

Noteworthy Decision Summary

Decision: WCAT-2003-02217-RB **Panel:** D. Van Blarcom **Decision Date:** August 26, 2003

Chiropractors - Duration of treatment – Policy Item #74.21 of the Rehabilitation Services and Claims Manual

The worker strained her back and obtained treatment from a chiropractor. The worker appeals the decision that denied her compensation beyond eight weeks of treatment. The panel found that policy item #74.21 of the *Rehabilitation Services and Claims Manual* strongly encourages the Workers' Compensation Board (Board) medical advisor to examine the worker in order to decide whether to extend treatment. In this case no such examination occurred. In addition, while the medical advisor stated that there was not objective evidence of recovery with the chiropractic treatment, there was evidence in this regard from the chiropractor and the general physician. The Board medical advisor erred in the decision not to support a continuation of the chiropractor's treatments.

WCAT Decision Number :

WCAT-2003-02217

WCAT Decision Date:**August 26, 2003****Panel:**David Van Blarcom, Vice Chair

Introduction

The worker strained her back and obtained treatment from a chiropractor. The chiropractor wrote the Board asking that the worker be examined by a Board medical advisor and that chiropractic treatments be extended for another four weeks.

The request was referred to a Board medical advisor. She did not examine the worker but said the worker had been attending chiropractic treatment for eight weeks without objective evidence of recovery. She said chiropractic treatment did not appear to have been successful and, "as per Board policy", an extension was not indicated.

The worker appealed to the Review Division, asking that she be compensated for chiropractic treatments through the duration of her graduated return to work. She complained that the Board made its decision without an examination by the Board medical advisor.

Issue(s)

Should the worker be compensated for chiropractic treatments beyond eight weeks?

Jurisdiction

The worker appeals a Review Division decision dated April 15, 2003.

This is an appeal by way of rehearing, rather than an appeal *de novo* or an appeal on the record. WCAT has jurisdiction to substitute its own decision for the decision under appeal.

I must make this decision based on the merits and justice of the case, but in so doing I must apply a policy of the board of directors that is applicable in this case. This compensable injury occurred after June 30, 2002. I therefore find the applicable policy is found in the *Rehabilitation Services and Claims Manual, Volume 2* (RSCM).

Background

The worker injured her low back on November 7, 2002. She was helping a patient transfer when his knees buckled, throwing his weight onto the worker. Her general

physician referred her to a chiropractic clinic, where she was first seen about a month after the injury.

The worker's general physician reported on December 23, 2002 that the worker's condition was improving. Spasm that had been reported earlier was no longer reported. The chiropractor saw the worker on December 27, 2002 and he also reported the worker was continuing to improve. She had increased activity and decreased pain. Daily exercise was increasing her strength, although chiropractic adjustment was also used.

The chiropractor wrote the Board on January 10, 2003 that the worker's progress had been steady and positive and that a graduated return to work would be implemented within two weeks. He requested a four-week extension in chiropractic treatment for the duration of the graduated return to work.

The case manager told the chiropractor on January 15, 2003 that treatment had been approved for the eight weeks from December 2, 2002 until January 27, 2003, but that the advice of a Board medical advisor was needed to extend treatment further.

The employer told the Board on January 23, 2003 that he would prefer that the worker have chiropractic treatment during a graduated return to work, rather than a work conditioning program, as he was concerned the worker might be injured in a work conditioning program.

The Board medical advisor did not examine the worker or refer her to a specialist, but wrote in a memo dated January 27, 2003 that the worker had been attending chiropractic treatment for eight weeks without objective evidence of recovery. She said chiropractic treatment did not appear to have been successful and, "as per Board policy", an extension was not indicated. The Board medical advisor recommended a work conditioning program, which would include a medical assessment. The decision denying the extension was conveyed to the worker in a letter dated January 23, 2003, which is the basis of this decision.

In her report of January 28, 2003, the worker's general physician recommended that, during the graduated return to work, the worker should have a further two weeks of chiropractic treatment, as the treatments had given her a great deal of benefit. The worker was feeling 70 percent improved, but still had pins and needles in her left leg.

The Board medical advisor spoke with the worker's general physician on February 10, 2003, when the general physician was to give the worker a complete examination. The worker's doctor found no neurological signs in that examination – although there was occasional tingling in the left leg, the frequent weakness had resolved. She was limited by pain.

The Board medical advisor therefore agreed that there was no need for a work conditioning program and that a graduated return to work program would be appropriate. The worker completed the graduated return to work program by March 14, 2003. During that time, she continued seeing her chiropractor, without the financial support of the Board.

The policy for duration of treatment by chiropractors is set out in item #74.21 of the RSCM and says:

After eight weeks of treatment by a chiropractor . . . the claim must be referred to a Board Medical Advisor for review. The Board Medical Advisor will decide whether a continuance of treatment by the chiropractor should be authorized. It is necessary when such a request is received that the medical factors be considered and the various options evaluated. The main options which should be considered in order of preference are:

1. Have the worker examined at the Board.
2. Refer the worker for an orthopaedic or other appropriate specialist consultation.
3. Agree to an extension.

Giving preference to an examination by a Board Medical Advisor is simply an effective method of determining whether options 2 or 3 are necessary or appropriate, or whether some other approach or decision is indicated. The third option is generally limited to situations where recovery appears imminent. The Board Medical Advisor should be satisfied that the worker's condition is improving. The duration of additional chiropractic treatment must be clearly designated, including the frequency of the treatments. Any extension should be limited to a maximum of four weeks.

Where a request is received for an extension beyond this point, approval cannot be granted unless an examination is carried out by a Board Medical Advisor or there has been a specialist consultation. It is expected that extensions beyond 12 weeks would only occur in rare and unusual circumstances.

The reasons for accepting or denying a request for an extension of chiropractic care must be recorded on the claim and since it is a decision that is reviewable by the Review Division, it must be communicated in writing by the Board officer to the worker and the chiropractor. When recording their opinions on claims, Board Medical Advisors should clearly define the reasons in support of their recommendations by outlining in what way an extension may produce an improvement in the worker's condition, or alternatively, why further treatments are likely to be ineffective. . . .

The Review Division interpreted the policy as saying that an “at Board” examination was preferred, but an examination was not required. In the panel’s view, the Board medical advisor had complied with the second option in concluding that referral to a specialist (the work conditioning program physician) was appropriate.

In this appeal, the worker has included a summary of her accounts with the chiropractor, showing that she continued treatment from January 30, 2003 until March 25, 2003.

The worker submits that if the Board medical advisor had examined her, she would have agreed that continued chiropractic treatment was indicated. The worker notes that both her general physician and her physiotherapist supported continued chiropractic treatment.

Reasons and Decision

The policy strongly encourages the Board medical advisor to examine the worker in order to obtain the facts needed decide to whether to extend treatment. While not mandatory, it says a Board medical advisor “should” consider that option in reviewing whether a continuance of treatment should be considered. The Board medical advisor is only relieved of that recommendation when agreeing to extend the treatment.

I disagree with the review officer that this was done by planning to refer the worker to a work conditioning program – the decision to deny the extension had already been made without the benefit of such an assessment.

The policy also says the Board medical advisor “should clearly define the reasons in support of their recommendations by outlining . . . why further treatments are likely to be ineffective”.

In this case, in the absence of an examination, the Board medical advisor has said there had not been objective evidence of recovery with the chiropractic treatment. I find this is not supported by the evidence that was available to the Board medical advisor. The chiropractor and general physician both reported improvement with objective signs such as strength, neurological signs, and absence of spasm.

I also find the improvement in subjective signs, such as pain and tingling, may be considered. I note that the chiropractor was not limiting his treatment to traditional chiropractic adjustments, but was also including physiotherapy-type treatments such as exercise to strengthen the trunk muscles.

I therefore find the Board medical advisor erred in her decision not to support a continuation of the chiropractor’s treatments. The worker will be reimbursed the cost of her chiropractic treatments in the four weeks beginning January 30, 2002, not

exceeding one treatment per day. The four week extension is in accordance with the request of the chiropractor.

Conclusion

The Review Division decision is varied. The worker will be reimbursed the cost of her chiropractic treatments in the four weeks beginning January 30, 2002, not exceeding one treatment per day.

David Van Blarcom
Vice Chair

DVB/rbe