

Background

1. On 17 May 2022 Taane Samuel (athlete) was tested following a basketball game. The result was positive for Methylenedioxymethamphetamine (MDMA) which is a specified substance, prohibited in-competition, under class S6 Stimulants on the WADA 2022 Prohibited List. On the doping control form he did not list any medications or substances that he had taken.
2. Drug Free Sport New Zealand (DFSNZ) advised the athlete of his positive test by email on 5 August 2022 and in person on 10 August 2022.

Circumstances leading to adverse analytical finding

3. It is accepted that the athlete unwittingly consumed a drink provided to him containing dissolved MDMA powder at a private social event on 14 May 2022. The athlete realised the true nature of its contents soon thereafter.
4. Two days later, he competed in a National Basketball League fixture following which he was subject to anti-doping testing, which proved positive for MDMA following testing at WADA-accredited laboratories contracted by DFSNZ. He did not declare his out-of-competition consumption of MDMA in the belief that MDMA had no performance enhancing effect during the game and was out of his system by that time.

Proceedings

5. On 5 August 2022, DFSNZ applied to the Tribunal for provisional suspension for alleged violation of Rules 2.1 and 2.2 of the Sports Anti-Doping Rules 2021 (SADR).
6. The athlete was provisionally suspended without opposition on 19 August 2022. On 26 August 2022, DFSNZ filed substantive anti-doping rule violation proceedings with a memorandum seeking directions regarding the application of SADR 10.2.4, which provides for a reduced sanction if an athlete completes an approved "substance of abuse" treatment programme.
7. DFSNZ accepts that the athlete's consumption of MDMA was out-of-competition and not for any performance enhancing effect, therefore SADR 10.2.4 is engaged.
8. The athlete admitted the violation and requested the opportunity to participate regarding sanction. He said that he was in the process of registering with a doctor for a suitable treatment programme and meanwhile the provisional suspension ran on.
9. On 31 August 2022, the athlete provided evidence of a referral by a qualified medical practitioner to a psychiatrist for drug education assessment and treatment under SADR 10.2.4.1 and sought that such treatment as the psychiatrist may prescribe be approved by DFSNZ under that rule.

10. On 8 September 2022, DFSNZ approved in principle the athlete's proposed approach to sourcing professional treatment and on 9 September he advised through counsel that his first appointment for assessment would be with the psychiatrist in the week of 12 September 2022.

Rules

11. SADR provides:

4.2.3 *Substances of Abuse*

For purposes of applying Rule 10, *Substances of Abuse* shall include those *Prohibited Substances* which are specifically identified as *Substances of Abuse* on the *Prohibited List* because they are frequently abused in society outside of the context of sport.

10.2.4.1 where an ADRV involves a *Substance of Abuse*:

If the *Athlete* can establish that any ingestion or *Use* occurred *Out-of-Competition* and was unrelated to sport performance, then the period of *Ineligibility* shall be three months *Ineligibility*.

In addition, the period of *Ineligibility* calculated under this Rule 10.2.4.1 may be reduced to one month if the *Athlete* or other *Person* satisfactorily completes a *Substance of Abuse* treatment program approved by DFSNZ. The period of *Ineligibility* established in this Rule 10.2.4.1 is not subject to any reduction based on any provision in Rule 10.6.

Comment on Rule 10.2.4.1 states:

The determinations as to whether the treatment program is approved and whether the Athlete or other Person has satisfactorily completed the program shall be made in the sole discretion of the Anti-Doping Organisation. This Article is intended to give Anti-Doping Organisations the leeway to apply their own judgment to identify and approve legitimate and reputable, as opposed to "sham", treatment programs. It is anticipated, however, that the characteristics of legitimate treatment programs may vary widely and change over time such that it would not be practical for WADA to develop a mandatory criteria for acceptable treatment programs.

Rule 7.4.1 reads:

7.4.1 *Mandatory Provisional Suspension after an Adverse Analytical Finding or Adverse Passport Finding*

When an *Adverse Analytical Finding* or *Adverse Passport Finding* (upon completion of the Adverse Passport Finding review process) is received for a *Prohibited Substance* or a *Prohibited Method*, other than for a *Specified Substance* or *Specified Method*, a *Provisional Suspension* shall be imposed promptly upon or after the review an notification required by Rule 7.2.

A mandatory *Provisional Suspension* may be eliminated if:

- (i) the *Athlete* demonstrates to the *Sports Tribunal* that the violation is likely to have involved a *Contaminated Product*, or
- (ii) the violation involves a *Substance of Abuse* and the *Athlete* establishes entitlement to a reduced period of *Ineligibility* under Rule 10.2.4.1.

The Sports Tribunal's decision not to eliminate a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

Discussion

12. This is the second case in New Zealand under this Rule introduced by the revised 2021 Code, which encourages a proactive approach to substance abuse treatment and emphasises athlete health.
13. SADR recognises “substances of abuse” as illegal drugs misused in society, and frequently used with no context of sports enhancement. The Rules provide flexibility for a substantial reduction in sanction if used out-of-competition and unrelated to sports performance, as in this case, and a further reduction is possible if an approved treatment programme is completed.
14. In New Zealand, there are few “off-the-shelf” treatment programmes appropriate for recreational drug users, and timely access to specialists to prescribe an appropriate treatment may prove difficult. The feasibility of athletes in the position of Mr Samuel to be professionally assessed and to complete a programme within a month of imposition of a provisional suspension from activity is low. The Tribunal recommends that DFSNZ consider the merits of endorsing a suitable short programme, potentially cost-recoverable from the athlete, for cases of this nature.
15. The course proposed jointly by the parties is that the provisional suspension be set aside from the date of this determination and a one-month suspension be formally imposed, with recognition of the time the provisional suspension has had effect. If the prescribed treatment programme is not completed, the two-months' balance of the three-month suspension will be imposed.
16. The Tribunal accepts the merits of this proposal in principle, without the need for a hearing, albeit with minor modifications to ensure that the athlete participates in the treatment programme in a timely way and provides evidence of such.

ORDERS AND DIRECTIONS

17. The Tribunal orders and directs as follows:

- 1) Subject to paragraph 17(2) below, a period of ineligibility from participation in any event or activity organised, sanctioned or authorised by Basketball New Zealand or by any other sporting organisation that is a signatory to the SADR, of one month, is imposed on the athlete under R. 10.2.4.1, commencing on 19 August 2022.
 - 2) The one-month suspension referred to in paragraph 17(1) above is conditional upon completion by the athlete of the treatment programme prescribed by Dr Felisa Rodan.
 - 3) The athlete must advise DFSNZ of the indicative date of the completion of the treatment programme and update DFSNZ at the end of each calendar month as to the treatment programme.
 - 4) The athlete is responsible for providing evidence satisfactory to DFSNZ that the treatment programme has been completed.
 - 5) DFSNZ shall indicate to the athlete no later than 5 working days after receiving such evidence referred to in paragraph 17(4) above whether it is satisfied that the treatment programme has been completed, copying the Tribunal.
 - 6) The one-month Provisional Suspension imposed on 19 August 2022 is set aside, and the athlete is entitled to have the time since then (29 days to the date of this decision) credited against the ineligibility period under paragraph 17(1).
 - 7) Costs are not ordered, as none are sought, but they are reserved should DFSNZ wish to apply.
18. The Tribunal further directs as follows:
- 8) Where DFSNZ has notified the athlete of its dissatisfaction of treatment completion, its notice shall serve as an application to the Tribunal for imposition of a revised period of ineligibility of 3 months, whose end date will take into consideration any period of ineligibility served commencing from 19 August 2022. The Tribunal reserves its powers to amend the conditional order in paragraph 17(1) above.
 - 9) For the avoidance of doubt, the athlete is eligible to participate in sport between 19 September and such time that the Tribunal makes any determination following an application made pursuant to paragraph 18(1).
 - 10) This determination should be the final determination by the Tribunal in this matter, and it may be published in the usual way.

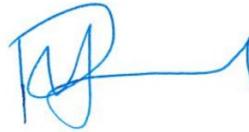
Dated: 16 September 2022

Nicholas Davidson

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The Hon. Nicholas Davidson KC
Deputy and Acting Chair



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Georgina Earl
Member



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Pippa Hayward
Member