

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker had a compensable back injury in 1984. The Worker went on to have back surgery in 1985, which involved a nerve root decompression and fusion. The procedure did not achieve long-term relief, and it was considered a failed back surgery. The Board subsequently determined that the Worker had been left with a 30 percent permanent medical impairment ("PMI") as a result of the injury.

The Worker had severe back pain due to spinal stenosis. He tried many different therapies and medications without success. In 1998, the Worker started homeopathic treatments, which gave him a modicum of relief. The Board denied coverage for these treatments, but on appeal, the Tribunal overturned this finding, and provided medical aid assistance for the treatments. The Worker continued to receive homeopathic treatments until September, 2006, when the physician providing them took a leave of absence from his medical practice.

The Worker started receiving massage therapy treatments on his in October 2006. In 2007, the Worker sought reimbursement from the Board for these treatments, and for related travel costs. The Board refused to reimburse the Worker for these expenses because the massage therapist was not an approved service provider. The Worker appealed that decision to a Hearing Officer, but his appeal was denied in a June 20, 2007 decision. The Worker appealed the Hearing Officer's decision to the Tribunal.

The Tribunal appeal proceeded by oral hearing in Yarmouth on November 29, 2007. The Worker testified at the hearing, and his representative provided oral submissions. The Worker was the only participant in attendance at the hearing. No written submissions were received from any participant.

ISSUE AND OUTCOME:

Is the Worker entitled to reimbursement for massage therapy treatments and related travel costs?

No, the Worker is not entitled to reimbursement for the costs of massage therapy and related travel he had between October 2, 2006 and March 27, 2007. The Worker may wish to investigate with the Board a way of obtaining massage therapy in a manner that ensures Board coverage. I leave that discussion to the Worker and the Board.

ANALYSIS:

The *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended (the "Act") applies to this appeal.

Section 187 of the *Act* requires me to give the Worker the benefit of the doubt, which means that if the disputed possibilities are evenly balanced on an issue of compensation, then the issue will be resolved in the Worker's favour.

The Worker seeks reimbursement for massage therapy treatments and related travel costs.

The Worker's request is covered by section 102 of the *Act*, which authorizes the Board to provide any medical aid assistance that is necessary or expedient as the result of the compensable injury.

The Worker's Adviser says that my analysis should begin with an earlier Tribunal decision which awarded the Worker medical aid assistance for homeopathic treatments. In a December 27, 2001 decision, the Tribunal recognized that the homeopathic treatments were necessary and expedient, in that they provided some measure of pain relief. That was in comparison to oral medications, which provided little relief, and which had serious side effects. The Board had denied coverage on the basis that the treatments were not insured services under MSI. The Tribunal found that this fact was not a barrier to providing the medical aid, and that other examples of uninsured services were awarded by the Board. The Tribunal noted that there was no evidence whether the homeopathic doctor was an approved service provider, and thus, made no finding in that regard.

The treatments by Dr. Heisler continued after the Tribunal decision, that is, until September, 2006 when Dr. Heisler decided to take some time off from his practise. To that point in time, the homeopathic treatments were the only measure that relieved the Worker's severe back pain.

The Worker testified that Dr. Heisler recommended that he try out massage therapy treatments with Peter Goodman, a therapist in Halifax. The Worker took Dr. Heisler's advice, and began seeing Mr. Goodman in October, 2006. The Worker says that the treatment provided by Mr. Goodman was helpful in relieving his back pain. He says it helped almost immediately, and that successive treatments increased the benefit he received. The Worker says that Mr. Goodman told him that his muscles were very tight, and that loosening them through massage therapy and exercises would give him some measure of pain relief and increase his functioning.

Given the Worker's difficulties with taking oral pain relievers such as Tylenol # 3, the lack of improvement with more physiotherapy and chiropractic treatments, the unavailability of Dr. Heisler's treatment, and the relative success in pain relief from Goodman's treatment, I find that massage therapy is expedient. That, however, is not the reason why the Board

denied coverage.

The Board decided not to reimburse the Worker for the massage therapy he received because it was not given by an approved service provider. The Board only covers the cost of massage therapy treatments [assuming they are necessary or expedient] when they are received as part of a physiotherapy or chiropractic treatment plan.

The requirement that medical treatment be given by an approved service provider comes from Board Policy 2.3.1R. This Policy outlines some overriding criteria that proposed medical aid must meet besides it being either necessary or expedient. The Policy provides, in part, that the Board will assist in providing health care by *WCB-approved service providers* to injured workers.

The Board has indicated that it does not give approved service provider status to a stand-alone massage therapist. The Board's stated rationale is that massage therapists are not licensed or regulated in Nova Scotia. The concern with being un-regulated may relate to concerns over standards of qualification, and consistency of service. Ultimately, these concerns relate to patient safety, a valid issue.

The Board's position that it will only approve medical aid assistance for treatment provided by an approved service provider could be said to be the general rule. *Decision 2005-433-AD* (February 27, 2006, NSWCAT), follows the general rule. The Tribunal denied medical aid assistance because the massage therapist was not an approved service provider. The Tribunal decided that Policy 2.3.1R authorized Board decision-makers to provide medical aid assistance supplied by approved service providers, and as the massage therapist did not have that status, the Tribunal found that there was no authority to award medical aid assistance for that treatment.

There are some cases, however, where the concerns that underlie the reasons for the general rule are satisfied, but the treatment is not given by an approved service provider.

In *Decision 2003-323-AD* (December 29, 2003, NSWCAT), the Tribunal noted that the massage therapy had been recommended by three Board-approved service providers. There was evidence from all three that the massage therapy was helping, and that additional treatments were recommended. The Tribunal noted that one of the approved service providers who had recommended the therapy, also saw the Worker for acupuncture each time she had massage therapy. The Tribunal found that the acupuncturist was in a position to direct and control the worker's treatment, and ensure the treatment was appropriate for the worker. The Tribunal noted that the family doctor and the pain specialist were also aware of the worker's treatment, and were able to assess the efficacy of the treatment. In that way, they were in positions that could have exercised control and direction over the treatments.

In *Decision 2004-142-AD* (July 30, 2004, NSWCAT), the Tribunal indicated that the massage therapy in question had been recommended by a family physician, an approved

service provider. In that appeal, there was evidence from the family physician about not only the recommendation, but also of the effects of treatment. There was also evidence from the massage therapist about the efficacy of treatment. There is less explicit language in this decision about whether the family doctor exercised direction and control over the treatment. From the decision, it was apparent, however, that the doctor had recommended the treatment, and was aware of the outcome of that treatment. From that, I infer that the family doctor had direction and control of the massage therapy treatment, and could have intervened to change or interrupt treatment if the need existed.

In awarding medical aid in these cases, the Tribunal noted that in deciding what was appropriate health care, Policy 2.3.1.R directed the decision-maker to consider a number of factors. One of those factors is the "recommendations from WCB-approved health care providers." In both cases, the massage therapy had been recommended by approved service providers. In addition, those service providers were monitoring the progress of the treatments. It was that monitoring that allowed the Tribunal to make exceptions to the general rule. The concerns over the safety and appropriateness of the treatment were addressed by the massage therapy being recommended by an approved service provider, who also had the ability to direct and control the treatment. This was seen to satisfy the Board's concern that nobody was overseeing the treatment, or assessing its efficacy.

In the present case, not all of those elements are present. The treatment was provided by a non-approved service provider, a stand-alone massage therapist. There is some testimonial evidence that this treatment was recommended by Dr. Heisler. Even accepting that this was true, there is no evidence to indicate that any medical professional was supervising the treatment, or assessing its effectiveness. There is no medical evidence during the time in question to satisfy the requirement that an approved service provider has the ability to direct and control the massage therapy treatments.

I appreciate the Worker's testimony indicating that this treatment was effective at relieving his pain and increasing his functionality. While that evidence might satisfy the test as to whether the massage therapy was expedient, it does not satisfy the overriding concerns that the approved service provider status seek to address.

I find there is insufficient evidence in the present case to divert from the general rule, that in order for medical aid assistance to be provided, the treatment must be given by a Board-approved service provider.

In light of the Worker's positive experience with massage therapy, he may wish to investigate with the Board whether there is a manner of obtaining these services, either with Mr. Goodman, or another massage therapist closer to home, where the Board will cover the cost. This would inevitably necessitate it becoming part of a physiotherapy or chiropractic program. I leave that discussion to the Board and Worker to sort out.

CONCLUSION:

The Worker's appeal is denied. The Worker is not entitled to reimbursement for the costs of massage therapy and related travel he had between October 2, 2006 and March 27, 2007. The Worker may wish to investigate with the Board a way of obtaining massage therapy in a manner that ensures Board coverage. I leave that discussion to the Worker and the Board.