Submission #80

MFL Occupational Health Centre, Inc.

A Presentation

to

Workers Compensation
Public Review Hearings in Manitoba

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Presented by

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The MFL Occupational Health Centre (Centre) is a community health centre specializing in occupational health and safety. The Centre is dedicated to attaining the highest level of occupational health and safety for Manitoba workers by delivering services that improve workplace conditions and by empowering individuals and groups to take action on workplace health and safety issues. For over twenty (20) years we have helped Manitoba workers with medical diagnosis and evaluation, prevention, education and outreach services.

Occupational Disease

Definition of "occupational diseases"

The definition of "occupational diseases" used in the Workers Compensation Act is inconsistent with current concepts of causation of disease. The Workers Compensation Board (WCB) accepts a disease as occupational when occupational factors are deemed the dominant cause of the disease. This translates into a system where a condition is either accepted or not accepted as work related. Although on the surface this may seem reasonable, operationally this usually means acceptance of a claim when epidemiologic studies show double the risk. Many cases of workplace occupational disease occur in situations where the risk is not doubled. The use of a "dominant cause" criteria creates too high a level of proof to show occupational causation for multi-factorial diseases when workplace and non-workplace exposures interact in the development of the disease. In this situation, many cases of disease where workplace factors played an important role are not recognized as work related.

Asthma Compensation Criteria

The assessment of impairment in occupational asthma in Manitoba is out of date. The system used in this province for asthma is the same as for other occupational lung diseases using a combination of symptoms, physical findings, and lung function tests. Many of these categories have nothing to do with asthma and their inclusion in the assessment tends to limit the award. Other provinces such as Ontario and Quebec are using a more relevant system to assess occupational asthma and we recommend that Manitoba follow their lead.

Permanent Partial payment awards are too low

The Centre has seen a number of individuals who are appealing WCB decisions regarding their permanent partial disability awards. These individuals want to appeal their impairment ratings because the awards they receive are too small for the permanent impairment they are living and working with. Impairment ratings are calculated on the basis of a portion of a whole body impairment and this percentage is then translated into a dollar amount based on the individual's income. Workers who have low impairment ratings wind up with low awards. For example a young man in his early 20's on his first job had his non-dominant hand damaged in an industrial accident and was left with some permanent neurologic damage. He had problems in the cold and with the lack of strength in his hand. He was assessed at less than 2.0% permanent partial disability. In his case this translated into a lump sum payment award of about $1500.00. Although his impairment is relatively low in the whole body

approach, to the worker this small amount defies his common sense perception of his injury's long term impact . It is important that the WCB readdress the conversion of impairment ratings into monetary awards to bring the awards up to appropriate levels.

Injury disability and Chronic Pain

The greatest cause of injury in the workplace and the working population of Manitoba involve *musculoskeletal injuries* (MSI), a spectrum ranging from acute strain, sprain, contusions or fracture, to conditions of chronic pain, impairments, and disability.

As an insurance company, WCB is concerned with limiting the financial responsibility for financial and social costs inherent in chronic disability. This drives claims management more than the principles of secondary or tertiary prevention, i.e., broader efforts to prevent further disability and unemployment.

For the broad spectrum of chronic musculoskeletal disability, and its related economic and social impacts, coverage under WCB, as with most insurance companies, is limited by claims administration.

For example, acute injury claims files are often closed with "full return to work", however, short-lived, and whether or not there was full recovery and resolution of pain and related post-injury syndromes.

Or, other contributing medical conditions, collectively termed 'pre-existing' or degenerative, are often the pretext for denying coverage of subsequent recurrences, aggravations or complications. Ironically, a series of previous work injuries, recognized in WCB

claims history, is often used as a ‘ pre-existing’ condition disallowing a new claim.

For such denied claimants, appealing for medical review is the usual option. Their suffering and predicament is thereby medicalized. As often is the consequence, the diagnosis is deemed ‘pre-existing’ effectively cutting off benefits and treatments. Understandably, workers seeking compensation feel betrayed and disbelieved.

In medical terminology this situation constitutes a major iatrogenic complication (an adverse condition occurring as a result of medical treatment or management) - the worker see her/himself doubly victimized, by the accident and then ‘the system’.

"Excessive or exaggerated pain behaviours can be a response to feeling discounted or mistrusted, so that one must emphasize symptoms to persuade physicians of their reality, magnification can be an iatrogenic phenomenon that occurs when an individual feels mistrusted or poorly cared for." [1]

These individuals (of which there are hundreds if not thousands in the province) have not been well served by the system. There are compelling ethical, economic and social reasons to recognize that the WCB process is neither effective nor efficient with this important sub-population of injured workers.

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[1] Section 18.4, recently released 5th edition of AMA Guides to the Evaluation for Permanent Impairment allows for the rating of pain as a permanent impairment, the system relies primarily on self-reporting and assesses: 1. Pain intensity; 2. emotional distress related to pain; and 3. effect of pain on activities of daily living. ADL (Activities of Daily Living) are given the greatest weight. Previous editions of the AMA Guides were less accepting of pain impairment, e.g. 4th Edition: "The presence of pain, in the absence of an identifiable somatic cause, is not impairment in itself… An individual who complains of pain, but who has no objectively validated limitations in daily activities has no impairment. [material from Greg Chernish MD May 27, 2002 seminar "Pain Related Impairment: the Cost of Suffering"]

However, once WCB files are closed whatever disabilityand impairment, primary and iatrogenic, falls to the safety net', as it exists, in Manitoba (e.g., health care, social assistance, etc). The social and economic cost from the downward spiral of life circumstances attending a failed recovery can be dramatic. The primary casualty is the once active and productive worker, but the impact affects household and social economy.

The relative savings of a no fault (WCB) vs. litigation compensation system is lost when chronic disability claims are subjected to lengthy appeal proceedings with administrative costs several fold in excess to benefits paid out or medical costs.

From the vantage point of the government of Manitoba, responsible for social welfare and health care to the population… the opportunity for legislative review of the WCB Act should re-appraise the impact, indirect and indirect, in cases of chronic pain disability and consider alternative approaches to case management

At the MFL Occupational Health Centre, the case load of the musculoskeletal occupational health physician predominately consists of injured workers with ongoing medical issues, pain impairments, and issues of entitlement to WCB benefits or services. Since 1997, our physician has worked with at least 300 such Manitoba WCB claimants, approximately a third of whom subsist on social welfare and have generally coped poorly with their condition. From this experience, two issues that deserve attention are highlighted here.

Issue #1. Disputes between disability insurers over coverage responsibility in complex cases.

When work injury disability is established but coverage responsibilities are disputed between insurers, e.g., WCB and MPIC (publicly run) or other disability insurers (private).

Example 1: a worker is off work on WCB for treatment of a work injury. At this stage he is involved in an motor vehicle accident, and his overall condition restricts him from returning to work. WCB states he has recovered from the effects of his work injury and his residual disability is related to the motor vehicle accident. Manitoba Public Insurance (MPI) states his barrier to returning to work is related to his initial work injury, therefore, the responsibility of WCB.

Example 2: a worker sustains multiple strains and destabilization of his cervical spine from repetitive biomechanical forces in his work. Nerve root impingement and spinal cord signs lead to neurosurgical release and fusion of the neck.

WCB holds the position that the underlying condition of degenerative spinal changes is not compensable. Disability insurer argues that it is work-related. The worker ends up with no coverage, dependent on welfare without treatment coverage or vocational rehabilitation services despite having ostensible coverage by two insurers.

Recommendation: When there is unequivocal disability from a work injury, but the coverage is disputed between insurers, e.g.WCB and MPI (publicly run), or other disability insurers (private), it is recommended that services necessary for the worker to proceed basic treatment, rehabilitation and vocational opportunities not be withheld due to contestation between WCB and another insurer.

A ‘human rights ombudsman’, an impartial office at arms length from WCB may be called for to apportion financial responsibility. The internal WCB Medical Review Panel process as is practiced to date, is not sufficiently objective, nor is the issue in such cases solely medical, but includes dire poverty and social impact. There should

be a mechanism by which the injured worker is not denied services and disability costs are not borne by ‘household" and ‘state’ due to intransigence of publically legislated insurers to apportion responsibility between them.

Issue # 2. Current medical science about degenerative spinal disease

Degenerative peripheral joint conditions such as knees, elbows and shoulders may be compensable under WCB when they result from traumatic work injuries and, in some cases, of repetitive overuse when established by epidemiological studies. This is generally not the case for degenerative spinal diseases, where the finding of osteoarthritic conditions (e.g.spinal stenosis) is usually deemed pre-existing, and unrelated to repetitive work or a history of recurrent strain injuries on the job.

However, current medical science is demonstrating that, in the case of several degenerative spinal diseases [2], mechanical overuse like that of repetitive work and cumulative strain causes the degenerative tissue formation. The current determination by WCB that repetitive overuse and recurrent strain does not cause degenerative spinal disease does not reflect current science.

Recommendation: a worker’s history of previously accepted work injuries involving a particular body part (e.g. low back) should not be discounted as a ‘pre-existing condition’ that disentitles the current claim of the same body part.

Workplace Stress

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[2] e.g., cervical spinal stenosis from "ossification of the posterior longitudinal ligament" (OPLL) and the ligamentum flavum (low back), and "diffuse idiopathic skeletal hyperostosis" (DISH)

Ongoing workplace stress is a real occupational hazard that contributes to medically recognized diseases such as anxiety and depression. The WCB's position of not compensating workplace stress related claims does not reflect the current scientific and medical thinking. There is extensive research, case studies and documentation clearly showing ongoing workplace stress is an occupational hazard. For references to related research see the presentation already submitted by the Workplace Stress Initiative "Workplace Stress, Mental Illness & Manitoba's Workers Compensation Act". We recommend the restriction on chronic workplace stress related claims be removed from the Act and resulting diseases compensated.

Immigrant Workers

Through our work with the immigrant community, we know that immigrant workers face additional barriers in trying to access the system. For workers with English as a second language the system is confusing and misunderstood. In Manitoba the burden of translation is placed on the worker. Workers are asked to provide their own interpreter. There are no translation services available at the WCB to help the worker negotiate the system nor are immigrant workers directed to services that may exist such as the International Centre's language bank. In contrast the Workers Safety Insurance Board in Ontario have an internal staff of language specialists and they also contract directly with a bank of freelance interpreters and translators. In total, they can provide language services for 77 different languages.

The WCB also needs to offer information and education about its services in other languages. The Occupational Health Centre is very successful in working within the immigrant community in training community facilitators to help workers understand their basic rights. There is no reason the WCB could not adopt this approach and work directly with the immigrant community.

Manitoba is the leading province for Canada in its immigrant recruitment program. Along with recruitment, comes the obligation to support immigrant workers with interpretation services, outreach and education and help in accessing services.

Community Initiatives and Research Program

Grants from the above program provided the Centre with seed money to develop and implement education and outreach projects for workers in the immigrant and Aboriginal communities. Currently we are integrating the immigrant education and outreach program into our core programming as part of our services to Manitoba workers. Once the education and outreach project stage is completed for the Aboriginal workers strategy, we will again integrate this program into our core services. Without this funding we would not be able to develop, test and implement new strategies.

The Community Initiatives and Research Program's community consultation process allowed us to meet other grant recipients, hear about other innovative initiatives and give input into the granting process.

This program is invaluable in aiding community organizations to carry out exciting, worthwhile projects that over the long term will prevent workplace diseases and injuries and reduce workers compensation costs. We recommend that the WCB continue to support this program and increase the funding to two million dollars annually.

Conclusion

Workers in Manitoba deserve a compensation system that is fair, and easy to access with sufficient benefits that the worker and the worker's family do not suffer financial hardship.