

## Noteworthy Decision Summary

---

**Decision:** WCAT-2011-01673A **Panel:** Susan Marten **Decision Date:** November 1, 2011

### ***Item #16.1.3 of the Manual of Rules of Practice and Procedure – Reimbursement of Appeal Expenses – Expert Opinion***

The WCAT *Manual of Rules of Practice and Procedure* (MRPP) explains to both workers and employers that if they want reimbursement of appeal expenses they should make a request to the WCAT panel at the oral hearing or in their written submissions. The panel will decide whether or not to order the Workers' Compensation Board, operating as WorkSafeBC (Board), to reimburse the appeal expenses.

The MRPP is publicly accessible on WCAT's website ([www.wcat.bc.ca](http://www.wcat.bc.ca)). The WCAT website also provides information about the Board's fee schedules for various expenses. Given the clear guidelines in the MRPP, it is helpful if the party provides information regarding expenses without a specific request by the WCAT panel. It is advisable that a worker or employer (or their representative) check the listing of the fee schedules. If the expense of an item is greater than the amount set out in the Board's fee schedule and full reimbursement is requested, the worker or employer then need to explain to the WCAT panel why an amount greater than the fee schedule should be reimbursed. Item #16.1.3.1 of the MRPP states that a party seeking reimbursement of an expert opinion must also provide a copy of the request to the expert and the expert's bill or account.

In this case, while considering the merits of the appeal, the panel was unclear whether the worker was seeking appeal expenses. There was a medical-legal opinion on the file but the worker had not sought expenses or provided an invoice. The panel decided the merits of the appeal in the worker's favour, found that the medical-legal report was helpful and decided to remain seized of the issue of expenses under item #20.1.3 of the MRPP. The worker's representative requested reimbursement, and attached an invoice that was greater than the amount specified in the Board's fee schedule but did not provide an explanation of the circumstances.

A WCAT panel has the discretion to award reimbursement of an expert opinion in an amount greater than the fee schedule in limited circumstances. Examples of these limited circumstances including the difficulty of the case requiring significant time and effort, the length of the report, and/or whether the additional detail and analysis of the report is uncommon. In the absence of a request for reimbursement in excess of the Board's fee schedule and a satisfactory explanation of the circumstances, WCAT will limit reimbursement to the fee schedule amount. In this extraordinary and complex case, the panel decided to inquire further, and convened a teleconference.

The panel found that the worker's case was difficult and required significant time and effort. The physician reviewed the literature regarding methacholine challenge testing. The panel found the detail and analysis in the report was uncommon. The panel ordered the Board to reimburse the full amount charged for the report.

**WCAT Decision Number :**

**WCAT-2011-01673A (Addendum)**

**WCAT Decision Date:**

**November 1, 2011**

**Panel:**

Susan Marten, Vice Chair

---

## Introduction

- [1] In *WCAT-2011-01673*, dated June 30, 2011, I allowed in part the worker's appeal of Review Decisions #R0102858 and #R0116607, dated June 30, 2009 and December 6, 2010 respectively.
- [2] When I was addressing this appeal, it was unclear to me whether the worker was seeking appeal expenses. The Workers' Compensation Appeal Tribunal's (WCAT) *Manual of Rules of Practice and Procedure* (MRPP) explains to both workers and employers that if they want reimbursement of appeal expenses they should make a request for reimbursement to the WCAT panel at the oral hearing or in their written submissions. The WCAT panel will decide whether or not to order the Workers' Compensation Board (Board<sup>1</sup>) to reimburse appeal expenses.
- [3] The MRPP is a publicly accessible document on WCAT's external website ([www.wcat.bc.ca](http://www.wcat.bc.ca)). The MRPP also explains that WCAT generally orders reimbursement of appeal expenses in accordance with the fee schedule (if applicable) used by the Board.
- [4] WCAT's external website also provides a listing of appeal expenses, which sets out an expense reimbursement chart that includes the Board's fee schedules for various expenses. For example, there is a Board fee schedule when a worker or employer seeks reimbursement of the expense of a medical-legal opinion. It is advisable that a worker or employer (or their representative) check the listing of the fee schedules. If the expense of an item is greater than the amount set out in the Board's fee schedule and full reimbursement is requested, the worker or employer then need to explain to the WCAT panel why an amount greater than the fee schedule should be reimbursed. In these situations, it is helpful to the WCAT panel to provide an itemized invoice and to refer to the criteria warranting a greater amount to be paid. These criteria are set out in MRPP item #16.1.3.1 and are further discussed below.
- [5] In *WCAT-2011-01673*, at paragraphs 102 to 104 of my decision, I stated:

[102] The worker's submissions requested reimbursement for the cost of any medical opinion and information that he may incur to make his case. The request was very generally stated and no additional explanation

---

<sup>1</sup> The Board operates as WorkSafeBC.

provided. Only one medical report was provided from Dr. Rolf, dated December 21, 2010. No invoice was provided.

[103] The MRPP at item #16.1.3 provides that WCAT will generally order reimbursement of expenses for obtaining written evidence, regardless of the result in the appeal, where the evidence was useful or helpful to the consideration of the appeal, or it was reasonable for the party to have sought the evidence. WCAT will generally limit reimbursement of expenses to the rates or fee schedules established by the Board.

[104] I found the evidence in Dr. Rolf's medical-legal opinion helpful and it was reasonable for the worker to have sought Dr. Rolf's evidence in connection with the appeal proceedings. The worker did not provide an invoice for Dr. Rolf's medical-legal opinion and it is not certain if any expense was incurred. No other expenses are apparent to me. However, given the circumstances of this appeal, in the event that the worker wishes to present an invoice for Dr. Rolf's opinion or other expense for my consideration, I remain seized of that issue.

- [6] In a letter dated July 19, 2011, the worker's representative requested reimbursement for the expense of the medical-legal opinion supplied by Dr. Rolf. He attached an invoice in the amount of \$2,542.80. That amount is greater than the amount set out in the Board's fee schedule.
- [7] The MRPP at item #16.1.3.1 states that a party seeking reimbursement of an expert opinion must also provide a copy of the request to the expert and the expert's bill or account. A WCAT panel has the discretion to award reimbursement of an expert opinion in an amount greater than the fee schedule in limited circumstances. In the absence of a request for reimbursement in excess of the Board's fee schedule and a satisfactory explanation of the circumstances, the MRPP states that WCAT will limit reimbursement to the fee schedule amount.
- [8] A WCAT panel has no obligation to clarify whether a party is seeking a greater amount than the Board's fee schedule or seek a satisfactory explanation as to why the reimbursement should be greater than the fee schedule.
- [9] WCAT panels generally address appeal expenses in the merit decision. It would have been helpful if the worker or his representative had provided this information without request, given the clear guidelines set out in the MRPP. In the absence of this information, I could have ordered the Board to reimburse the expense of the expert medical/legal opinion up to the maximum of the Board's fee schedule.
- [10] However, in these extraordinary circumstances involving a complex case, which included the submission of a comprehensive expert medical-legal opinion, I departed from these guidelines and sought further information.

- [11] By letter dated August 23, 2011 and at my request, the parties were advised I had noted that the amount of the invoice was greater than the Board's fee schedule for a medical-legal opinion and included amounts for review. Further, that I would consider the invoice with reference to the provisions of the MRPP, including items #16.1.3 and #16.1.3.1.
- [12] A teleconference was held on September 7, 2011. The worker, the worker's representative, and the employer's representative participated in this teleconference.
- [13] In brief and in part, the worker's representative advised there were no other expenses associated with the appeal. With reference to MRPP item #16.1.3.1, the worker's representative submitted that all points in the MRPP item were satisfied in this case. It was an extremely difficult case involving files of some length. Dr. Rolf was asked to undertake an entire review and provide an opinion. He was provided the entire case file. Dr. Rolf provided an independent medical opinion and undertook a literature review. His report provided a detailed analysis. The claim file indicated there had been medical reviews undertaken by the Board medical advisers. The entire expense was justified.
- [14] Also in brief and in part, the employer's representative agreed that the report was comprehensive and the worker's case was fairly complicated. He indicated that the amount of the invoice was not unreasonable.
- [15] MRPP item #16.1.3.1 provides that WCAT will usually order reimbursement of expert opinions at the rate established by the Board for similar expenses. If the bill or account exceeds the Board fee schedule, the party seeking reimbursement of the full amount must explain the reasons the account exceeds the fee schedule and why the panel should order reimbursement of the full amount. Examples of the limited circumstances include whether the case is so difficult that it required significant time and effort, the length of the report, and/or whether the detail and analysis of the report is uncommon.
- [16] Pursuant to item #20.1.3 of the WCAT's MRPP I retain the jurisdiction to address this outstanding issue in order to complete *WCAT-2011-01673*. I have already found that Dr. Rolf's opinion was helpful and that it was reasonable that the worker secured this report. In the specific circumstances of this appeal I find that it is appropriate to order the Board to reimburse the worker the full expense of obtaining the expert opinion from Dr. Rolf. I find the worker's case and Dr. Rolf's report meets the examples of those limited circumstances set out in MRPP item #16.1.3.1 when a panel may exercise the discretion to award reimbursement of an expert opinion in an amount greater than the fee schedule. The worker's case was difficult and required significant time and effort and Dr. Rolf included a review of literature regarding methacholine challenge testing. I consider the detail and analysis set out in Dr. Rolf's report to be uncommon.

- [17] Having considered the matter, I order the Board to reimburse the full amount of \$2,542.80 charged by Dr. Rolf as set out in the January 6, 2011 invoice.
- [18] No other expenses were requested and I make no additional orders for reimbursement of expenses.

Susan Marten  
Vice Chair

SM/tv