17 February 2021

[redacted]

Tēnā koe [redacted]

Your Official Information Act request, reference: GOV-008759
Thank you for your email of 28 January 2021, asking for the following information under the Official Information Act 1982 (the Act):

- *acc assessment requests and what is considered reasonable requests*
  What I would like to know is when ACC determines that an assessment is required be it for cover or entitlement what is the policy, procedure, guidelines and framework, criteria etc... to fulfil before requesting the assessment and what defines 'reasonable requests' if those type of assessments have already been done or are indicated by a treating medical professional of the client that they are not required.

The second part of your request concerning *medical evidence* has been responded to in our letter of 12 February 2021 (Ref: **GOV-008659).**

We are unable to provide you the information requested
Thank you for the above clarification of your original request, dated 9 December 2020 (Ref: GOV-008225).

As mentioned in our previous response, GOV-008225, assessments are requested for a wide range of entitlements and ACC does hold policy documents related to specific assessment types. However, ACC does not hold documentation which defines *reasonable requests*. As such, we are refusing to provide the information requested as the document alleged to contain it does not exist. This decision has been made under section 18(e) of the Act.

The Accident Compensation Act 2001
When determining if an assessment request is *reasonable* staff are guided by the parameters outlined in Section 55(1)(d) and (e) of the Accident Compensation Act 2001, which states:

> *A person who lodges a claim under section 48 must, when reasonably required to do so by the Corporation,*
> *(d) undergo a medical assessment by a registered health profession specified by the Corporation, at the Corporation's expense*:
> *(e) undergo any other assessment at the Corporation's expense*

Policy document attached
Attached to this letter is the *Decline entitlement when client is non-compliant* policy. This document contains information relating to *reasonable requests* in the context of client non-compliance.

Please note that the staff named in the document attached are subject matter contacts for internal queries, they are not staff who created or updated the policy.

How to get in contact
If you have any questions, you can email me at GovernmentServices@acc.co.nz.

If you are not happy with this response, you have the right to make a complaint to the Ombudsman. Information about how to do this is available at www.ombudsman.parliament.nz or by phoning 0800 802 602.

Nāku iti noa, nā

Sasha Wood
Manager Official Information Act Services
Government Engagement & Support

Decline Entitlement when Client is Non-compliant Policy v6.0

Summary

Objective
Use this guidance to determine whether a client has unreasonably failed or refuses to comply with a reasonable request from ACC. The purpose of this guidance is to help ensure that we meet legislative requirements when issuing non-compliance decisions, and that our decision is fair and reasonable.

This entry also provides policy guidance on declining to provide entitlements, and resuming or backdating payments once the client complies with ACC's requests.
1. The difference between declining to provide entitlements and suspending entitlements
2. Fair and reasonable process
3. Example: Clients travelling overseas
4. Declined entitlements
5. Resuming payments and reinstatement
6. Backdating entitlement payments
7. Links to legislation

Background
Under section 117(3)(a) of the Accident Compensation Act 2001, ACC may decline to provide any entitlement for as long as the claimant unreasonably refuses or unreasonably fails to comply with any requirement of the Act.

Owner [redacted]

Expert [redacted]

Policy

1.0 The difference between declining to provide entitlements and suspending entitlements

a If a client is no longer eligible for assistance, we suspend their entitlements rather than decline them.

See Suspend entitlement when client no longer eligible .

Suspend entitlement when client no longer eligible
https://go.promapp.com/accnz/Process/a729677d-e433-4e94-948b-f06ce027f873

b We may decline to provide entitlements when the client unreasonably fails to comply with a reasonable request, including:
• complying with any requirement of the Accident Compensation Act 2001 relating to their claim
• undergoing medical or surgical treatment for their personal injury that they are eligible to receive
• agreeing to or complying with their individual rehabilitation plan (IRP).

See Managing non-compliance

Managing non-compliance process
http://thesauce/team-spaces/chips/compensation/suspension-disentitlement/process/managing-non-compliance/index.htm

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2.0 Fair and reasonable process

a We must follow a process to ensure that we meet legislative requirements and are seen to be fair and reasonable. The following points will help determine whether non-compliance is fair:
• our request must be reasonable
• we must give the client reasonable notice and the opportunity to comply, and advise them about the implications of not complying
• we must consider the reason(s) the client gives us for their non-compliance.

NOTE **Example - Reasonable request**
We ask a client to attend a medical assessment in two weeks' time. The client does not have any particular preference for a provider, and we advise them by letter about the assessment and the implications of non-compliance.

NOTE **Example - Unreasonable refusal or failure**
The same client ignores the request to attend the assessment, saying they didn't have enough notice, or didn't choose the provider, or have not been told about non-compliance. Any of these responses is considered unreasonable.

b We must send the client at least one written warning before they are deemed to be acting unreasonably. We must give the client an opportunity to comply before we make a decision.

3.0 Example: Clients travelling overseas

a In some cases, a client's rehabilitation may be delayed or interrupted because of overseas travel.

It is important to consider the circumstances of each case before deciding whether section 117(3) of the Accident Compensation Act 2001 applies. The fact that a client is travelling overseas, whether for a holiday or to relocate, does not necessarily meant that they are unreasonably refusing to comply.

It is possible that a client can undertake rehabilitation while overseas. They may also be able to agree on a reasonable timetable for returning to New Zealand to undertake their rehabilitation or to undergo assessments.

In appropriate cases, a claim can be transferred to the Overseas Claims Unit for ongoing management if a client is intending to be away from New Zealand for more than three months.

Alternative options that help a client participate in their rehabilitation should be considered before determining that they have been non-compliant.

4.0 Declined entitlements

a We cannot decline entitlements retrospectively. We can only decline to pay future payments and cannot recover payments that we've already made.

We are able to decline to provide all entitlements or just some of them.

We can decline an entitlement indefinitely if the client continues to not comply.

A client forfeits payments for the period in which they fail to comply.

When we revoke a decision to decline to provide entitlements, or our decision is quashed on review or appeal, we must reinstate the client's entitlement from the date that it was first stopped.

b If ACC issues a non-compliance decision, then we can decline to provide entitlements, including: weekly compensation payments, independence allowance payments, and rehabilitation interventions, such as home help or attendant care.

c Once the client complies with our request then we can reinstate entitlements.

NOTE **Example - Eligible but entitlements declined until compliant**
After continued discussion, including advice about the implications of not complying, a client still refuses to sign the ACC174 form. The case owner approves the client's eligibility, but declines to provide any weekly compensation payments until they agree to sign the form.

NOTE **Example - Decline some but not all entitlements**
We decline to provide a client's weekly compensation and independence allowance entitlements, but continue the client's attendant care because stopping it would cause the client and their family serious hardship.

5.0 Resuming payments and reinstatement

a We resume payment from the date the client complies and/or attends a missed appointment.

We are not normally liable to make any payment to which the client would otherwise have been entitled for the period between the:

- date from which their payments were first withheld
- date payments resume, ie the date the client begins to comply.

6.0 Backdating entitlement payments

a We are not required to backdate a client's entitlement over the period we declined to provide it. However, we can backdate the entitlement if we believe that both:

- exceptional circumstances exist
- it would be unfair to refuse to backdate.

b Factors include, but are not limited to:

- the client is temporarily medically unfit and has a medical certificate
- death or illness in the family
- the client or their family have been affected by unforeseen circumstances or circumstances beyond their control that have caused significant financial hardship or emotional distress
- the impact for the client or their family of not having the entitlement backdated is out of all reasonable proportion to the reason why the client refused to comply
- the client's rehabilitation has not been affected or delayed by the period of non-compliance.

See Delegations Manual: Cessation and suspension for details.

Delegations Manual: Cessation and suspension
http://thesauce/how-to/corporate-delegations/case-claims-management/cessation-suspension/index.htm?d=1525813187.099

7.0 Links to legislation

Section 54: Responsibility of Corporation to make reasonable decisions in timely manner
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100981.html

Section 70: Claimant's and Corporation's obligations in relation to rehabilitation
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101406.html

Section 72: Responsibilities of claimant who receives entitlement
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101409.html

Section 117: Corporation may suspend, cancel, or decline entitlements
http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101482.html

Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants' Rights) Notice 2002
http://www.legislation.govt.nz/regulation/public/2002/0390/latest/DLM173110.html?search=qs_act%40bill%40regulation%40deemedreg_code+of+acc+claimant%27s+rights_resel_25_h&p=1&sr=1