissioner or Deputy Commissioners to decide to take no further action wherever they consider, in all the circumstances, further action is unnecessary or inappropriate. I consider that the issues you raised which were within jurisdiction were considered by the Deputy Commissioner and were appropriately addressed in her decision.

Accordingly, your complaint will remain closed. Thank you for bringing your concerns to the Commissioner's attention.

Yours sincerely



Katie Elkin
Associate Commissioner
Legal and Strategic Relations

Enc:

Copy of letter to Dr [redacted], 18 September 2012

Copy of Dr [redacted]'s initial response, 20 September 2012

18 September 2012



Health and Disability Commissioner
Te Toihau Hauoro, Hauatanga

D: [redacted]
PO Box [redacted]

AUCKLAND 1

Dear Dr [redacted]

Complaint: [redacted]
Our ref: C12HDC6 [redacted]

The Commissioner has received a complaint from [redacted] regarding the treatment you provided to him at [redacted] Health Centre. A copy of the complaint is **enclosed** for your information.

One of the Commissioner's functions, as set out under section 14(1)(m) of the Health and Disability Commissioner Act 1994, is "*to gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this Act.*"

To assist the Commissioner to decide what action, if any, to take on this matter, we would appreciate receiving a response to Mr [redacted]'s complaint, along with a copy of his clinical notes from 17 June 2012. In particular, we would appreciate receiving a response to the communication issues Mr [redacted] has raised.

Please provide this information by **9 October 2012**.

Once this information has been reviewed, and a decision made on what action to take, we will write to you again.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Harriet Boyd', written over a light blue circular stamp.

Harriet Boyd
Senior Complaints Assessor

Enc: Copy of complaint

Centre Ltd
Street
P.O. Box , Auckland 1
Ph: 8 Fax: 8
Website: www. co.nz

Harriet Boyd
Senior Complaints Assessor
Health and Disability Commissioner
PO Box 1791
Auckland 1141

20 Sep 2012

Re:

Street

Auckland
DOB
Your ref: C12HDC

Dear Ms Boyd,

I refer to your letter of 18 September regarding my treatment of Mr at Health Centre.

I saw Mr as per the attached report which fully details my contact with him for an Invalids Benefit Assessment for Work and Income New Zealand.

As I did not provide medical treatment to Mr I am of the understanding that all complaints of this nature are more correctly addressed to the Medical Appeals Board.

I attach a letter dated 16 August 2010 from your department which outlines such policy previously.

I will be on leave in Australia from today until my return to work on Monday 9th October.

Yours sincerely,

NZMC:
BSc, MBChB, FRNZCGP

am copying this letter also to
Anne Alexander
Operations Manager
Work and Income
Regional Office
Level 2, Building A
65 Main Highway
Ellerslie
Private Bag 68911
Newton
Auckland

Centre Ltd
Street
P.O. Box , Auckland 1
Ph: 8 Fax: 8
Website: www. .co.nz

WINZ - Designated Doctor Report

30 Jun 2010

Re:
Mr

Auckland
DOE
NHI:
Ethnicity: European not defined
Ph: Mobile:
Client No:

17 Jun 2010

IB Review.

GP Dr Bay

Receives IB now - past two years, SB two years before this.

Last consistent work 2003. Seven years on benefit. Some years in on unemployment..

Prev work

Problems: Alcohol binge drinking . Occas relapses lasting 3-4 days. Attends regularly - prev weekly, now every two weeks..

Letters from verifying this sighted.

Lives alone.

Says would rather work - when under stress risk of alcohol relapse.

Feels that too much to deal with now.

BP 120/70. overweight. cvs, rs, abdo nad.

Impression: 50yrs, minimal work past 7yrs. Seems little motivatuon to work.

30 Jun 2010

HDR - disorder , anger issues, episodic depression and alcohol misuse. Report from psychiatrist - DR J E

Recommended disulfiram or naltrexone for his alhol abuse - this does not seem to have been tried. It was noted that he had no signs of self neglect, good rapport, well presented, mood appropriate and no thought disorder.

Impression: A 50yr man who has hardly worked since 40yrs age. He is a binge drinker, has some personality issues and seems to lack any motivation to work. There are suggested treatments that do not seem to have been tried. He presents well.

Recommendation: He is not elligible for Invalids Benefit. He can certainly work at least 20hrs per week and every effort should be made to get him off benefits and into work. SB to continue meantime.

Yours sincerely,

Dr D NZMC:
BSc, MBChE , FRNZCGP