WCAT Decision Number: WCAT-2004-00061-RB
WCAT Decision Date: **January 09, 2004**
Panel: Baljinder Chahal, Vice Chair

Introduction

The worker appeals a decision of an officer of the Workers' Compensation Board (Board) dated February 14, 2002. The Board denied the worker's request for reimbursement for narcotic medications.

Issue(s)

At issue is whether the Board has acted within the authority and accordance with section 21(6) of the *Workers Compensation Act* (Act) by restricting the worker's entitlement to healthcare benefits in the form of narcotic medication.

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and the Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it (section 254).

Background and Evidence

The worker was employed as a truck driver when he sustained injury to his lower back while driving on rough terrain on December 5, 1990. His claim was accepted for a soft tissue injury. The Board terminated his benefits as of March 8, 1991 as the worker was considered to have recovered from his December 5, 1990 injury.

His benefits were reinstated as a result of a Medical Review Panel (MRP) certificate dated September 18, 1993. The MRP certified that the worker's 1986 compensable injury resulted in pain in the neck, back and right buttock by the production of muscle sprain. The MRP also certified that the aggravation of December 5, 1990 resulted in the process of fibromyalgia. The MRP concluded that the worker had a disability consisting

of fibromyalgia, resulting in pain, stiffness, dysasthesias, restriction of movements and disturbed sleep. On September 2, 1994 the worker was advised that narcotic medications were not accepted under the claim. On March 3, 1996 a Disability Awards claims adjudicator (DAMA) notified the worker that he had not been left with a significant impairment of function that would in the long term affect his earning capacity. Therefore, no award was payable on the claim. The worker appealed this decision to the Review Board.

On May 23, 1997 the Review Board allowed his appeal and found that the worker was entitled to an award equal to one percent of a totally disabled person for his back injury and an additional one percent for the subjective complaints. The Review Board also found that the worker was physically precluded from gainful employment due to the effects of his compensable injury and that he was entitled to a pension equal to 100 percent of a totally disabled person from September 17, 1994 when the worker's condition was considered to be plateaued until the date of the finding, with further entitlement to be determined by the Board.

The claim is presently accepted for low back injury and fibromyalgia. The worker presently receives a two percent pension, one percent for his back and one percent for subjective complaints.

After reviewing the worker's drug profile as noted in the log entry of February 7, 2002 a medical advisor recorded his opinion with regard to the use of medication in the log entry of February 13, 2002. He made the following recommendations:

> The worker's claim is accepted for fibromyalgia and low back pain. I note that there is a decision on file dated 1994 that narcotics and benzodiazepines should not be paid for. Therefore the following medications would not be covered:
> Acetaminophen and Codeine
> Tylenol #3
>
> The worker appears to be on several non-steroidal anti-inflammatory agents:
> Indomethacin 100 mg
> Ketorolac 10mg
> Ibuprofen 600mg
>
> More recently he seems mainly to be on Ibuprofen 600 mg TID
> With regard to these medications it would seem reasonable that they be covered. However in future I would recommended limiting his treatment to one medication in this class, namely Ibuprofen 600mg TID and this might reasonably be provided via a pharmacy card.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

> He also appears to be taking amitryptilline 50 mg daily. This is reasonable and is a common medication in treating fibromyalgia. It would be quite suitable for a pharmacy card.
> It appears that he receives prescriptions for Gabapentin or Neurontin, 300mg daily. This is also commonly prescribed in pain syndromes like fibromyalgia and so would be reasonable on this claim and also reasonable for a pharmacy card.
> I note that he also had one prescription for diclofenac in phlojel which is a topically applied anti-inflammatory. Without medical documentation I would suggest the Workers' Compensation Board not pay for this medication as it is in the same category as described above.
>
> [reproduced as written]

On February 14, 2002 the Board conveyed the medical advisor's opinion concerning the use of medication to the worker. The Board authorized a reimbursement of receipts for Ibuprofen, Amitriptyline, Gabapentin or Neurontin. However, the Board advised the worker that Acetaminophen, Codeine and Tylenol #3 or any narcotic medication was not covered by the Board.

On May 10, 2002 the worker appealed the Board's decision and submitted a letter from his attending physician dated May 7, 2002. In this letter the attending physician noted that he agreed with respect to the use of Ibuprofen, Amitriptyline, Gabapentin and commenced the patient on morphine sulphate in the form of M-Esilon.

On June 12, 2003 the worker submitted another letter from the attending physician dated June 10, 2003. In this letter the attending physician noted that the worker was using Tylenol #3 and Duragesic as well as Amitriptyline, Ibuprofen and Toradol. He asked the Board to review their denial for reimbursing the worker's narcotic analgesia. In his view this was an accepted method of pain control and non-malignant pain. He stated that the worker had been constant with no evidence of misuse.

Reasons and Findings

This decision was made following a review of the file documents. I have examined all the documents in the claim file as well as the worker's submissions. The employer did not participate in this appeal.

Section 21(1) of the Act sets out that the Board may provide for the injured worker any medical, surgical, hospital, nursing and other care or treatment that it considers reasonably necessary at the time of injury and thereafter during the disability to cure and relieve the effects of the injury or alleviate those effects. This provision of the Act also provides the Board with authority to adopt rules and regulations with the respect to furnishing healthcare to injured workers entitled to it and for the payment of it. Section 21(6) of the Act states as follows:

> Healthcare furnished or provided under any of the proceeding subsections of this section, must at all times be subject to the direction, supervision and control of the Board…

Chapter 10 in the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) sets out the Board's policies on providing medical assistance and benefits. Item #77.00 sets out the Board's policy that allows the Board to provide health care benefits in the form of drugs. Item #77.30 of the RSCM sets out the Board's policy regarding the prescribing of narcotics and other drugs of addiction as follows:

> The following policy applies:
>
> 1. Board responsibility for narcotic analgesics, hypnotic-sedatives and tranquilizers (see examples in Table 1) will be limited to a post-injury or post-surgery period of eight weeks. An extension of this eight-week period may be considered, however, where there are special or extenuating circumstances; for example, where a worker has received, or will receive, a permanent disability pension and requires regular **intermittent and limited** narcotic preparation for the relief of pain.
> 2. If an Adjudicator or Payment Clerk continues to receive accounts for these drugs beyond the eight-week limit, the worker's claim file will be referred by the Adjudicator to a Board Medical Advisor. The Board Medical Advisor will contact the attending physician by phone where possible, outline the details of this policy, and discuss any special or extenuating circumstances. The Board Medical Advisor will also discuss the use of acceptable therapeutic alternatives such as: N.S.A.I.D.'s, anti-depressives, T.N.S., biofeedback. If necessary, an extension beyond eight weeks may be recommended by the Board Medical Advisor following this discussion.
> 3. The Board Medical Advisor's discussion and resulting recommendation will then be documented in a memo on the worker's claim file and referred to the Adjudicator.
> 4. The Adjudicator's decision will be communicated in writing to the worker with a copy to the attending physician.

In this case, the Board medical advisor carried out the drug review as required in the Board policy and recorded his opinion in the log entry of February 13, 2002. In that memo the medical advisor noted that Acetaminophen, Codeine and Tylenol #3 were not allowable as per Board policy. I note that there is no indication that the use of narcotic analgesics were discussed with the worker's physician as outlined in #77.30 of the RSCM. The medical advisor in the log entry of February 13, 2002 simply has set out what drugs may be acceptable and what may not, without any discussion of the worker's circumstances and side effects from other previous drugs.

Previously, on September 2, 1994 the Board conveyed the medical advisor's opinion concerning the use of narcotic medication to the worker. At the time of the decision letter of September 2, 1994 the worker was invited to consult his physician regarding discussion on the use of narcotic drugs. There is no indication that the worker appealed this decision. There is also no indication of consultations between the Board and the worker's family physician. The letters from the family physician note the worker frequently requires analgesics but does not outline any extenuating or unusual circumstances which would be a reason to vary from the Board's policy.

With regard to the discretion and control of drug treatment, I note that there is a well laid out policy that the Board must follow to ensure that the worker is receiving appropriate medication, but also receiving medication that is not going to harm the worker.

I find that the Board is not responsible for supporting narcotic medications. The evidence established the worker also takes regular anti-inflammatory and other non-narcotic medications required for his condition. The policy at item #77.30 notes that acceptable therapeutic alternatives such as N.S.A.I.D., anti-depressants, TNS and biofeedback are supported. If the worker is using these modalities under his physician's direction, the Board should consider covering the costs.

As the Review Board recognised the worker's ongoing disability, and the worker has indicated that the various medications he is presently taking are not providing sufficient relief, I recommend that the Board have a Board medical advisor contact the worker's physician to determine the medication intake program that will help the worker. I find that the Board has reasonably directed and controlled the use of narcotic medications, but needs to have further discussions between the Board medical advisor and the attending physician.

Conclusion

In summary, I deny the worker’s appeal with regard to the ongoing payment of narcotic medication. However, I direct the Board to further develop an alternative medication management program for the worker through consultation with the worker’s attending physician. No appeal related costs were identified and none are awarded.

Baljinder Chahal
Vice Chair

BC/eca

Workers’ Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

Workers' Compensation Appeal Tribunal
150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898