

NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

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

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

APPEAL DECISION

Representatives: D. William MacDonald for the Worker
Jackie Crouse for the Workers' Compensation Board

Form of Appeal: Written submission

WCB Claim No.(s): **[*]**

Date of Decision: March 2, 2009

Decision: The appeal of the August 6, 2008 Board Hearing Officer decision is allowed, according to the reasons of Appeal Commissioner Alison Hickey.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

This is an appeal of a decision of a Hearing Officer of the Board dated August 6, 2008, in which the Hearing Officer determined that the Worker was not entitled to Medical Aid ["MA"] in the form of a 54" adjustable bed. The Worker appealed this decision to the Workers' Compensation Appeals Tribunal [the "Tribunal"] on August 19, 2008. This appeal proceeded by way of written submission.

Written submissions were filed by the Workers' Adviser on December 31, 2008, and by the Board's Representative on November 12, 2008. The Workers' Adviser also filed a report from Dr. Conter, the Worker's family doctor, dated September 29, 2008 and the Worker's Affidavit sworn December 30, 2008. The Board's Representative filed a copy of a study conducted by Janis Noseworthy, Health Services Consultant for the Board, titled, "Clinical Efficacy of Standard and Specialized Bedding Systems: Summary of Evidence-Based Research".

ISSUE AND OUTCOME:

Is the Worker entitled to MA in the form of a 54" Adjustable Bed?

Yes. The provision of an adjustable bed is considered "expedient" in the Worker's case.

ANALYSIS:

The legislation applicable to this appeal is the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [the "Act"]. Section 187 of the *Act* requires me to give the worker the benefit of the doubt, which means 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 was a Police Officer and was injured in a motor vehicle accident on November 13, 1992. As a result of the accident, the Worker has ongoing difficulties with his left knee, as well as neck pain and lower back pain. The Worker seeks a 54" adjustable bed as MA in relation to his injuries.

It has been determined that the Worker suffers from "chronic pain" as that term is defined in the *Act*. The Worker is in receipt of an Extended Earnings-Replacement Benefit ["EERB"] and a 6% Pain-Related Impairment ["PRI"]. The Worker is requesting that the Board pay the cost of an adjustable bed.

Sections 102 and 104 of the *Act* grant the Board, and by extension, the Tribunal, the discretion to provide a worker with MA considered "necessary" or "expedient" as a result of the compensable injury. In *Decision 1999-377-AD* (February 22, 1999, NSWCAT), the Tribunal adopted the definition of "necessary" taken from Webster's New World Dictionary,

Second College Edition—"that which cannot be dispensed with; essential; indispensable." In *Decision 98-041-AD* (July 19, 1998, NSWCAT), the Tribunal adopted the definition of "expedient" as: "advantageous; advisable on practical rather than on moral grounds; suitable, appropriate, -a means of obtaining an end; a resource." I adopt these definitions for the purposes of this decision.

MA is defined in part in the *Act* as including , "any health care service, product or device that may be authorized by the Board and is provided to a worker as a result of a compensable injury...".

Board Policy 2.3.1R states that the Board, "...will assist in providing health care (services and treatments) by WCB-approved service providers...", and further, that the Board will use the following information to determine the most appropriate, effective and efficient health care for its clients: a) recommendations from WCB-approved health care providers; b) up-to-date scientific evidence about effective health care; c) evidence-based guidelines developed by professional health organizations across Canada and the United States; and d) standards developed by the WCB to ensure quality health care. The Policy states that the Board will not pay for health care that is not considered appropriate and will assist in providing health care (services and treatments) where the health care (a) appropriate for the type of compensable injury, and (b) consistent with standards of health care practices in Canada.

There is a report on file from Dr. Conter dated February 22, 2008, in which Dr. Conter stated that the Worker has osteoarthritis in his left knee as well as ongoing episodes of severe lumbar spine pain and sciatica. He recommended that because of "his significant lumbar spine injury", the Worker be provided with an adjustable 54" bed. Dr. Conter states his hope, which is that it would improve the Worker's sleep level and decrease his fatigue and the amount of pain and stiffness related to his lumbar spine and knee. He stated that the bed would improve the Worker's sleep cycle and overall pain relief.

According to the Medical Opinion of the Board Medical Advisor dated March 25, 2008, specialized bedding systems are not covered by the Board unless they are medically necessary for the prevention or treatment of pressure ulcers, or for the control of intra-abdominal pressure in bedridden patients. It was the Board Medical Advisor's understanding that the Worker had episodes of severe lumbar spine pain and sciatica but she was of the view that there was no medical necessity for a specialized bedding system. The Board Medical Advisor appears to have been guided in her opinion by the study submitted to the Tribunal by the Board's Representative.

By way of decision dated April 14, 2008, the Case Manager denied the Worker the provision of the adjustable bed. She stated that there was no evidence to support that the bed "per se" was medically necessary as a result of the Worker's compensable injury. She noted that beds were generally purchased for those who were confined to their beds or had severe spinal cord injury and that the Worker had neither of those conditions and should

be encouraged to maintain independence and function as part of his core strengthening program.

Dr. Conter, in his report of September 29, 2008, states that the Worker has osteoarthritis in his cervical and lumbar spine causing ongoing pain and loss of function. He states that due to loss of joint space between the bones, there is an increased risk of nerve compression that leads to soft tissue spasm in both the cervical and lumbar distribution. Dr. Conter states that his recommendation is that the Worker receive the bed, as, "...having an appropriate bed would ease his sleep and give him more comfort both in his neck and low back areas. This would certainly impact the current effect of his injuries and decrease the progression of these injuries into the future."

So where has the Tribunal stood on the issue of the provision of adjustable beds for workers suffering from chronic back pain? In *Decision 2001-670-AD* (April 28, 2003, NSWCAT), the Worker had chronic back pain, and his request for an adjustable bed was denied. The Tribunal found that there was insufficient information to suggest how the adjustable bed would help the worker get a good night's sleep and help with his pain. There was no suggestion from the evidence that an adjustable bed would do anything to alleviate the Worker's symptoms. There was no evidence as to how symptomatic relief would be achieved through the use of the bed.

The Tribunal, in *Decision 2006-522-AD* (October 13, 2006, NSWCAT), found that the Worker was entitled to an adjustable bed. In that case, there was clear evidence that the Worker had difficulty getting in and out of bed, and an adjustable bed would alleviate that problem. The bed was found to be "expedient" although not necessary. Evidence from the family physician was that if the Worker was sitting in a chair, he would be unable to get out of the chair without struggling. There was also an opinion from a neurosurgeon that the best thing the Worker could do given his spinal fracture and chronic pain was to take pressure off his back by sitting in a reclining chair or bed. The Tribunal found that the bed was expedient for the Worker in improving his sleep and alleviating his pain.

The Tribunal in *Decision 2005-95-AD* (June 7, 2005, NSWCAT) found that the Worker was entitled to an adjustable bed. The Worker in this case had chronic pain. The Tribunal found that there was sufficient evidence that an adjustable bed would be helpful to the Worker in obtaining restorative sleep and the Worker's family doctor had recommended the adjustable bed as a non-pharmaceutical way to treat the Worker's ongoing discomfort. The Appeal Commissioner found as follows:

It seems reasonable that a person with a painful chronic problem affecting her sleep and mobility would benefit from a device prescribed in order to enable her to sleep better, longer and/or get in and out of bed more easily. I accept Dr. Conter's opinion that using an adjustable bed has been medically beneficial to the Worker.

The conclusion of the Board's evidence-based research paper, with respect to adjustable beds, is as follows:

A review of the literature regarding various types of bedding systems suggests there is subjective evidence that medium firm mattress systems are beneficial in relieving shoulder and low back pain and in improving sleep. However, there are no randomized control studies found in the literature to provide objective data to support the benefit of certain standard mattress systems. Therefore, it cannot be concluded from an evidence-based standpoint that any one type of standard mattress set is effective in addressing musculoskeletal conditions and sleep quality.

There is subjective evidence from the Worker in his affidavit that he had an opportunity to use an adjustable bed in the past and it improved his sleep. He stated that because his sleep was improved, his pain was reduced. The Worker submits that there has been improvement in his condition by virtue of the adjustable bed, and his medication use has been reduced.

It would not be possible for one to conclude on the evidence in the instant case, that the Worker's chronic pain condition will be eliminated by the use of the bed. I am satisfied, however, that provision of the bed would be "expedient" in this case. I am not prepared to say it is medically necessary, as one might find in the case of pressure ulcers and bedridden patients, as referred to in the Board's research paper.

There is evidence before me, to establish that the use of the bed has improved and would improve Worker's sleep, which in turn improves his pain and his ability to cope with it. Unlike in *Decision 2001-670-AD* (April 28, 2003, NSWCAT), there is Dr. Conter's evidence which suggests how the adjustable bed would help the worker get a good night's sleep and help with his pain. The benefits provided by using the bed are supported by the Worker's affidavit evidence. There is no evidence to suggest that such a bed could not improve a Worker's sleep, or that improved sleep would not have any impact on a worker's pain. The evidence I have on this case is to the contrary. Dr. Conter suggested that the Worker's chronic pain will get worse if he doesn't get the bed and that his symptoms will cease to be such a problem if he does get it. The bed could be a means to an end, that end being better functionality and some pain relief.

The evidence here may be based on the Worker's subjective reporting, but that does not discount it entirely. There is no requirement for objective evidence that must be applied in this case. Dr. Conter recommends the adjustable bed, and has attempted to thoroughly explain the reasons for which the bed should be provided. He is a qualified health care provider, familiar with the Worker's condition, and I accord his opinion significant weight.

It was the view of the Board Medical Advisor that the bed was not necessary, but the

opinion given is by no means comprehensive . It does not address the idea that the bed may be expedient or acknowledge the subjective evidence referred to in the Board's paper that these beds can relieve pain and improve sleep.

I am cognizant of my obligation to give the Worker the benefit of the doubt where the possibilities are evenly balanced. I am prepared to exercise my discretion and award the Worker the bed. Recommendations for the type of bed to be provided should be obtained from Dr. Conter, or another qualified health care provider consulted by the Board.

CONCLUSION:

This appeal is allowed. The Worker is entitled to MA in the form of an adjustable bed.

DATED AT HALIFAX, NOVA SCOTIA, THIS 2ND DAY OF MARCH, 2009.

Alison Hickey
Appeal Commissioner