

Date: 19980521

Docket: C.A. 144114

NOVA SCOTIA COURT OF APPEAL

Cite as: Nova Scotia (Workers' Compensation Board) v. MacLeod, 1998 NSCA 121

Clarke, C.J.N.S.; Hart and Flinn, J.J.A.

BETWEEN:

WORKERS' COMPENSATION BOARD OF NOVA SCOTIA)	John R. Ratchford for the Appellant
)	
)	
Appellant)	Sarah Bradfield for the Respondent
)	Tribunal (Watching Counsel only)
- and -)	
)	
)	K.H. (Kenny) LeBlanc and Linda L. Zambolin
WORKERS' COMPENSATION APPEALS for the Respondent)	
TRIBUNAL and BRENDA MacLEOD)	Brenda MacLeold
)	
Respondents)	Appeal Heard: May 21, 1998
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)	Judgment Delivered: May 21, 1998
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THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Clarke, C.J.N.S. and Hart, J.A. concurring.

FLINN, J.A.:

Leave having been granted, the Workers' Compensation Board (the Board) appeals from a decision of the Workers' Compensation Appeals Tribunal (WCAT) which awarded the worker 50% of the cost of her travel to a medical appointment as "medical aid" pursuant to s. 71(1) of the **Workers' Compensation Act**, R.S.N.S. 1989, c. 508 (the former **Act**).

Section 71(1) of the former **Act** provides as follows:

71 (1) The Board may provide any worker entitled to compensation under this Part, or who would have been so entitled had he been disabled for three days, with such medical aid as, in the opinion of the Board, may be necessary as a result of the injury, and shall provide every such worker with such artificial member or members and apparatus and such dental appliances and apparatus as may be necessary as a result of any accident, and shall keep them in repair or replace them in the discretion of the Board, and shall provide spectacles as may be necessary as a result of the injury, which spectacles may, in the discretion of the Board, be renewed from time to time, and may replace spectacles damaged as a result of any accident.

The claim for medical aid by the worker had been denied by the Board's Claims Adjudicator and, following a hearing, by the Hearing Officer. It is apparent from a review of the record that the reason why the medical aid benefit was refused was because of the determination by the Board's Claims Adjudicator and by the Hearing Officer that the worker was not entitled to any continuing disability benefits.

WCAT reversed the decision of the Hearing Officer (and the Board's Claims Adjudicator), which it is empowered to do, and awarded the worker disability benefits. WCAT decided that since the worker was entitled to disability benefits, it was appropriate to grant the worker medical aid under s. 71(1).

The Board does not appeal the decision of WCAT awarding disability benefits to the worker. However, the Board submits, on this appeal, that the award of medical aid under s. 71(1) of the former **Act** is within the sole jurisdiction of the Board; and that WCAT had no jurisdiction to deal with the issue of medical aid.

We are of the unanimous opinion that this appeal should be dismissed.

In coming to this conclusion we have considered:

1. that the denial of disability benefits to the worker was the reason why medical aid was refused by the Claims Adjudicator and the Hearing Officer;
2. WCAT reversed that decision and awarded disability benefits to the worker;
3. the provisions of the **Act** respecting appeals from the Hearing Officer to WCAT include broad powers of review;
4. notwithstanding that the Board was aware - through the notice of appeal - that the issue of medical aid would be dealt with by

WCAT in this case, the record discloses no objection, by the Board, to WCAT's jurisdiction at that time.

The appeal is dismissed.

Flinn, J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.

