CANADIAN SOCIETY OF CHIROPRACTIC EVALUATORS

the Evaluator

Content

The Canadian Society of Chiropractic Evaluators (CSCE) *strives to promote a high level of quality, expertise and standardization in the performance of independent chiropractic evaluations and in the production of the resultant narrative report.*

CSCE President's Report - August 2012

Health care practitioners operating in the environment of third-party independent assessments have faced changes over the last few years, as systemic reforms have been implemented in Ontario in particular. Chiropractic Experts are not alone in having been negatively impacted from these changes.

The Board of Directors of The Canadian Society of Chiropractic Evaluators continues to work diligently on your behalf to ensure that there remains a forum for the views of Chiropractic Experts to be voiced, and their expertise on assessment matters recognized. We continue to liaise with Government and regulators to help ensure that this occurs.

Recent changes in Ontario include the release of the Superintendent's Report on the Definition of Catastrophic Impairment in the Statutory Accident Benefits Schedule. This report provides little clarification of the role for allied health care professionals in the performance of independent catastrophic assessments. At this time we are encouraging all CSCE members to write or email their MPP and express any concerns that they may have. While we did meet with him last August on this issue, many of our concerns about the lack of training of assessors (especially given proposed changes), looking at the training of assessors rather than merely their initial professional designation, and potential shortage of assessors, have failed to be acknowledged in the Superintendent's final report.

Subsequent to regulatory changes in September 2010, there is much greater control of the determination of benefits by insurers, without the need for input from duly qualified health professionals. This has created a gross imbalance in the system to the extent that there are now approximately 26,000+ cases pending for mediation at the Financial Services Commission of Ontario. In many cases, determination of the need for health care goods and services, and specified benefits, are being made internally by insurers, without the benefit of health care expertise from Chiropractic Experts or other qualified health professionals. This results in a significant potential of unfairness for the claimant and for the dispute resolution system at large. Recent arbitration and court decisions have sided with claimants on these matters, and the legislation that arbitrations must be heard within 60 days from filing.

A number of Chiropractic Experts are performing assessments for the Workplace Safety and Insurance Board. We continue to work on educating the legal community and third party payors on the role that Chiropractic Experts can play.

For members outside of Ontario, we encourage your input on matters affecting you locally and where CSCE can potentially be of assistance. In this regard, we are finalizing the new edition of the CSCE Desktop Reference Manual which will be timed for release in the early fall.

Given the relatively strong financial position of CSCE and recent changes that may negatively be impacting on members, your Board has decided to waive annual dues for this year. The dues will be re-visited next year. The financial position of CSCE continues to be assisted through the continuing education programs that CSCE offers in conjunction with CMCC.

D. Dos Santos, *B.Sc., D.C., FCCPOR(C), FCCO(C)*
President, CSCE

FSCO Mediation delays over 60 days constitutes a Failed Mediation

Ontario Superior Court Justice John Sloan ruled on February 8, 2012 that the Mediation Unit at the Dispute Resolution Services of the Financial Services Commission of Ontario (FSCO) was functioning without timelines and had been doing so for years. He indicated that the Statutory Accident Benefits Schedule was for the benefit of injured motor vehicle victims and that these benefits are often required in a timely fashion.

This decision was in response to a series of cases brought forward by the plaintiff's lawyer that the failure of FSCO to conduct the applied for mediations within the regulated time frame of 60 days constituted a failed mediation process.

Current mediation application processing backlogs at FSCO have grown from approximately 12,000 cases in September 2010 to over 40,000 cases with a 12 to 14 month delay before they are assigned to a mediator.

Justice Sloan ruled the Insurance Act is clear, that 60 days after an accident victim has filed an application for mediation that an accident victim has a number of choices and that one of these choices is to start a court action.

He stated that insurance companies always have the option to discuss and negotiate a settlement with claimants and given the differences in financial resources between the insurer and the accident victim, claimants should not be kept in perpetual limbo from being able to access timely reasonable and necessary benefits.

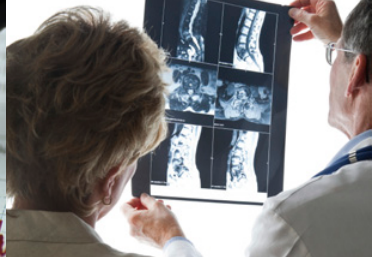
Justice Sloan ruled that to entertain the insurance companies' position that accident victims must simply wait 100, 300 or 500 days for mediation is preposterous.

Justice Sloan's decision is also supported by Arbitrator Jeffrey Rogers' decision of February 10, 2012 in the case of Leone vs State Farm. In his decision, he states that claimants face the potential of irreparable harm as a result of delay in recovery of benefits to which they are entitled. The erosion of statutory rights to a speedy dispute resolution process can have serious consequences for both sides.

The impact of these decisions on the auto insurance system is still uncertain. However, it is anticipated that with these decisions that claimants will be able to move forward with their claims for reasonable and necessary accident benefits in a more timely fashion. However, coupled with other problems within the auto insurance system, the decisions may lead to increased costs to insurance companies and upward pressure on insurance premiums.

Citation 2012 ONSC 905



Chiropractic Specialties Conference

CANADA'S 2nd ANNUAL CHIROPRACTIC SPECIALTIES CONFERENCE

Headache and Concussion

Saturday, November 3, 2012

Courtyard Marriott
475 Yonge Street, Toronto, Ontario

On Saturday, November 3, 2012 members of Canada's five Specialty Colleges will come together again for our second annual joint conference, bringing chiropractic leaders from across Canada for an intense day of learning and exchange. This conference is for Chiropractic Specialists, Chiropractors and students alike.

The conference will feature plenary sessions, a panel session and a grand rounds presentation focusing on the theme of Headache & Concussion. In addition, the AGMs for most Colleges will be held the same day.

HOLD THIS DATE in your calendars now
and plan to attend this excellent learning opportunity.

Come and re-connect with your Chiropractic Fellows around this very important topic area. The rate at the Courtyard Marriot is $115. Please contact the hotel at 1-800-847-5075 and indicate that you are with the "CFCREAB Specialties Conference" to receive the discounted room rate. The conference early bird registration fee is $250. Further details will be forthcoming in the next few weeks.

If you have any questions, please do not hesitate to contact us at:

chirofed@associationsfirst.com

Look for regular updates at www.chirofed.ca/english/specialty.html

Look forward to seeing you all in November!

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Maximum Medical Recovery - Guidelines Policy Statement

By

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In Ontario we are now just over 18 months into the management of auto accident claims under the new Superintendent's Guidelines released in November 2010. For the independent assessor, complexities associated with the physical assessment process often presents a clinical conundrum, particularly where a decision regarding permanent impairment is requested and maximum medical improvement (MMI) must be evaluated.
As noted in, The Guides Newsletter of the American Medical Association, September / October 2000, MMI is synonymous with a variety of other terms including "ascertainable loss; end of healing; fixed and stable; maximum cure; maximum degree of medical improvement; maximum medical healing; maximum medical recovery; maximum medical rehabilitation; maximum medical stability; medical end result; medical stability; medical stabilization; medically stable; medically stationary; permanent and stationary; and stable and ratable." [1]

The term MMR is widely used throughout the Province of Ontario, and specifically referred to in the Superintendent Minor Injury Guideline 09/11 .

An insured person's impairment does not come within this Guideline if the insured person's impairment is predominantly a minor injury but, based on compelling evidence provided by his or her health practitioner, the insured person has a pre-existing medical condition that will prevent the insured person from achieving maximal recovery from the minor injury if he or she is subject to the $3,500 limit referred to in section 18(1) of the SABS or is limited to the goods and services authorized under this Guideline.

While the Superintendent's Guideline defines a number of terms such as 'minor injury,' the difficulty for the independent assessor is that it does not define "maximum recovery." To make the issue more complicated the Ontario courts refer to The American Medical Association Guide to the Evaluation on Permanent Impairment 4th edition on such issues which again does not define MMR.

While the Guides does not define MMI, it does state that:
An impairment should not be considered 'permanent' until the clinical findings, determined during a period of months, indicate that the medical condition is static and well stabilized [4th Ed, 9].

In the USA, the following examples serve to illustrate the variation with regard to definitions of MMR utilized by various jurisdictions:

The State of Alaska defines MMR for workers' compensation as:

"The date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence. [2]

A more stringent definition is that from the State of Washington:

". . . when it is reasonably certain that further medical treatment will not predictably alter the course of the illness or medical condition. In other words, there is no significant probability that the level of impairment will be decreased by the treatment. [3]

The State of Ohio defines MMR as:

"A treatment plateau, static or well stabilized, at which no fundamental, functional, or physiological change can be expected within reasonable medical probability, in spite of continuing medical or rehabilitative procedures. However, a patient may need supportive treatment to maintain this level of function or reduce adverse progression. [4]

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For comparison, Canadian Provinces offer the following definitions:

ONTARIO

In Ontario, the policy of The Workplace Safety and Insurance Board (WSIB) states:

"Workers reach MMR when they have reached a plateau in their recovery and it is not likely that there will be any further significant improvement in their medical impairment".

The Guidelines governing the specific definitions include:

Significant improvement = *a marked degree of medical improvement in the work-related impairment that is demonstrated by a measurable change in objective clinical findings.*

Impairment = *a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss.*

Permanent impairment = *impairment that continues to exist after the worker reaches MMR.*

In Ontario, MMR is determined based on the following information which includes but is not limited to:

- clinical reports from the treating health professional(s)
- specialists' report(s), where appropriate
- reports from agency(ies) providing treatment and/or evaluation, (e.g., Regional Evaluation Centres)
- information from the worker on his/her medical impairment
- external, evidence-based medical/scientific guidelines on disease and injury-specific impairment and treatment, and
- the opinion of WSIB clinical staff, if obtained.

If clinical progress does not reveal any significant change over time, a specialist's opinion may be rquested to ascertain whether the worker's medical impairment is likely to improve.

According to the WSIB Guidelines, even when referring to a specialist, or when considering further clinical investigations, it may be that MMR has been reached if there is evidence that the worker's condition is unlikely to improve significantly.

ALBERTA

Alberta (Workers' Compensation Board – Alberta)

Return to work guidelines offer an estimate of the approximate time required for workers to return to work, following various work-related injuries and treatments. The maximum time allotted is not necessarily a definite return to work date, but rather the time when questions should be asked as to why the worker has not returned to work. Questions may be answered by medical reporting, discussion with the treating physician or it may be necessary to interview the worker for an independent examination. Such guidelines are specific to the injured part (e.g. fracture, tendon rupture, etc.) yet take into consideration that the worker need not lose time from work if modified or alternate job duties are available or work duties may be safely performed using uninjured limbs, without compromising treatment. [5]
The guidelines also provide an opinion concerning whether permanent clinical impairment [PCI] is not anticipated, possible or expected. If PCI is possible or expected, the guidelines indicate when the claim should be reviewed for this purpose. In order to ensure MMR has been achieved, the time indicated is the earliest that a PCI review should be considered. If there has been no surgery, PCI is from date of accident. If surgery has been performed, PCI is from date of surgery.

In cases where surgical or therapeutic procedures have occurred, it is the underlying condition that determines the PCI, not the procedure. If a procedure is uncomplicated it should expedite return to work and lessen the chance of a permanent clinical impairment, not vice versa.

NOVA SCOTIA

Nova Scotia (Workers' Compensation Board of Nova Scotia)
The program policy outlines factors considered by WCB when determining if the evidence supports a finding that the worker has suffered a recurrence of their compensable injury. Where it is determined a worker has suffered a recurrence, they may be eligible to receive benefits and services as provided for in the Workers' Compensation Act.

According to the Act, "MMR means the point at which further medical treatment or intervention will not , in the opinion of the WCB, result in a significant improvement in the worker's medical condition". The Act indicates, "recurrence of compensable injury" is the return of, or increase in, clinically demonstrated disability or symptoms that are caused by the compensable injury after the worker has reached MMR; the worker has returned to work; and/ or the worker suffers a further injury, condition, or disablement caused by, and considered part of, the compensable injury". [6]

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American Medical Association Guidelines 5th and 6th editions

The American Medical Association Guide to the Evaluation on Permanent Impairment 5th and 6th edition provide a much clearer definition of MMI:

> *Maximal (or maximum) medical improvement (MMI) refers to a condition or state that is well stabilized and unlikely to change substantially in the next year with or without medical treatment.*
> *(American Medical Association the Guides 5th edition)*

> *MMI can be conceptualized as a date from which further recovery or deterioration is not anticipated although over time (greater 12 months) there may be some expected change.*
> *(American Medical Association the Guides 6th edition 2.5e page 26)*

While the latest editions of the American Medical Association's Guide to Permanent Impairment provide much greater clarity to the definition of Maximum Recovery, it is likely should the independent Chiropractic Assessor render an opinion regarding MMR based upon these definitions, that their decision may be challenged by the courts as inconsistent with the current accepted Guidelines.

It is recommended that the Superintendent Guideline be revised to include a clear definition of Maximum Recovery consistent with current standards, so that, clinically-related decisions would more likely be rendered with greater structure, resulting in less vagueness and ambiguity.

References

1. The Guides Newsletter, American Medical Association; September / October 2000.
2. Alaska Workers' Compensation Act AS 23.30.395(21).
3. Medical Examiners' Handbook. Olympia, Wash: Washington Department of Labor and Industries, September 1998; 41.
4. Bailey, JA. The Concise Dictionary of Medical-Legal Terms. New York, NY: Parthenon Publishing, 1998; 79.
5. WCB – Alberta, Online Services for Health Care Providers, 2009. www.wcb.ab.ca/providers/addgintr.asp
6. Workers' Compensation Board of Nova Scotia, 2008. www.wcb.ns.ca/policy/index_e.aspx?Detailld=2208

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