

CLAIM HISTORY AND APPEAL PROCEEDINGS:

This is an appeal from an October 16, 2007 Hearing Officer decision. The Hearing Officer found that medical aid ["MA"] in the form of Alfa Laser treatments provided by Dr. Y (a chiropractor) would not be approved because Dr. Y is not a Board-approved service provider per Policy 2.3.1R.

I will set out only those portions of the claim history and appeal proceedings most relevant to this decision.

The Worker suffered a compensable injury on March 16, 1987. The Worker was eventually awarded a permanent medical impairment rating of 40 percent and a pain-related impairment of 6 percent with respect to the compensable incident.

A June 1, 2007 Case Worker decision denied the Worker MA in the form of Alfa Laser treatments provided by Dr. Y because Dr. Y is not a Board-approved service provider. In particular, Dr. Y had not agreed to sign a contract with the Board, and therefore was and is not approved to invoice the Board for services rendered to injured workers who are in receipt of workers' compensation benefits. The Worker appealed the Case Worker decision by means of an August 8, 2007 Notice of Appeal to Hearing Officer. That appeal led to the October 16, 2007 Hearing Officer decision which forms the subject matter of this appeal.

This appeal was commenced by the Worker's filing of a November 13, 2007 Notice of Appeal with the Workers' Compensation Appeals Tribunal [the "Tribunal"].

This appeal proceeded by way of oral hearing, held at Halifax, Nova Scotia, on March 6, 2008. The Worker attended at the hearing and provided testimony and submissions. The Worker's wife attended at the hearing, but solely as an observer. No other participant attended at the hearing, or provided additional evidence or submissions directly with Tribunal in this appeal.

ISSUES AND OUTCOMES:

At issue is whether the Worker is entitled to MA in the form of Alfa Laser treatments provided by Dr. Y.

The Worker's appeal is denied, for the reasons below. The award of MA in the form of Alfa Laser treatments provided by Dr. Y is denied, because Dr. Y is not a Board-approved service provider.

ANALYSIS:

I have reviewed the materials in the Board and Tribunal files. In addition, I reviewed the recording of the oral hearing. I will set out only those portions of the testimony, evidence and submissions most relevant to this decision.

Worker's Testimony

The Worker testified that he has been a patient of Dr. Y since the year 2000, a period of approximately 8 years. In the 21 years since the accident, the Worker stated that Dr. Y is the only doctor who sat down and explained fully what was happening. Dr. Y's treatments started to make him better.

Until approximately a year ago, Dr. Y provided chiropractic treatments with his hands. The treatments provided some relief, but not what the Worker needed. Dr. Y advised the Worker that he would be procuring the Alfa Laser, and that the Worker would be a good candidate because his case is unique.

The Worker contacted the Board with respect to whether the Board would pay for the Alfa Laser treatments. The Board advised that Dr. Y was no longer a "compensation doctor" (to use the Worker's words), even though Dr. Y had been a "compensation doctor" when the Worker first started seeing him. The Worker understood that Dr. Y wanted to be compensated for the administrative costs of "paperwork", and that the Board refused to pay for the "paperwork". Consequently, Dr. Y no longer dealt with the Board. In addition, the Board employee advised the Worker that he was not aware of the nature of the Alfa Laser treatments, and it was possible that the Board would not pay for such treatments even if they were provided by another doctor.

The cost of the treatments was to be \$1200.00 for the first 15 sessions. The treatments would ordinarily cost \$150.00 per hour (involving \$75.00 per hour, per machine), but Dr. Y only charges the Worker \$50.00 per hour because his case is unique and because the Worker would find it difficult to pay the regular rate. Dr. Y indicated to the Worker that he (Dr. Y) could learn a great deal from treating the Worker. When the Worker asked Dr. Y how he would explain the reduced rate to the Board, Dr. Y replied that he can charge whatever rate he wishes in his own office.

The Worker described the Alfa Laser treatments. Belts are placed on the Worker's body. Each belt contains 35 to 50 lights. The belts are plugged into a machine, and the lights project "heat" into the Worker's body. The Worker understands that the light projected into the body is converted into energy, which heals and regenerates the muscles and ligaments. However, the treatment will not repair worn out or damaged bones, just the muscles and ligaments which surround them.

The Worker described the effect of the Alfa Laser treatment as "miraculous". No other treatment has worked nearly as well as the Alfa Laser. The Worker described it as the

difference between Heaven and Hell. He is no longer in agony. Unless the Worker is experiencing a particularly bad bout, there is no comparison whatsoever in his situation before beginning the Alfa Laser treatments and since he has started such treatments. The Worker is no longer in sufficient pain to use an Extra-Strength Tylenol, unless he is experiencing a bout of pain. The Worker still cannot engage in any significant physical activity, which would trigger pain. However, he is able to walk around without pain (unless he is experiencing a bout of pain), something he could not do before. Because of the Alfa Laser treatments, the Worker is able to enjoy life again. Based on his conversations with other patients, the Worker understands they have experienced similar benefits from the treatment.

Dr. Y had advised the Worker that he would be in a wheelchair within two years if he did not receive the Alfa Laser treatments. The Worker testified that because of the treatments, he will not have to be in a wheelchair.

The Worker argued that he should not have to change his doctor because of a dispute between Dr. Y and the Board, which has nothing to do with the Worker. The Worker has nothing but good things to say about Dr. Y. The Worker argued that he is a Canadian, and he should be free to choose his own doctor. The Worker will continue to use Dr. Y, regardless of the outcome of the appeal.

The Worker indicated that he is not a pushy individual and rarely makes demands of the Board. If the Worker requires a back belt or a cane, he will pay for it himself instead of bothering the Board. However, the Worker requires his pension funds to pay his bills, and really lacks the resources to pay for the laser treatments. In fact, it was necessary for him to borrow \$1200.00 from a friend to start the treatments. The Worker believes it is very unfair that, as an injured worker, he must pay for the laser treatments. The Worker carried out the appeal so that younger workers will have access to the laser treatment, which the Worker believes is the wave of the future.

The Law

Generally, a worker may be awarded MA if he can demonstrate that the need for MA is causally related to a workplace injury, that the provision of the requested MA is either necessary or expedient, and that the Board should not exercise its overriding discretion to refuse to provide MA. See *Decision 96-653-TAD* (October 28, 1998, NSWCAT).

In this appeal, however, the issue is whether the Worker is entitled to the cost of Alfa Laser treatments from a doctor who is not a Board-approved service provider, and who in fact refuses to sign a contract with the Board. In this connection, I refer to the wording of Policy 2.3.1R respecting "WCB-approved service providers". Further, I note that the Tribunal has already considered a materially identical appeal concerning this issue (which in fact involved Dr. Y), in *Decision 2004-487-AD* (January 24, 2005, NSWCAT). In that appeal, the Tribunal determined that the worker was not entitled to reimbursement for the cost of chiropractic treatments from Dr. Y. In that appeal, as in this appeal, all the participants

were aware at the outset that Dr. Y was not and refused to be a Board-approved service provider.

Section 102(2)(b) of the *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, as amended [the "Act"] states that the provision of MA is "...subject to the supervision and control of the Board". A number of sections of the *Act* directly address the manner in which medical professionals are paid for MA provided to injured workers. For example, sections 105-106, and 108-109 are of great relevance to this appeal. The relevant portions state:

105 (1) The Board may set a schedule of fees or charges payable for medical aid.

(2) No person shall bring an action to recover any amount in excess of any fee or charge set by the Board pursuant to subsection (1).

106 The Board shall not pay any account rendered against it for medical aid by a physician, surgeon, hospital or other health care professional or institution unless application for payment is made within six months after the medical aid has been rendered.

108 No person shall make any charge against any person, other than the Board, for medical aid rendered to a worker pursuant to this Part.

109 (1) Every physician, surgeon, hospital official or other health-care professional consulted regarding any worker claiming compensation pursuant to this Part shall

(a) provide to the Board any information requested by the Board; and

(b) provide all reasonable and necessary information or other assistance to any worker to enable the worker to establish a claim for compensation.

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(4) The Board may establish a schedule of fees or charges payable for forms and reports.

Reasoning

The sole issue in this appeal: Is the Worker entitled to MA in the form of Alfa Laser treatment provided by Dr. Y?

To answer the above question, I look to the statutory rules governing the Board's payment to medical professionals for MA provided to workers. Overall, the provision of MA is subject to the Board's "supervision and control" (s. 102(2)(b)). The medical professional must bill

the Board directly (s. 108). If the Board sets a fee or charge for a service provided as MA, no one can sue to collect an amount in excess of the fee or charge set by the Board (s. 105). The Board shall not pay any account submitted by a medical professional respecting MA services rendered more than six months prior to the submission of the account (s. 106). A medical professional who provides MA to a worker must provide the Board with any information it requests (s. 109(1)(a)). Further, Policy 2.3.1R, section 1 indicates that MA in the form of health care is to be provided by Board-approved service providers.

Generally, the provision of MA is subject to the “supervision and control of the Board”. In the present situation, there is an explicit rejection of the Board’s supervision and control of MA given Dr. Y’s refusal to enter into a contract with the Board. Presumably, Dr. Y’s refusal extends to complying with the statutory and other rules respecting the provision of MA. I note, for example, that Dr. Y bills the Worker directly. In any event, by refusing to sign a contract with the Board and therefore refusing to continue as a Board-approved service provider, MA cannot be provided by Dr. Y (see Policy 2.3.1R, section 1). Consequently, the Worker cannot be awarded MA, if the proposed MA is to be provided by Dr. Y.

Finally, the situation in the current appeal is materially identical to that which existed in *Decision 2004-487-AD*, wherein it was determined that a worker was not entitled to MA to be provided by Dr. Y because Dr. Y was not a Board-approved service provider. In the interests of adjudicative coherence, I resolve the present appeal in the same manner as *Decision 2004-487-AD* by denying MA in the form of laser treatments to be provided by Dr. Y.

I have considerable sympathy for the Worker in the present situation. He has a long-standing relationship with Dr. Y, in whom he has great confidence. The Worker understandably wishes to continue being treated by a doctor with whom he is familiar. However, all participants in the workers’ compensation system - this Tribunal, the Board administrators and decision makers, health-care providers and workers - must comply with the *Act* and Board Policy. Dr. Y has chosen not to deal with the Board nor to accept its supervision and control of MA. Dr. Y has elected not to continue as a Board-approved service provider. Consequently, he is not eligible to bill the Board for MA provided to injured workers in relation to compensable injuries. By extension, those workers who choose to receive health care treatment from Dr. Y with respect to compensable injuries must accept that they are not eligible to have such treatment provided and paid for by the Board as a form of MA. Therefore, the Worker is not entitled to MA in the form of Alfa Laser treatment provided by Dr. Y, and the Worker’s appeal is denied.

CONCLUSION:

The Worker’s appeal is denied, for the reasons above. The award of MA in the form of Alfa Laser treatments by Dr. Y is denied, because Dr. Y is not a Board-approved service provider.