

NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

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

Participants entitled to
respond to this appeal:
and **Department of Transportation and Public Works (Employer)**

**The Workers' Compensation Board of Nova Scotia
(Board)**

APPEAL DECISION

Representatives: William J. P. Powroz for the Worker
 Karen Anthony for the Employer

Form of Appeal: Written Submissions

WCB Claim No.(s):

Date of Decision: September 19, 2008

Decision: The appeal of the April 3, 2008 Board Hearing Officer decision
 is allowed, according to the reasons of Appeal Commissioner
 David Pearson.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

On May 19, 2005, the Worker fractured his left femur when he fell off a truck at work. The Worker required surgery and insertion of a metal plate to repair his broken hip.

The Board provided the Worker with temporary earnings-replacement benefits for a period. The Worker was assessed with a ten percent permanent medical impairment, and as the result of a November 26, 2006 decision, the Worker was awarded a combined permanent impairment benefit and extended earnings-replacement benefit ("EERB"), which would be payable only until May 19, 2007, given the Worker's age at the time of his injury.

The Worker was subsequently found to have chronic pain, and he was awarded a three percent pain-related impairment for this condition. The Worker's EERB was adjusted to take account of this award.

The Worker requested reimbursement for a recumbent bicycle that he had purchased. In a December 11, 2007 decision, a Board case manager denied the Worker medical aid assistance for a recumbent bike, finding that it was neither necessary nor expedient. The Worker appealed this decision to a Hearing Officer, but his appeal was denied in an April 3, 2008 decision. The Worker appealed the Hearing Officer's decision to the Tribunal.

The Tribunal appeal proceeded by way of written submissions. The Worker's Adviser provided submissions on July 15, 2008. The Employer representative provided written submissions on July 29, 2008. No other submissions were received.

ISSUE AND OUTCOME:

Is the Worker entitled to medical aid assistance for a recumbent bicycle?

Yes, the Worker is entitled to medical aid assistance for the provision of a recumbent bicycle.

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 a recumbent bike he purchased. The stated rationale for its purchase was that it was to assist at preventing muscle wasting.

The Board has a wide discretion to provide medical aid to a worker. Section 102 says that it can provide any medical aid that is necessary or expedient as a result of a compensable injury.

Besides meeting the test of being either necessary or expedient, there are other general provisions which must be met in order to allow coverage by the Board. Board Policy 2.3.1R says that any medical aid must be "appropriate for the type of compensable injury," and "consistent with standards of health care practices in Canada."

The case manager said that the recumbent bicycle did not meet either test as necessary or expedient, and neither was it a generally accepted medical treatment to avoid muscle wasting. The hearing officer said that the recumbent bicycle was not necessary or expedient.

From the file, it appears that a Board Medical Adviser may have changed her opinion about whether a recumbent bicycle should be approved as medical aid. I note a September 15, 2008 opinion from Dr. Marche, wherein she indicated that the provision of a recumbent bicycle was reasonable. A decision has yet to be made, however, either accepting or rejecting that opinion.

If a new decision had been rendered, I would say that this appeal was moot, as the subject matter had already been dealt with as requested. As that decision has yet to occur, I will proceed with the merits of the appeal.

Suffice it to say that Dr. Marche's recent opinion assists greatly with the resolution of the appeal in the Worker's favour. Even without that opinion, I would have found in the Worker's favour. My reasons follow.

Following the Worker's surgery to address his comminuted hip fracture, there is an abundance of evidence of ongoing problems with weakness and atrophied muscles in the Worker's left leg.

The weakness and atrophy improved to a point, but did not resolve. The Worker progressed with his mobility to using a crutch, but it got no better, and seemed to worsen.

In March, 2007, Dr. Ellis, the Worker's family doctor recommended therapy at home, and the purchase of home exercise equipment. The Worker purchased the recumbent bicycle in furtherance of this recommendation. In his April 23, 2007 Client Information

Questionnaire, he said he had been using it 3-4 times daily, 6-8 minutes each time. Dr. Ellis recommended a similar regimen for the bicycle in his May 1, 2007 report.

In October, 2007, the Worker underwent a home assessment, which recommended the bathroom modifications. In the resulting report, the occupational therapist commented that "there is exercise equipment in [the Worker's] house which he should use to allow him to maintain his current abilities or slow down the deterioration of his ability."

In July, 2008, the Worker had his PMI rating reassessed and increased to 24 percent.

On August 26, 2008, the Worker had a check-up with Dr. Glazebrook, the surgeon. The resulting report acknowledged MRI evidence that the plate in the Worker's hip had broken, and suggested that there might not be a solid union. Note was made of the Worker's increasing weakness, and it was recommended that the Worker get a scooter to increase his mobility. Use of the recumbent bicycle was encouraged at home to help with exercise.

In a separate report to the Board dated the same date, Dr. Glazebrook noted the Worker's difficulties with ambulation, and said the Worker would benefit greatly from the aid of a scooter. In addition, Dr. Glazebrook recommended the "recumbant (sic) foot press equipment" to help increase the strength in the Worker's left leg.

As a result of these recommendations, an opinion was sought from Dr. Marche on the provision of a scooter and the recumbent bicycle. Dr. Marche responded on September 15, 2008. She said that the need for a scooter could not be determined until further scheduled investigations were done. With respect to the recumbent bicycle, however, she said that providing this was reasonable in this case.

I agree that the provision of a recumbent bicycle is reasonable in this case. It has been recommended by Dr. Ellis and Dr. Glazebrook to help with muscle wasting and weakness. The benefit to be achieved may be greater strength, or a slowing down of the worsening.

The decisions below highlighted the fact that there had been no objective measure of improvement with the device. From the evidence, however, it may not improve strength objectively, and slowing down further weakness would be difficult to determine.

On the basis of the recommendations of the Worker's treating physicians, and in light of Dr. Marche's recent opinion, I find that the provision of a recumbent bicycle is necessary medical aid for the Worker. He is entitled to medical aid assistance to cover the cost of the recumbent bicycle.

CONCLUSION:

The Worker's appeal is allowed. He is entitled to medical aid assistance for the provision of a recumbent bicycle.

DATED AT HALIFAX, NOVA SCOTIA, THIS 19TH DAY OF SEPTEMBER, 2008.

David Pearson
Appeal Commissioner