

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND CLAUDIA HANHAM

Respondent

AND HOCKEY NEW ZEALAND

Interested Party

**DECISION OF TRIBUNAL
DATED 3 DECEMBER 2014**

Hearing 2 December 2014 by telephone conference

Tribunal Sir Bruce Robertson
Dr Jim Farmer QC
Paula Tesoriero

Present Paul David and Shaun Maloney, counsel for Drug Free Sport
New Zealand
Graeme Steel, Drug Free Sport New Zealand
Jude Ellis, Drug Free Sport New Zealand
Claudia Hanham, Respondent
Don MacKinnon, counsel for Claudia Hanham
Elizabeth and Jeff Hanham, in support of Claudia Hanham
Dr. John Collins, witness

Registrar Brent Ellis

Proceedings

1. Drug Free Sport New Zealand (DFS) alleged an anti-doping violation against Claudia Hanham (Claudia) who plays a number of sports at a representative level, namely hockey, touch rugby and tag. Samples were taken from her on 7 September 2014 and the A sample tested positive for Prednisone which is a specified substance under the Prohibited List under S9 (glucocorticosteroids) and as such is prohibited in competition. Claudia accepted the result without requiring analysis of the B sample. At the time of the testing she volunteered that she was taking Prednisone and disclosed it on the doping control testing form.
2. Due to an equipment malfunction, there was an unfortunate delay of 2 months before the result of the analysis was returned. DFS filed an application for Claudia's provisional suspension to the Tribunal on 10 November 2014. On 13 November Claudia was provisionally suspended without opposition on the basis that the Tribunal would expedite the hearing of the complaint. This the Tribunal did. DFS filed substantive anti-doping proceedings with the Tribunal on 19 November and the matter went to a substantive hearing on 2 December after written briefs of evidence and submissions had been filed and exchanged by the parties. Submissions were made by the parties as to what effects the delay should have on Tribunal's determination. Ultimately however, in the light of the Tribunal's decision, it is not necessary to give a ruling on this issue.
3. Claudia admitted the violation of SADR 3.1, namely that Prednisone had entered her body and that this constitutes a breach of the anti-doping rules. However, the status of that drug as a specified substance meant that the provisions of SADR 14.4 are potentially applicable. This gives the Tribunal a broader discretion as to penalty for a first breach provided that the athlete can show:
 - (1) how the substance entered her system; and
 - (2) the absence of an intention to enhance sport performance or to mask the use of a performance enhancing substance.

Evidence

4. Because the onus was on Claudia to satisfy the components of SADR 14.4, her case was presented first followed by DFS. She affirmed her written statement with a small change and was then cross examined at reasonable length by Mr David QC for DFS, principally as to her attendance at an anti-doping education seminar conducted by DFS and her understanding of the obligations of an athlete in relation to checking on whether a drug prescribed for a medical condition was prohibited. Her evidence was supported by evidence from her mother, Elizabeth Hanham, and from one of her consultant doctors, Dr John Collins, whom she consulted as to whether she could safely take part in sport after earlier being prescribed Prednisone and four other medical drugs (none of which, as we understand it, are prohibited).
5. For DFS, Graham Steel gave evidence as to the regular education sessions that DFS provides for high calibre sports men and women and exhibited the detailed slides that are presented at such sessions. He very fairly testified however that he could not say with certainty that at the more recent session attended by Claudia, at North Harbour Hockey, in January 2013, a full presentation with all the slides was made, this being dependent on the extent of the facilities available at that location. On the evidence, it is reasonable to conclude however that the main points of the anti-doping regime would have been presented at that session.
6. The only previous session attended by Claudia was some 5 years earlier when she was aged 14 or 15. Claudia on cross examination was fairly sure that she had not seen many of the slides that Mr David carefully took her through though she recalled that there had been stressed at the session the need to ask a doctor about any medication and its potential effects on the sports drug regime.

Claudia's health

7. Claudia began to experience a number of health problems in 2013. In February and March 2014 she attended two doctors, one of whom diagnosed systemic lupus erythematosus and prescribed medication for that. However, a short time later at the end of March, after she had experienced severe chest pain, she was admitted to North Shore Hospital where, after tests, she was diagnosed as having Stage 4 kidney nephritis. This is an extremely serious condition which Claudia and her mother were told could result in kidney failure and early mortality. Dr Collins confirmed this diagnosis in evidence and said that Class 4 Lupus nephritis is "life-threatening with a 5 year 50% combined mortality or end stage kidney rate if untreated".
8. Dr Collins also said that Prednisone was "not in any way performance enhancing". Indeed, he went further and said that its side effects can include infection and muscle wasting. This raised the natural question of why it was prohibited but Mr David said that it was within the general group of steroids, some of which of course are performance enhancing. However, Dr Collins did make the point that, because of the characteristics just described, he "had no reason to believe that this medication might raise concerns with regard to drug testing agencies for sportspeople".
9. After the diagnosis referred to by North Shore Hospital, Claudia had a very high dosage of Prednisone (plus the other medication referred to) prescribed immediately. She has remained on those drugs, though at a diminishing level, over the last 7 months. At the time of her diagnosis, North Shore Hospital strongly recommended that she stop playing sport for the foreseeable future. Her mother testified that this initially had adverse effects on Claudia's emotional well-being and on her ability to concentrate and on her self-confidence and self-esteem. This evidence was not surprising given the fact that her life revolved around competitive sport (extending also to coaching and sport studies).

10. Claudia and her parents went to Dr Collins on 8 April to obtain his view on whether she could safely participate in sport notwithstanding her condition and the medication that had been prescribed. He pointed out to Claudia the risks that she would face, including injuries that could lead to secondary infection, and muscle wasting which would reduce her capacity to perform optimally. Claudia did resume active sporting activities, principally hockey, and also successfully completed her studies for the first semester. In reviewing her on 8 July, Dr Collins said that this was excellent given her serious medical problem. On a further review on 23 September, Dr Collins recorded that Claudia was keeping physically very well apart from an episode of chest pain that took her to the Emergency Department of the Hospital and that she was continuing her studies at the AUT. He concluded that she was now in remission but that it would be advisable to continue with medication including a dosage of Prednisone. In his evidence to the Tribunal, Dr Collins said that he found it impressive that Claudia was able to continue to function competitively given the inevitable detrimental effects of Prednisone on her ability to perform.
11. DFS acknowledged fairly that Claudia is to be commended for the efforts that she has made to rehabilitate herself. The Tribunal agrees.
12. On 14 November 2014 an application was made on Claudia's behalf to the Therapeutic Use Committee of DFS for a Therapeutic Use Exemption (TUE). It was granted on 19 November 2014. The TUE authorises her continuing use of the medication containing the Prednisone. Had this been applied for earlier in the year the violation would not have occurred.

Submissions

13. DFS submitted that Claudia should be subject to a 1 to 2 month suspension. Given that the provisional suspension order was made on 13 November 2014, this would mean that she would be suspended until either 13 December 2014 or 13 January 2015. Claudia is keen to participate in hockey and rugby events that are scheduled for December. DFS argues that this is irrelevant to the determination that this Tribunal must make and we tend to agree.

14. Mr MacKinnon for Claudia argues that in the circumstances a reprimand is a sufficient and appropriate sanction. He relies on 2 earlier decisions of the Tribunal – *Drug Free Sport New Zealand v Peter Martin* (ST 03/12, reasons for decision 9 August 2012) and *Drug Free Sport New Zealand v Tom (Zig Zag) Wallace* (ST 15/08, decision 5 March 2009) – in which athletes received reprimands only. Mr David, for DFS, cited a number of other authorities – notably *Drug Free Sport New Zealand v Anna Bramley* (ST 03/11, Decision 20 June 2011) – in which periods of suspension were imposed. It was accepted by both counsel that cases are always fact specific, though the Tribunal should strive for broad consistency and exercise its discretion in a principled way.
15. A factual issue that ultimately is at the heart of the case was whether Claudia had acted with sufficient diligence to a level that satisfies the “utmost caution” test in endeavouring to ascertain whether Prednisone was a prohibited substance. Her evidence was that, after seeing Dr Collins, she had decided herself to undertake a search of the WADA web site. She searched the website and found a link to the 2014 WADA Prohibited List. She clicked on the link and opened the pdf document of the Prohibited List. She did a search of the Prohibited List by the standard method of searching a pdf (pressing either control-F or command-F and entering the required search term in the pdf search box that pops up). She entered “Prednisone” in the pdf search box. The answer was given that “no matches were found”, which is the standard response when a searched term is not found in any pdf document. She also entered the other drugs that she had been prescribed in the pdf search box with a similar result. She did not search the rest of the WADA website for Prednisone as she understood that the Prohibited List contained all the banned substances.
16. Mr Steel for DFS fairly confirmed that Prednisone would not have been revealed as a prohibited substance by the WADA website, even if she had searched the rest of the website. However, he exhibited a screen shot of a search of the WADA website for Prednisone that, although returned the response “no results for Prednisone” also stated, in general terms, that an

athlete was referred to his or her national anti-doping organisation. He testified that a search of the DFS website would have revealed that Prednisone was a prohibited substance. Counsel for DFS then argued that Claudia had failed to exercise "utmost caution" and that her degree of fault in that respect warranted a suspension rather than a reprimand. Both in cross examination of Claudia and in submissions, he stressed that the first port of call should always be to DFS. The point was also made that Claudia had not made enquiry of her National Sporting Organisation or spoken to a coach about the matter.

Decision

17. The Tribunal agrees that ideally an athlete should make enquiries of more than one source apart from the obvious one of raising the matter with the treating doctor. The clear obligation is on and remains with the athlete. In the present case, the evidence of Claudia and her mother was that they had told Dr Collins that she was competing at a representative level. Dr Collins on questioning said that while he knew she played representative sport, he did not believe he had been told she was subject to testing for doping. We rather thought, as everyone seemed to have accepted, that perhaps Dr Collins and Claudia were "talking past each other". This fact perhaps emphasises the need for athletes to be very explicit about their situation when consulting doctors. Not all doctors will have knowledge of what is prohibited and what is not. In Dr Collins' case, given his view that Prednisone strongly diminished, rather than enhanced, athletic performance, it is not surprising that the discussion on this matter would have been relatively cursory. In saying that, we do not preclude the possibility that in other fact situations – for example, where the prescription of Prednisone is short term only – that a doctor might not come to the same conclusion that Dr Collins did in the present case.
18. In our view, while Claudia took the initiative of going to the WADA website and searching the Prohibited List to check if prednisone was a prohibited substance, there is strength in the position taken by DFS that it, rather than WADA, is the more natural place for making this enquiry. That is

particularly so given the fact that at its drug education seminars emphasis is put on the fact that an athlete should call DFS if in doubt.

19. Claudia clearly is not a drug cheat and was a young woman subject to a sudden and serious life threatening medical situation requiring treatment. While she should in hindsight have made better inquiries, in these particular circumstances a reprimand is all that is required. The importance of her obligation is underlined by the period of suspension under the provisional order.
20. The decision of the Tribunal is that Claudia is not suspended but is reprimanded.

Dated 3 December 2014



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Dr Jim Farmer QC
Deputy Chair