

WORKERS COMPENSATION APPEAL TRIBUNAL

BETWEEN:

WORKER
CASE ID # [personal information]

APPELLANT

AND:

**WORKERS COMPENSATION BOARD OF
PRINCE EDWARD ISLAND**

RESPONDENT

DECISION #183

Appellant	Worker, as represented by Maureen Peters, Worker Advisor
Respondent	Brian Waddell, Solicitor representing the Workers Compensation Board
Place and Date of Hearing	April 23, 2013 Loyalist Lakeview Resort 195 Harbour Drive Summerside, Prince Edward Island
Date of Decision	July 22, 2013

Facts and Background

1. The Appellant is appealing decision IR# [personal information] of the Internal Reconsideration Officer (“IRO”) dated October 29, 2012, which upheld a decision of the Workers Compensation Board (“Board”) to deny coverage for the Appellant of the medication, Diazepam. [Appellant’s Appeal Record Tab 1]
2. The Appellant first sustained a workplace injury on August 27, 2009, when he suffered a low back injury while working as a [personal information] for his employer. The claim was accepted on September 28, 2009, for low back strain, and the Appellant received temporary wage loss benefits, as well as Medical Aid benefits including coverage for the medications, Diazepam and Atasol. [Appellant’s Appeal Record Tab 7 and 19]
3. The medical aid also consisted of numerous visits to his family physician, Dr. Howard Molyneaux, as well as assessments and/or treatments received from Adams Chiropractic Clinic; Summerside Physiotherapy Clinic; Dr. John Campbell, Orthopaedic Surgeon; Dr. D.I. Alexander, Orthopaedic Surgeon; Dr. Edvin Kashi; Physiatrist; and Dr. Bryne Harper, Neurologist. In addition a functional capacity evaluation was performed by CBI Health; and an impairment assessment was conducted.
4. On March 19, 2012, in response to a request from the Appellant’s Case Coordinator, Dr. Steve O’Brien, the Board’s Medical Advisor, provided an opinion on the use of the medication Diazepam 10 mg and whether it was appropriate under the Appellant’s claim. Dr. O’Brien wrote:

Diazepam, also known by common brand name of Valium, is a benzodiazepine type medication; the use of which is associated with many risks. In *ODG Treatment in Workers’ Comp*, 2011, under benzodiazepines, states:

Not recommended for long-term use because long-term efficacy is unproven and there is risk of psychological and physician dependence or frank addiction. Most guidelines limit use to 4 weeks. Benzodiazepines are a major cause of overdose, particularly as they act synergistically with other drugs such as opioids (mixed overdoses are often a cause of

facilities) Chronic benzodiazepines are the treatment of choice in very few conditions. Tolerance to hypnotic effects develops rapidly. Tolerance to anxiolytic effects occurs within months and long-term use may actually increase anxiety. . . . Tolerance to anticonvulsant and muscle relaxant effects occurs within weeks.

I also note that [Appellant] has been prescribed Atasol 30, which contains 30 mg of codeine and is considered an opioid type medication. The use of this medication combined with Diazepam would be contraindicated because of the high risk of side effects.

Therefore, the use of the medication Diazepam would not be appropriate under this claim. [Appellant's Appeal Record Tab 133]

5. The Appellant's family physician, Dr. H. Molyneaux, was provided a copy of Dr. S. O'Brien's medical opinion on March 23, 2012. [Appellant's Appeal Record Tab 133]
6. The Appellant was advised in Board correspondence dated May 1, 2012, that his reimbursement request for Diazepam was denied. [Appellant's Appeal Record Tab 135]
7. On May 15, 2012, Board received a note from Dr. H. Molyneaux which stated, "This man has been taking Diazepam for approximately the past 3 years which is working for him with no side effects". [Appellant's Appeal Record Tab 136]
8. Following receipt of the above note, the Appellant's Case Coordinator requested a second opinion from Dr. S. O'Brien. Dr. S. O'Brien in his report dated May 16, 2012, indicated that his opinion was unchanged and added, "As is often the case with long term use of Diazepam and similar benzodiazepine medication, the patient is not aware of significant side effects they are having until they have been off the medication for a significant period of time". [Appellant's Appeal Record Tab 137]
9. On May 22, 2012, the Appellant was advised again that coverage for his Diazepam medication would no longer be provided. [Appellant's Appeal Record Tab 138]

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10. The Appellant filed a Request for Internal Reconsideration on August 20, 2012, and the IRO issued her decision on October 29, 2012, which upheld the Board's decision to deny the claim. [Appellant's Appeal Record Tabs 145 and 1]
 11. The Appellant subsequently appealed the IRO's decision to the Workers Compensation Appeal Tribunal by way of Notice of Appeal dated November 28, 2012. [Appellant's Appeal Record Tab 2]

ISSUE:

Was the Board's decision to deny coverage for the medication Diazepam appropriate?

ANAYLSIS/DECISION:

12. The Workers Compensation Appeal Tribunal is created pursuant to the provisions of the *Workers Compensation Act*, R.S.P.E.I. 1988, Cap. W-7.1 (the "Act") as amended. Section 56(17) of the *Act* states that this Tribunal is bound by both the *Act* as well as the Policies of the Board.
13. In the Appeal before this Tribunal, the issue concerns the provision of medical aid or more specifically coverage for the Appellant's medication, Diazepam.
14. Section 18 of the *Act* states:
 - (2) *The medical aid is at all times subject to the supervision and control of the Board and shall be paid for by the Board out of the Accident Fund, and such amount as the Board may consider necessary therefore shall be included in the assessment levied upon the employers.*
 - (3) *All questions as to the necessity, character, and sufficiency of any medical aid furnished or any vocational or occupational rehabilitation shall be determined by the Board.*
15. The Board is also guided by Policy POL-120 – Medication. It reads in part:
 1. *The Workers Compensation Board may authorize payment for medications that are necessary for the treatment of workers who have*

been approved by the Workers Compensation Board for medical aid benefits. In order to give consideration for payment, the medication must:

- be prescribed by a licensed physician, dentist, or nurse practitioner; within their scope of practice;*
- be dispensed by a licenced pharmacist;*
- be prescribed for a compensable condition.*

In addition, the dosage, frequency of use, and total amount prescribed must be clearly indicated in reports submitted to the Workers Compensation Board using the Canadian Pharmacists' Association Compendium of Pharmaceuticals and Specialties as reference for establishing dosage recommendations.

- 2. The Workers Compensation Board may refuse or limit the authorization of payment of prescription drugs or medications that are ineffective, inappropriate, or harmful, including those which may lead to dependency or addiction.*

...

- 5. The Workers Compensation Board may authorize opioid prescriptions beyond two weeks when all of the following criteria are met:*

- the prescription of opioids is part of an integrated approach to pain management;*
- the prescription can only be prescribed by a single licenced physician or dentist at any one point in time;*
- the route of prescription is oral;*
- careful consideration is given to behavioral symptoms that suggest opioids may increase the complexity of the worker's problem;*
- there is evidence that treatment with opioids will result in improvement of both pain and function;*
- the prescription pattern follows regular dosing of long-acting oral opioids, with infrequent short-acting oral dosages of the same opioid for breakthrough pain;*
- there is appropriate monitoring by the Workers Compensation Board;*
- there is compliance with the guidelines issued in February 2005 by the College of Physicians and Surgeons of Prince Edward Island as well as updates as they become available;*
- there is a signed copy of a therapeutic agreement between the worker and physician, such as the Patient Agreement of Conditions Governing Treatment with Opioids, Appendix 4 of the College of Physicians and Surgeons of Prince Edward Island Guidelines, and a Narcotic Management Form signed by the prescribing physician, provided to the Workers Compensation Board.*

6. *The Workers Compensation Board will periodically review the worker's treatment plan and goals to ensure that opioids continue to be necessary and effective in treating the compensable injury or disease.*

The Workers Compensation Board may suspend or discontinue authorization of payment for prescribed opioids when:

- increases in dosage do not result in improvement in function (based on validated outcome measures acceptable to the Workers Compensation Board), progress towards return to work and/or a reduction in pain;*
- the prescribed opioids result in significant, serious side effects (e.g., nonphysiological processes required for bodily functions, medications required to counteract side effects reasonably attributable to opioids);*
- the prescribed opioids are harming or impeding the worker's recovery, improvement in function, and/or return to work;*
- there is evidence of repeated dosage adjustments that have not been prescribed or authorized;*
- there is evidence the prescribed opioids are being misused, used in a manner not intended by the prescribing physician, or is inconsistent with the intended purposes of the medication.*
(Emphasis Added)

16. Policy POL - 68 - Weighing of Evidence requires the Board to assess and weigh all relevant evidence and make decisions based on a balance of probabilities - a degree of proof which is more probable than not.
17. Dr. S. O'Brien opined that the Appellant was at an increased risk for side effects due to the use of another medication, Atasol 30, which he stated should not be taken at the same time as Diazepam as it is considered an opioid. On the other hand, Dr. Molyneaux advised the Board that the Appellant had been taking Diazepam for the past 3 years with no side effects.
18. The Appellant argued that Dr. H. Molyneaux would be in the best position to make a determination regarding any side effects the Appellant might be having with Diazepam since he had been the Appellant's treating family physician for many years, was the prescribing physician and had been treating him from the date of the injury onwards.

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19. Therefore, it was argued by the Appellant that Dr. H. Molyneaux's opinion established on the balance of probabilities, the use of Diazepam was necessary and reasonable in this case, and his opinion should be given greater weight than that from Dr. O'Brien.
 20. Finally, the Appellant submitted that the evidence before the Tribunal was at least equal in weight and thus the benefit of the doubt must be afforded the Appellant, pursuant to section 17 of the Act and Board Policy POL-62 – Benefit of Doubt.
 21. The Respondent, on the other hand, argued the evidence was not equal in weight. Section 18 of the Act clearly grants the Board the authority to supervise, control and determine the necessity for medical aid, while POL 120 – Medications gives the Board the authority to refuse or limit authorization for prescription drugs that lead to dependency and addiction.
 22. The Respondent argued that Dr. S. O'Brien's medical opinion should be given more weight. Dr. S. O'Brien's opinion cited *ODG Treatment in Workers' Comp, 2011* which stated Diazepam was not recommended for long term use as there is risk of dependence and addiction. Dr. S. O'Brien also noted that taking Diazepam combined with Atasol 30 (an opioid) could create a high risk of side effects.
 23. The Respondent also argued that the inconsistencies in Dr. H. Molyneaux's statements would suggest a too casual approach on the use of an opioid. In a letter dated June 17, 2011, Dr. H. Molyneaux stated the Appellant "requires a steady use of Atasol to control pain" although he made no mention of his taking Diazepam. In his later statement dated May 14, 2012, he wrote "he has been taking Diazepam for the past 3 years".
 24. The Respondent argued further the Board's Policy POL 120 imposed strict guidelines on the use of an opioid beyond two weeks, and it was clear from Dr. H. Molyneaux's statement that the Appellant had been taking both Atasol and Diazepam for at least three years. Paragraph 5 of Policy 120 requires the use of an opioid to be part of an integrated approach to pain management, and there should be evidence that such treatment will result in improvement of both pain and function. The Respondent claimed there was no

indication of an integrated approach to the Appellant's pain management, nor was there any evidence of any improvement of pain and function by the Appellant.

25. The Board submitted that Dr. S. O'Brien's opinion was based both on the Board POL 120 as well as the *ODG Treatment in Workers' Comp, 2011*, while Dr. H. Molyneaux's contrary opinion was based solely on the fact that he was the Appellant's family physician and that the Appellant suffered no side effects in the three years he had been taking Diazepam. Thus the Board argued that the evidence cannot be considered equal in weight.
26. Finally, the Respondent posed a suggestion that Dr. Steve O'Brien, be asked to appear before the Tribunal to offer some clarity and clarification on the use of Diazepam. The Appellant countered, that should the request be granted, he should be provided the same opportunity to have Dr. Molyneaux attend as well. The hearing recessed to allow the panel an opportunity to discuss the issue. However, this Tribunal determined there would be no benefit in having the two physicians appear as the oral and written submissions were sufficiently presented to enable the Tribunal to make a decision.
27. This Tribunal agrees with the Board that the evidence presented was not equal in weight, but rather was weighted more in favour of the Board's position. Dr. S. O'Brien's opinion is supported by the *ODG Treatment in Workers' Comp, 2011*, as well as the Board Policy which permits opioid prescriptions beyond two weeks when all of the criteria have been met. In this case, the only medical evidence in the Appellant's favour was Dr. H. Molyneaux's note that the Appellant experienced no side effects. There was no evidence that all of the criteria as set forth in Paragraph 5 of Board POL 120 had been met, and in particular there was no evidence of an integrated approach to the Appellant's pain management.
28. Therefore, on the balance of probabilities, the Tribunal rules that the Board exercised its discretion appropriately in denying continued coverage of the drug Diazepam to the Appellant. The Appellant's appeal is therefore denied.

29. The Tribunal wishes to thank counsel for the Appellant and the Respondent for their well presented arguments.

Dated this 22nd day of July 2013.

Wendy E. Reid, Q.C., Chair
Workers Compensation Appeal Tribunal

Concurred:

Scott Dawson, Employer Representative

Bruce Gallant, Worker Representative