

Public Submissions
Review of Physiotherapy Services
Workplace-ACC Policy
Department of Labour
PO Box 3705
Wellington

Dear Ms Salter,

Please find attached a further submission to the Physiotherapy Inquiry.

This is our second submission illustrating the far reaching consequences of treatment and rehabilitation ceasing before people are "rehabilitated to the maximum extent practicable" due to ACC's current inflexible approach.

In summary, this submission will discuss findings and recommendations from the draft report and put forward our thoughts in the following areas:

- Delay and denial of physiotherapy treatment for injuries.
- Physiotherapy treatment being terminated without the injury being fully rehabilitated.
- Changing responsibility of physiotherapists due to their contract with ACC rather than the patient.
- Informed consent and privacy issues.

The human costs of the current restrictive practices deserve to be reiterated in light of the draft report.

Yours sincerely,

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PERSONAL EXPERIENCES WITH PHYSIOTHERAPY TREATMENT

**Submissions to the 2nd
Hearing of the
Physiotherapy Review**

For: Public Release

Submission to the Physiotherapy Inquiry

This is the further submission of:

Acclaim Otago (Inc)
PO Box 5222
Dunedin

I wish to appear before the inquiry to give evidence and speak to this submission.

I can be contacted at:

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This Submission is structured in the following manner:

- Introduction
- The Issues
- The impact on patients and their treatment
- Recommendations

This submission is made by Denise Powell on the 24th August 2007

Denise Powell

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INTRODUCTION

This second submission focuses on the draft report and its recommendations. We see many positive recommendations arising from this report and commend Mr Goddard for listening to claimants' experiences of the current physiotherapy regime and the effects this has had on their lives.

There are some areas we would like to focus on as we believe they deserve further consideration by the review.

THE ISSUES

Obtaining cover for an injury and accurate diagnosis

As stated in our first submission the ACC45 form allows for a brief explanation of how the injury occurred and an initial diagnosis. Due to a variety of factors sometimes the extent of the injury is not able to be ascertained at the time of the accident and therefore what is written on the form may not indicate the true severity of the injury. This can lead to treatment profile that is inadequate for the person's injury and effect the number and type of treatments approved. The process for updating the diagnosis does not seem to be clearly defined and this often leads to delays in obtaining appropriate and suitable treatment.

We believe this aspect needs to be more fully addressed in the final report. In discussions with treating physiotherapists in our region some were aware of the importance of updating the diagnosis and others were not. We believe ACC should take a proactive approach and ensure all treatment providers are aware of the need to ensure accurate diagnosis and make doing so a straight forward procedure so as not to burden physiotherapists unduly.

Delays in obtaining approval for further treatment

The draft report states:

Para 9.29 “There is no evidence to suggest timeframes for processing ACC32 forms were unjustifiably long”

We disagree that there is ‘no evidence’ in our view there is significant evidence from the cases presented at the first hearings by Acclaim Otago. We continue to assert that delays of more than 3-5 days are unjustifiable, especially when considering the impacts described by those delays.

Para 9.17 “ACC advised that decisions can be delayed for a number of reasons including....”

There is significant evidence amongst ACC claimants of delays due to ACC’s errors or worse still ACC not wanting to make a decision. This means claimants are unable to review a decision until such time as a decision is made. This effectively means that the claimant is denied access to treatment and ultimately justice.

Most claimants are unaware of s. 134 (1) (b) of the IPRC Act which enables people to lodge a review for decisions not made in a timely manner. It is often only if claimants seek legal advice that this type of review application is lodged, thereby forcing ACC to issue a decision. This cannot be done however until some 21 days after a decision has not been forthcoming by which time physiotherapy treatment has been interfered with.

It is Acclaim Otago’s suggestion that the following be added to the recommendations given in Para 9.33

If treatment continues as if ‘approved’ by ACC whilst ACC processes the request, it will increase ACC’s timeliness in making such decisions. It will also have the effect of removing the ‘burden’ for administrative delays from claimants and physiotherapists and place the responsibility firmly in ACC’s lap, the party who has the potential to cause the delay.

Decisions about further treatment

The decision whether or not the person has been rehabilitated to the maximum practicable extent should be a decision made between the treatment providers in consultation with their patient. Using the figures provided by ACC to the review the following shows how many people currently have treatment delayed or denied.

- Every year 8,000 claimants' treatment is 'interfered with' by ACC and by this we mean that treatment is delayed while ACC makes a decision about initial cover or further treatment.
- Every year 3,200 claimants' further treatment is denied.

It is unfair to target physiotherapy treatment in this way which is out of step with other forms of treatment. To illustrate this point - It would be seen as highly unusual and probably unethical for an orthopaedic surgeon to have gained prior approval for surgery and then to cease said surgery half way through because it was discovered the operation was more complex than first thought whilst they awaited further permission to continue with the surgery/treatment from a non treating professional at ACC.

The example is extreme, but I'm sure the point is not lost. Physiotherapy should not be treated any differently simply because is physiotherapy.

Denying Treatment

There are two issues as we see it in this category, neither of which we feel has been addressed fully in the draft report of the inquiry. These are:

1. Thousands of people are being denied treatment every year. As a rough estimate, since treatment profiles have been in place, some 15,000 people have been denied treatment outright, when their treating physiotherapist has stated that in their professional opinion they require further treatment in order to be rehabilitated to the maximum practicable extent.

2. Much harder to place a figure on is the number of people who have been denied treatment because their physiotherapists have not applied for pre-approval of further treatment. We do know however that this occurs from the anecdotal evidence we presented in our first submission. It would appear that some physiotherapists take this course of action because they don't want to raise the ire of ACC by falling outside the 'norm' of treatment profiles and thus become 'outliers'.

The draft report states:

Para 9.24 - There appears to be a strong case for ACC to develop a more sophisticated approach to the pre-approval of treatment

AND

Para 9.26 – Another option is for additional responsibility for confirming that additional treatment is necessary to be assumed by the treating physiotherapist. The treating physiotherapist could be authorised to approve a further number of treatments, provided they give a certificate to ACC that in their professional opinion, the further treatments are necessary.

AND

Para 9.36 – “....ACC has come to use their treatment profiles, with a strong focus on numerical ranges specified, and without the appropriate allowance for a lack of knowledge about the frequency with which actual cases fall outside the circumstances addressed in the profiles.”

We fully agree with the above comments. The ACC32 process already incorporates a physiotherapist specifically requesting additional treatment. Physiotherapists clearly make this application using their professional judgement in their capacity of treating practitioner. As stated in our first submission, physiotherapists should be given the ability to make treatment decisions about their own patients. Notwithstanding this ACC is currently arbitrarily declining further treatment. This must stop and physiotherapists must be respected for the decisions they make and listened to by ACC.

Our conclusions are as follows:

1. Claimants are being denied treatment when in their treating practitioner's opinion more treatment is justified and necessary.
2. Physiotherapists are being controlled by ACC and are hesitant to apply for additional treatment
3. The basis for declining treatment is an arbitrary numerical range which is based on straight forward injuries without complications.

Our recommendations are as follows:

- The system needs to be adjusted so that claimants are receiving the treatment they require, when they require it.
- ACC should not be able to arbitrarily deny treatment without someone physically examining the patient on ACC's behalf, or at the very least asking for a second opinion.
- The treating physiotherapist should be authorised to provide further treatments by providing ACC with a certificate which states that further treatment is required in their professional view.
- ACC should also pursue the initiative of identifying "advanced practitioners" who are able to exercise their own professional judgement to provide services over and above the level that would currently require ACC approval for all physiotherapists.
- ACC should pursue setting up a system for granting longer term approvals for treatment in chronic cases following appropriate clinical recommendation with input from the claimant and treating physiotherapist.
- The social responsibility should not be transferred on one hand to physiotherapists to treat patients for free, or on the other hand to ACC claimants, many of whom cannot afford to pay the full cost of treatment. This appears to be the way of the current system and must not be allowed to continue as it is completely out of step with the social contract underpinning the ACC scheme.

Trust between patient and provider

In our first submission we raised the issue of patient/physiotherapist relationships and the importance of trust. We acknowledge that whilst the contract between the EPN physiotherapist and ACC may not replace the contract between the physiotherapist and their patient, we believe the perception of claimants that we stated previously; namely that the EPN physiotherapist is not independent from ACC and that these physiotherapists will err on the side that pays them; namely ACC, is still accurate. We believe this aspect needs to be considered further.

Promotion of EPN providers

The suggestion to changing the name from ‘endorsed provider’ to ‘contracted provider’ has significant merit and we would endorse such a move to remove the impression that the ‘endorsed providers’ provide a higher quality service. (6.28 - 6.30)

We gave examples of people being contacted by their case manager and advised that if they attend an EPN provider the treatment will be free. We are pleased to see that this has been addressed in this draft and we endorse the fact that ACC needs to provide clear information and training to case managers about the inappropriateness of such recommendations. (6.31 – 6.32)

Informed consent

Informed consent was not an aspect raised by Acclaim Otago in its initial submission; however we do wish to express our views on this issue. As rightly acknowledged in the draft report whilst claimants do usually sign the ACC45 form agreeing to the collection and disclosure of information we venture that most would not actually understand the implications of signing such an agreement, in fact whether the declaration is actually read is also questionable. In other words there could be some doubt cast on whether the consent given is actually informed consent. Therefore we wholeheartedly support the recommendations made in 7.91; namely that it is made clear on the front of the form that

the patient consents to the disclosure of clinical information by the treatment provider to ACC.

Further, we support the view that it is reasonable for the treatment provider to request a copy of the authorisation before providing clinical notes if they themselves do not have a copy of clear authorisation to release such information on file themselves (7.98).

We also endorse the view that confidential personal information that the physiotherapist may hold as part of their clinical notes should not be released to ACC if not directly related to the injury for which entitlements are being provided (7.103)

Activity Based Programmes

As stated in our first submission Activity Based Programmes are viewed with suspicion by patients who are sent on them without their own treatment providers being consulted.

It is heartening to see that ACC has released a consultation document in relation to ABPs which expressly refers to consultation with the existing treatment provider before a referral occurs (1.51) Acclaim Otago fully endorses this approach.

ILO 17

This is another area that was not addressed in our original submissions but probably should have been. Claimants who suffer work injuries should not have to make co-payments to bring New Zealand in line with its obligations under International Labour Organisation Convention 17. This convention requires that the cost of work injuries be met by employers or insurers. The draft report makes several suggestions as to how this can be achieved and it is Acclaim Otago's view that physiotherapy services should be available without co-payment to people who sustain work injuries.

Options for resolution

Acclaim Otago reiterates its point from the first submission that if patients are denied treatment they do have the option of requesting a review of such a decision. The review process can take several months and if the review is unsuccessful the decision can then be

appealed to the District Court, in which case the patients can be waiting over 12 months to have the case heard. We believe this can have an extremely adverse affect on the person's ability to be fully rehabilitated and that there needs to be a quicker and faster way to resolve these issues. Perhaps with ACC's new focus on mediation and dealing with issues at the lowest level, this would be an ideal opportunity to 'case conference'. This would allow valid input from the treating healthcare professionals rather than moving to a confrontational, drawn out legal procedure.

As previously stated we believe that should a decision to decline or cease treatment ultimately be overturned at mediation, review or in court, reimbursement of reasonable costs including any payments made for treatment during the intervening period should be awarded as a matter of course.

Impact of injury on people and the importance of appropriate treatment

As stated in the Woodhouse Royal Commission Report, Para 58 - rehabilitation, (including physiotherapy) has a vital role to play in restoring people to the maximum practicable extent. The delay and/or denial of treatment, combined with the obvious cost shifting from the scheme designed to restore people to the maximum potential onto the injured person and society at large, is unacceptable.

“Any impediment to this should be regarded as a serious failure to safeguard the real interests of the man himself and the interest which the community has in his restored productive capacity.”

When treatment is denied or ceased before the injury is fully resolved, the impact that has is like a pebble being dropped into a pond. The ripples spread in ever increasing circles causing a myriad of consequences.

RECOMMENDATIONS

- Above all, the needs of the patient should be paramount. It is not right for ACC to make decisions about, and limit, Physiotherapy Treatment. People have a right to continue to be treated until either they are better, or the treatment is not helping.
- The system needs to be a system that is transparent and actually provides treatment to restore people's health to maximum practicable extent in a timely and efficient way with the least amount of stress for the patient.
- Treatment providers should be free to make clinical judgements without undue outside influence from the Accident Compensation Corporation or any other person or organization. They are after all the people best qualified to make such decisions.
- The ultimate result should be one that takes into account the person in context and the realisation that if a person is not fully restored to their maximum potential the costs to the community- including economic, social and personal costs are untenable and inexcusable.