



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

17 September 2013

Street

AUCKLAND 1

Dear Mr

Complaint: Dr D

Our ref: C12HDC

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 on 17 June 2010. You raised the following concerns:

- You stated that Dr '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 '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 's report, while ignoring other relevant medical information.
- You stated that Dr is not appropriately qualified to conduct an assessment of a client with your particular medical conditions.
- You stated that Dr 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 Dr provided an initial response on 20 September 2012. This Office contacted Dr 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.

XX?

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.

← Ombudsman does not offer "appeal rights"!!

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