

NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

Appellant: ***** (Worker)

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

APPEAL DECISION

Representatives: Eleanor Neal for Ms. MacCormick
Jackie Crouse for the Workers' Compensation Board

Form of Appeal: Written submissions

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

Date of Decision: March 9, 2009

Decision: The appeal of the November 12, 2008 Board Hearing Officer decision is denied, according to the reasons of Appeal Commissioner Sandy MacIntosh.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

On October 16, 1992, the Worker had a back and shoulder injury at work. The Board accepted her claim and paid a temporary total disability benefit until October 11, 1994.

Other than a failed attempt at an ease-back program, the Worker never returned to work. Ongoing benefits were not paid as, until recently, the Board did not compensate for the impacts of chronic pain.

On October 11, 2006, the Board reviewed the Worker's claim under the *Chronic Pain Regulations*. It found that she was eligible for compensation under the *Regulations*. It rated the Worker with a substantial pain-related impairment. It found that the Worker was entitled to an extended earnings-replacement benefit retroactive to 1994.

This appeal relates to the Worker's request that the Board cover the costs of IV Lidocaine.

On June 10, 2008, a Board Case Manager found that the Board would not cover the costs of the IV Lidocaine treatment being administered by Dr. Pollett. It found that current scientific research did not support IV Lidocaine shots as an appropriate long-term treatment for chronic neuropathic or musculoskeletal pain.

On November 12, 2008, a Board Hearing Officer confirmed the Case Manager Decision.

This decision addresses the Worker's appeal of the Hearing Officer Decision.

The Worker's representative notes that the Worker has received IV Lidocaine injections since 2000, and continues to do so. She notes a letter from Dr. Pollett, pain clinic specialist, dated June 27, 2008, in support of the appeal. She notes that several Tribunal decisions in the past have approved the provision of IV Lidocaine finding it to be necessary or expedient.

The Board filed submissions supporting the Hearing Officer Decision. Its submissions are largely based on a paper entitled 'Clinical Efficacy of Intravenous Lidocaine: Summary of Evidence-Based Research'. It submitted that IV Lidocaine should not be approved as: 1) it is not consistent with Canadian standards of healthcare; 2) there are inconsistent medical studies; (3) there are safety issues; and (4) the largest pain clinic in the province does not support its use.

ISSUES AND OUTCOME:**Does ongoing IV Lidocaine treatment for chronic pain meet the policy criteria for medical aid?**

No. The Worker is not entitled to the reimbursement for the costs of IV Lidocaine use.

ANALYSIS:

Section 102 of the *Workers' Compensation Act* provides that the Board may provide any medical aid which it considers either necessary or expedient as the result of a workplace injury.

Board Policy 2.3.1R gives structure to the Board's discretion in providing healthcare services and treatments for injured workers. The Board is to provide assistance for healthcare appropriate for the type of compensable injury and consistent with standards of healthcare practices in Canada.

In determining the most appropriate, effective and efficient healthcare for workers, the Board is to use:

- (a) recommendations from Board approved healthcare providers;
- (b) up-to-date scientific evidence about effective healthcare;
- (c) evidence-based guidelines developed by professional health organizations across Canada and the United States; and
- (d) standards developed by the Board to ensure quality healthcare. The policy provides that the Board should decline to pay for healthcare not considered appropriate based on these criteria.

In determining any question, the Worker must be given the benefit of the doubt (s. 187 *Workers' Compensation Act*). This means that where disputed possibilities are evenly balanced, an issue is resolved in favour of the Worker. However, the standard of proof on the Board is on a 'more likely than not' basis.

As noted by the Worker's representative, several Tribunal decisions have awarded IV Lidocaine to workers in the past, after finding it meets the policy criteria for medical aid.

For example, in *Decision 2003-92-AD* (June 24, 2003), I rejected the position that treatments must have permanent effect to be accepted under policy 2.3.1. I found that

evidence then before me supported the finding that while IV Lidocaine was not a popular option, it was a legitimate treatment option.

More recently, in *Decision 2008-123-AD* (July 11, 2008), the Tribunal found that IV Lidocaine was an accepted possible treatment for neuropathy and chronic pain. The Tribunal accepted evidence from Dr. Pollett that IV Lidocaine injections are performed by 'numerous other pain management specialists throughout Canada'.

Like the two decisions I have just mentioned, this appeal involves a Worker being treated by Dr. Pollett, who reports subjective benefit from the IV Lidocaine treatment. According to the chart notes in the Worker's claim file, the timing between Lidocaine treatments has varied over the years. The results have varied as well. Sometimes the Worker got several weeks of subjective improvement and other times only a couple of hours. Most recently, Dr. Pollett has been providing Lidocaine injections on a weekly basis.

This appeal raises the generic issue as to whether IV Lidocaine meets the criteria of policy 2.3.1R. There is evidence before me that was not before the Tribunal when it made its earlier decisions. Most particularly, the paper produced by the Board entitled 'Clinical Efficacy of Intravenous Lidocaine: Summary of Evidence-Based Research' (the Board research paper) and a letter dated June 27, 2008 from Dr. Pollett.

By way of background, Dr. Pollett runs a pain clinic in Sydney, NS. It is a busy clinic. Unlike other pain clinics in Nova Scotia, it sees a large volume of patients on a maintenance basis. Anecdotally, there are a large number of Dr. Pollett's patients who report subjective benefit from the ongoing use of IV Lidocaine to treat chronic pain conditions. It appears that IV Lidocaine is often used by Dr. Pollett to treat a variety of pain conditions. The treatment is relatively inexpensive.

I agree with the reasoning concerning healthcare standards in Tribunal *Decision 2008-123-AD*. The term healthcare standards does not mean a universally agreed-upon set of guidelines. Given the plurality of standards-issuing organizations, there are often many standards. A standard, at a minimum, suggests an accepted possible treatment, not necessarily the most popular one. It does not include an experimental treatment.

I will now consider the four criteria in the policy for determining whether healthcare is appropriate.

Recommendations of Board approved healthcare providers.

Dr. Pollett supports the use of IV Lidocaine.

Dr. Pollett wrote that IV Lidocaine has been used throughout the world for the treatment of chronic pain. He wrote that at a meeting of the Canadian Pain Society, a group of

doctors who use it discussed the effective protocol for its use. He stated that the group included Dr. Jovey, past president of the Canadian Pain Society, Dr. Knight of the University of Alberta, and Dr. Ware of McGill University. He stated that they were all using IV Lidocaine as part of their treatments.

Dr. Marche, Board physician, recommended against the use of IV Lidocaine for the Worker. She stated that the Board research paper made it clear that repeated injections of Lidocaine is not accepted in the general medical community. She felt that more research is needed before recommending such an approach, including patient selection and outcomes.

Included in the Board research paper is information from Dr. Lynch of the Pain Clinic in Halifax. Her review of the literature indicated that there is some evidence that Lidocaine brings short-term pain relief, but no evidence of long-term relief. Also, there are no trials examining repeated injections or whether injections are safe and efficacious for the long-term.

Dr. Evans, of the pain clinic in Moncton, indicated that IV Lidocaine is not used there due to a lack of evidence for its long-term efficacy in treating chronic pain.

The McGill Pain Clinic indicated that success with IV Lidocaine is defined in their clinic as a reduction in pain for 3 weeks and an increase in function. The duration of IV Lidocaine treatment at the clinic is under review. However, the trend is toward short-term treatment to get a better understanding of the pain, instead of maintenance treatments. But, the clinic still has some patients on monthly treatments.

There are conflicting recommendation from Board-approved healthcare providers. Two pain clinic specialists, along with a Board physician, recommend against long-term use of Lidocaine to treat chronic pain.

Dr. Pollett supports long-term use and indicates that several of his peers use it in treating chronic pain. However, he does not provide detailed information as to specific IV Lidocaine use by his peers. The McGill clinic, where Dr. Ware is associated, appears to be moving away from long-term use of IV Lidocaine.

Overall, I accord the opinions on behalf of the Board greater weight. The specialists cited by the Board base their opinions on medical literature. The only clinic cited by Dr. Pollett who responded to the Board's inquiries is moving away from long-term treatment of chronic pain with IV Lidocaine. Details concerning the practices of the other doctors cited by Dr. Pollett are lacking.

Up-to-date scientific evidence about effective healthcare.

The only review of literature before me is contained in the Board's research paper. With respect to long-term use of IV Lidocaine there are mixed research outcomes. Deficiencies are identified in several of the studies, including small sample sizes. The meta-studies (studies that review several other studies) cited in the research paper indicate that more research is needed to draw definite conclusions about the efficiency of long-term usage.

Overall, this supports a conclusion that long-term use of IV Lidocaine is in an experimental stage, as opposed to a treatment in keeping with healthcare standards in Canada.

Evidence based guidelines.

According to the research paper, while Health Canada established guidelines for the use of IV Lidocaine for the treatment of arrhythmia, it has not done so for chronic pain. Likewise, the Compendium of Pharmaceuticals and Specialties lists Lidocaine as a treatment for arrhythmia. The American FDA has only approved IV Lidocaine for treatment of arrhythmia.

The Blue Cross of Georgia has a policy approving the use of IV Lidocaine for investigation of chronic pain, but not for its management (much like the trend at McGill).

On the other hand, Dr. Pollett wrote that he and an ad-hoc group discussed protocols for using IV Lidocaine for chronic pain.

Overall, there do not appear to be evidence-based guidelines for the long-term use of IV Lidocaine in the treatment of chronic pain on a maintenance basis.

Standards developed by the Board.

The Board's general position is that it will not cover the costs of IV Lidocaine treatment for chronic pain.

The Board's position statement on IV Lidocaine is posted on its website. It indicates that IV Lidocaine will not be approved for healthcare. However, due to the Tribunal having approved its use in the past, individual cases may be referred for a decision for coverage.

The Worker has failed to prove, on an 'as likely as not' basis, that the provision of IV Lidocaine for long-term chronic pain treatment meets any of the four criteria.

My decision differs from earlier Tribunal decisions on the provision of IV Lidocaine treatment for chronic pain due to additional evidence provided by the Board. I find that there is insufficient evidence that long-term IV Lidocaine treatment meets the criteria of

policy 2.3.1R. Its long-term use is still experimental and not consistent with healthcare standards in Canada. Therefore, it is not the most appropriate, effective and efficient healthcare available according to the policy criteria.

CONCLUSION:

The appeal is denied.

The Worker is not entitled to reimbursement for the costs associated with IV Lidocaine use.

DATED AT HALIFAX, NOVA SCOTIA, THIS 9th DAY OF MARCH, 2009.

Sandy MacIntosh
Appeal Commissioner