WCB Reform of Chronic Pain: What's In It for Employers?

Section 13(1) of the Workers' Compensation Reform Act, scheduled to be passed by December,1997, allows the Compensation Board to limit benefit and rehabilitation entitlement to workers suffering a chronic pain disability subsequent to a work accident.

Since the Workers Compensation Appeals Tribunal recognized chronic pain as a disease entity over 10 years ago, the Compensation Board has been determinedly attempting to contain worker entitlement for chronic pain by adopting restrictive entitlement criteria; limiting treatment to 4 weeks at Community Clinics; initiating stringent return to work programs; etc. All these measures have failed as chronic pain proves an elusive entity, allowing workers to restore benefits through appeals.

Chronic pain has its causation in factors removed from the injury itself: character deficiencies; pre-existing vulnerability to mental illness; desire for financial reward; desire for family support; unhappiness with the job environment; etc. To effectively cope with such an intricate disease entity, the adjudicators of the Compensation Board would by necessity have to be highly skilled and have the necessary resources (time).

Timely and individually tailored treatment programs which separate out those who need assistance from those who are consciously exaggerating would have to be developed and carefully monitored. The ignorant and politically appointed crew who have been running the WCB for the past 10 years could not possibly implement such programs. Generally, chronic pain claimants are at first under-compensated and then over-compensated.

To rectify this situation the following measures have been put forward as new Compensation Act Regulations defining exactly what benefits will be available to chronic pain sufferers:

1. In the case of a back strain a worker will be expected to return to light work within 7 weeks and heavy work within 16 weeks.

2. Light work is defined as "work activities involve handling of loads of 5 kilograms but less than10 kg". Heavy work is "work activities involve handling loads more than 20 kilograms".

3. A WCB nurse case manager will decide what constitutes light work or heavy work, as well as what constitutes a sprain as opposed to some other more serious form of injury.

4. Chronic pain will be defined as (i)pain which persists beyond the "usual recovery time" (see 1.above) and (ii)pain for which there is insufficient evidence to indicate that a physical abnormality or loss related to a compensable injury or disease is the cause of the pain.

5. Workers with potential chronic pain will be treated by "health professionals", at the discretion of the WCB nurse case manager, before symptoms arise, to prevent chronic pain.

6. Chronic pain sufferers will be entitled to participate in a pain management program.

7. After completing the pain management program, the chronic pain worker will be entitled to two follow-up additional stress management or biofeedback sessions focused on maintaining a prompt return to work.

8. There will be no entitlement to chronic pain treatment after 12 months.

9. There will be no entitlement to any benefits - health care or money, after the treatment is completed.

10. Employers have to provide chronic pain sufferers with their old or comparable suitable work.

11. The Pain Management Program must include a physician, a psychologist, and a physiotherapist who have specialized training.

12. Stress management, relaxation training and biofeedback must be part of the program.

13. The pain management program cannot last longer than 4 weeks.

14. The effectiveness of the program will be evaluated according to scientific standards.

15. Guidelines on healing times (entitlement period) and treatment will be extended for multiple recurrences.

These proposed Regulations are supposedly based on the recommendations of experts who the Board secretly commissioned in September 1996. The names of the experts are secret. A copy of the secret report was obtained under a Freedom of Information Act request by our office on July 28, 1997.

The proposed Regulations conflict severely with the following actual recommendations of the experts:

1. Disabilities should not be divided into organic (real) and chronic pain (mental) categories. Rather, pain from all sources should receive expert treatment, evaluation and limited entitlement.

2. The ultimate goal of medical rehabilitation efforts is to substantially improve functioning rather than a return to pre-accident work.

3. The loss of employment opportunities through no fault of the chronic pain sufferer (i.e. a layoff) should not be held against him/her. (Treatment will fail if suitable work is not available)

4. Treatment should start at the outset of the disability, not when chronic pain is identified by guideline.

5. There should be formal assessment phases as a disability continues, with a goal setting process.

6. Programs have to be individualized to meet the needs and problems of individualized workers. The program should be staged into segments lasting up to 12 weeks. There has to be an intense follow-up phase.

"Keep It Simple Stupid"

This is the new motto of the Workers' Compensation Board. Pigeon hole workers into categories, and put in place brief time categories of entitlement. Although this motto will initially delight employers, companies should be aware of the mid-term dangers facing a Compensation System that is patently unfair to workers, and in reality to employers themselves who are sending this

agency $2.6 billion every year in order to rehabilitate and fairly compensate what is generally a loyal Ontario work force. Consider the following:

A. Length of Treatment:

The Compensation Board is suggesting 4 weeks versus the Experts' 12 weeks. Section 33(1) of the Compensation Reform Act states a worker is entitled to all necessary health care. Section 33(8) states it is the Compensation Board which is the final arbiter of what is "necessary". When the WCB is in violation of the recommendations of its own experts there are bound to be legal challenges on the basis that the Board's decisions have not been on the "real merits and justice of the individual case".

To suggest that what needs to be done in 12 can be done in 4 is an attempt by Board bureaucrats to undermine the entire policy.

B. Diagnosis:

If the treatment and entitlement protocols are patently unfair, doctors will do their utmost to label the condition of their patients to be something other than chronic pain. If the system is abusive to injured workers, Adjudicators hearing appeals will bend over backwards to accommodate the opinions of doctors. Workers themselves will reach for repetitive strain syndromes (not so rigidly controlled) and recurrences as a way to skirt the draconian chronic pain measures.

C. Appeals:

Workers who are cut off benefits before they receive treatment can't be expected to have their appeals dealt with before the 12-month treatment deadline, and thus have no entitlement to chronic pain rehabilitation. This is probably contrary to the Canadian Charter of Rights, and obviously contrary to common sense.

Criminals who commit rape and murder are let out of jail after 10 years and given a second chance. After 11 weeks, workers who fail to shake off most of the lingering effects of a back strain will forever be terminated from benefits. A second chance at treatment, if the first was screwed up is never afforded. This is preposterous.

D. Nature of Back Disabilities

The effects of a back strain wax and wane. Minor permanent job modifications and adjustment for bad days are conditions that 90% of employers can accommodate. Once a worker is labeled with "chronic pain", none of this need be performed. The difference between available light work (7 weeks benefit allowance) and moderate work (8 weeks of benefit allowance) is more than the difference between lifting 5 vs. 10 kilograms. How the all knowing nurse case manager, coming out of the obstetrics ward of the recently government closed Wellesley Hospital, is going to judge this independently is beyond belief. Rigid bureaucratic solutions are no solution.

E. No Appropriate Assessment Process is proposed

Rather than looking at a worker specifically and trying to work out a rational goal oriented treatment process, nurse case managers will perform more WCB cookie cutter determinations thus perpetuating the collosal waste created by the $100 million WCB Community Clinic program. How the Board will be able to treat chronic pain to prevent it is still a total mystery.

F. Long Term Follow Up Is Lacking

Although the WCB promises to allow tenders for clinics wishing to treat chronic pain, it is known that negotiations with hospitals, who have failed to run successful programs in the past, are already underway. Historically the WCB has been profoundly oblivious to the need to help injured workers slowly work their way back to productive lives, but rather will either over or under-compensate.

Conclusion:

The Government is right on to limit benefits and treatment when chronic pain arises. Maybe the Compensation Board is correct not to follow all the recommendations of the secret panel of "experts" but how about following common sense? A chronic pain treatment program should be therapeutic not punitive. The treatment program must have time to co-ordinate with the workplace and to look at what factors there are causing problems.