

NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

Appellant: **[*] (Worker)**

Participants entitled to respond to this appeal: **Sherman Wilson (Employer) and
The Workers' Compensation Board of Nova Scotia (Board)**

APPEAL DECISION

Representatives: D. William MacDonald, Workers' Advisers Program, for the Worker

Form of Appeal: Oral hearing held April 9, 2008 in Sherbrooke, NS

WCB Claim No.(s):

Date of Decision: June 3, 2008

Decision: The appeal of the June 27, 2007 Board Hearing Officer decision is allowed, according to the reasons of Appeal Commissioner Leanne M. Rodwell Hayes.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

On February 18, 1998 while engaged in pulp cutting, the Worker was struck by a falling tree and sustained a serious compensable injury which rendered him paraplegic and confined to a power wheelchair for mobility. As a result of this life-altering injury, the Board has provided extensive medical aid ["MA"] assistance to the Worker, including major home modifications and renovations to accommodate the Worker's wheelchair, multiple personal assistive devices for the Worker, and an attendant allowance which reflects the 24-hour care provided to the Worker by his spouse.

Last, but certainly not least, the Board authorized the purchase of a van, modified to accommodate the Worker's wheelchair and allow him to drive. This van was purchased in 1998 and is now 10 years old. The Worker has now asked the Board to provide MA to purchase a replacement van and to cover the cost of the modifications necessary to make the new van wheelchair-accessible and therefore of use to the Worker. The Board has denied the Worker MA for the cost of purchasing the van, but has accepted responsibility for the costs associated with modifying a new van to accommodate the Worker's impairment. The Hearing Officer's June 27, 2007 decision confirming the Board's ruling is now under appeal to the Workers' Compensation Appeals Tribunal.

The appeal to the Tribunal proceeded by oral hearing, at which the Worker and his spouse testified. The hearing also included an opportunity for this Appeal Commissioner to take a view of the Worker's current van. No additional documentary evidence was filed with respect to this appeal beyond that contained in the Worker's Board claim file. Neither the Employer nor the Board actively participated in the appeal.

ISSUE AND OUTCOME:

Is the Worker entitled to MA assistance for provision of a replacement van?

Yes. The Worker's need for a replacement van suitably modified to accommodate his power wheelchair is attributable to his compensable injury. While the deterioration of the vehicle is inherent to all vehicles, the Worker's need for suitably accessible transportation as a result of his 100% impairment due to a compensable injury has not changed.

ANALYSIS:

As the only issue before me is the Worker's entitlement to MA for a new van, beyond the award of MA for van modifications awarded by the Board, I do not find it necessary to review the Worker's medical and employment history. The extent of the Worker's injury is not in question; he is in receipt of a 100% permanent medical impairment award.

MA is defined in s. 2(r) of the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as

amended [the “Act”] as “any health care service, product or device that may be authorized by the Board and is provided to a worker as a result of compensable injury”. MA is awarded pursuant to s. 102 of the Act, and lies within the Board’s discretion, which the Board is required to exercise appropriately, as long as the MA sought is necessary or expedient as a result of a compensable injury. All questions as to the necessity, character and sufficiency of MA are determined by the Board pursuant to s.104 of the Act.

The terms “necessary” and “expedient” were defined in *Decision 98-041-AD* (July 15, 1998, NSWCAT) such that ‘necessary’ includes something essential or indispensable, and ‘expedient’ includes that which is advantageous, advisable or appropriate.

The Board has taken the position that it is not obligated to provide the Worker with a vehicle, only with the modifications to that vehicle necessary to accommodate the Worker’s power wheelchair.

The Worker’s Adviser has submitted that the Board’s award of MA only for the costs associated with modifying a new van is effectively a moot award. The Worker is financially unable to purchase a new van that could be modified to accommodate his wheelchair, due to his limited income as a result of his inability to work due to his compensable injury. Effectively, an award for the costs for modifications is no award at all, when the financing to purchase the van to be modified is beyond the Worker’s means.

This is not to suggest that the Board is obliged to provide MA simply because the Worker is unable to afford to purchase a replacement vehicle. The test is the necessity or expediency of its provision. I find that providing the Worker with a replacement vehicle capable of the necessary modifications to accommodate his power wheelchair is both necessary and expedient.

Under normal circumstances, a motor vehicle would not be considered to be a form of MA, a health care product or device. However, the circumstances here are that the Worker, as a result of his compensable injury, is unable to be mobile without the aid of a power wheelchair, which enables him to move about within his household and on his property. There is no question as to the Worker’s inability to be mobile in anything other than his power wheelchair. However, even with the power wheelchair, the Worker’s mobility beyond the confines of his property requires further assistance. He lives in a rural area without sidewalks. In order to access any service - including medical care - beyond his property requires the use of a motor vehicle, which, of course, must be modified to accommodate his power wheelchair.

Ownership of a motor vehicle is a common, even expected, expense in Nova Scotia today. This is particularly so for individuals living in rural areas who must have their own transportation to access services, in the absence of readily available public transportation. Living where the Worker and his family do, a vehicle is a necessity, regardless of personal mobility. For this reason, the Worker and his spouse maintain two vehicles. One is the

family car. They purchased this vehicle themselves, and maintain it. It is the vehicle used by the Worker's spouse and daughter at all times when the Worker is not being transported. The modified van is used only when the Worker is using it, at least in part because the van's engine consumes gasoline at a greater rate than the family car. Except for transporting the Worker, when it is required, the modified van is not a practical or necessary vehicle for the Worker's wife and family.

The Worker cannot use the family car, because it is necessary for his power wheelchair to travel with him. If the Worker transferred into a regular motor vehicle without his wheelchair, he would be unable to exit the motor vehicle upon reaching his destination unless he could transfer back to his wheelchair. It therefore stands to reason that the transportation used by the Worker must also accommodate his power wheelchair.

The Worker has been unable to work as a result of his compensable injury for the past ten years. But for the injury, the Worker would not be confined to a power wheelchair, or need a modified van to accommodate that wheelchair in order to leave his home and property. But for the injury, he would likely still be working. Because of his injury, his family income is entirely dependent upon the various disability pensions he receives, including that from the Board. His wife does not work because she is his full-time care-giver. Their family income is only sufficient to support the basic needs of the Worker, his wife and daughter. It is insufficient to enable them to replace a large and specialized asset, such as a van modified to accommodate the Worker's power wheelchair.

The Worker has lived in his community virtually his entire life. The Board has facilitated his remaining in his home with the home renovations undertaken at the Board's expense. This is particularly appropriate given the Worker's family connections to the area - his extended family continues to reside nearby, and some of his family have funded their own home modifications to enable him to visit with them. That he has been able to continue to live in his home community has undoubtedly provided important family emotional support to the Worker and his wife and daughter.

The disadvantages of living in his rural community, however, are that the Worker does not have access to public transportation which is wheelchair accessible, nor to sidewalks, or to public services which would reduce or eliminate the need for him to have a personal vehicle accommodated to his needs. In order to visit family, in order to conduct his personal banking, and in order to seek medical attention, the Worker must have access to suitably modified transportation. Without this transportation, the Worker could become a prisoner in his own home, even more than his compensable injury has rendered him a virtual prisoner in his own body. There is no justification to effectively deny his only reasonable means of accessing services. Once either criteria for MA is met, there is no reasonable basis on which to refuse to exercise the Board's discretion to provide that MA. For these reasons, the provision of MA for a suitably modified van is both necessary and expedient, for this Worker.

The necessity and expediency of providing the Worker with suitably modified transportation was acknowledged when the van he now has was first supplied. For the Board now to suggest that a cost of a replacement vehicle is a normal occurrence not related to the Worker's impairment is disingenuous. There appears to be no dispute by the Board that after ten years the vehicle would need replacing. There is no indication that the vehicle has suffered from excessive use, or extraordinary wear and tear. The vehicle has remained roadworthy with multiple repairs, but the cost of those repairs has increased as the vehicle has aged. A request to replace a ten-year old vehicle is not an unreasonable one.

All of the participants to this appeal recognize the significant cost involved in this appeal. However, the burden of purchasing a replacement vehicle will create too great a hardship for the Worker to bear. The need for a suitably modified replacement vehicle stems from the Worker's compensable injury just as much as the initial need for a suitably modified vehicle did. In this case, the Board can benefit from the value of any trade-in.

CONCLUSION:

The appeal is allowed. The Worker is entitled to MA for the cost of a replacement van and the cost of the modifications necessary to accommodate his motorized wheelchair.

DATED AT HALIFAX, NOVA SCOTIA, THIS 3rd day of June, 2008.

Leanne M. Rodwell Hayes
Appeal Commissioner