

Appeals Commission for Alberta Workers' Compensation

Docket No.: AC0367-24-87

Decision No.: 2025-0286

Introduction

- [1] The worker appeals the June 5, 2024, decision of the Dispute Resolution and Decision Review Body (DRDRB). In that decision, the DRDRB upheld the Workers' Compensation Board's (WCB) determination on the following matters:
- [1.1] The worker was not entitled to home modifications under the claim, as set out in Policy 04-07.
- [1.2] The worker was not entitled to the provision of a powered wheelchair under the claim.
- [2] By way of background, the following circumstances gave rise to this appeal:
- [2.1] On August 30, 2000, the worker completed a Workers' Report of Injury form. In the report, the worker indicated that fourteen days earlier he felt a strange crunching sensation in his lower back while installing a flywheel. Although he did not experience immediate pain at the time, the worker stated the next day he had soreness in his back and the day after that, an onset of unbearable low back pain.
- [2.2] File information indicates that on September 7, 2000, the WCB initially accepted the worker's claim for a low back strain injury. The following is a brief summary of the history of the claim after it was accepted:
- The WCB determined there was additional responsibility for cauda equina syndrome, an L5-S1 herniated disc, and aggravation of pre-existing degenerative disc disease leading to neural foraminal stenosis;
 - The WCB determined the worker's compensable injuries resulted in permanent restrictions that prevented him from returning to his pre-accident position;
 - Effective May 2, 2003, the worker was entitled to a non-economic loss payment (NELP), based on a 5% permanent clinical impairment (PCI);

- Despite academic retraining to enhance the worker's employability for alternate employment, he was not able to locate a suitable position. The WCB then provided a temporary partial disability (TPD) benefit, based on the estimated post-accident earnings capacity of a heavy equipment sales position;
- On July 2, 2011, the worker underwent surgery (non-compensable) that involved an L2-L4 laminectomy. Due to a post-surgical wound infection, the worker underwent three additional debridement surgeries in August 2011;
- The worker's claim was subsequently closed and around early 2020, the worker contacted the WCB advising of back and mobility issues, which he related to the original injury. Reporting at the time also noted that the worker had returned to work as a self-employed store owner, which included the greeting of customers;
- On May 17, 2021, the WCB accepted the worker suffered a recurrence of disability and reinstated wage replacement benefits under the claim;
- On November 4, 2021, the WCB denied responsibility for the worker's L2-L4 disc degeneration and related surgeries, as they were unrelated to his work injury;
- On January 11, 2023, the WCB determined that the worker was entitled to a permanent total disability (PTD) benefit, which was made retroactive to November 2021;
- On April 6, 2023, the WCB determined that the worker was seriously injured and entitled to a retroactive monthly home maintenance allowance (HMA) and housekeeping allowance (HKA), effective December 1, 2021; and
- Finally, on September 27, 2023, the WCB determined that the worker met the criteria for a severely injured worker under Policy 04-07, Part I, and entitled to a personal care allowance (PCA).

[2.3] In a letter, dated December 19, 2023, the WCB informed the worker that he was entitled to ambulatory aides (cane, walker or manual wheelchair) but not a powered wheelchair, as recommended by an occupational therapist. His need for a powered wheelchair was due to weakness and sensory changes in the upper extremities, which were not claim related.

- On January 24, 2024, the worker's representative (representative) submitted, on his behalf, a Request for Review form regarding that decision.

- [2.4] On February 3, 2024, the WCB determined that the worker was not entitled to major home modifications under Policy 04-07. Although he was considered a severely injured worker, under policy major home modifications could not be covered because he did not own the home where he resided.
- That same day the representative submitted a Request for Review form regarding that decision.
- [2.5] On June 5, 2024, the DRDRB upheld the WCB's determinations that the worker was not entitled to major home modifications or a powered wheelchair under the claim.
- [2.6] On August 1, 2024, the Appeals Commission received a *Notice of Appeal* form regarding the DRDRB's decisions.
- [3] The Appeals Commission notified all the parties with a direct interest in the appeal and provided them an opportunity to participate.
- [3.1] On August 16, 2024, the Appeals Commission received a *Notice of Participation* form from WCB's legal representative (WCB legal representative).
- [3.2] In a letter of the same date, the legal representative confirmed that pursuant to section 13.2(6)(c) and 13.2(6.1) of the *Workers' Compensation Act*, RSA 2000, c W-15 (WCA), the WCB intended to participate in the hearing to make representations on the proper interpretation of WCB policy, provisions of the WCA and/or regulations to the matter under appeal.
- [3.3] The accident employer did not participate in the hearing, nor provide submissions for the panel's consideration.

Preliminary Matters

Submissions and additional documents

- [4] On April 16, 2025, the WCB legal representative provided a copy of her 7-page written submission.
- [5] On April 22, 2025, the Appeals Commission received a copy of the representative's 8-page written submission. That day, the representative provided copies of the following document, which was added to the Appeal Documents Package (ADP):
- [5.1] An April 1, 2025, Occupational Therapy Services Reassessment report.

Issue 1 amended

- [6] In the DRDRB's June 5, 2024, decision, the resolution specialist stated the first issue for review as:

"Denial of entitlement to home renovations for severely injured worker on account of ownership stipulation."

- [7] In acknowledging the worker's *Notice of Appeal*, the Appeals Commission identified issue 1 as follows:

"Is the worker entitled to home modifications as a severely injured worker under this claim?"

- [8] Following the conclusion of closing statements at the hearing, the panel determined it was appropriate to amend Issue 1, given that:

- [8.1] We understood, based on the submissions of the parties at the hearing and the adjudicative decisions of the WCB and DRDRB, that the following are not disputed in this case:

- The worker is a severely injured worker, as defined in Policy 04-07, Part I;
- The recommended major home modifications relate to the worker's compensable injuries;
- The home in question is the worker's primary residence;
- Under Policy 04-07, Part II, Application 2, all three criteria set out in Question 3 must be met. This includes confirmation by an independent certified home inspection that the home in question is structurally sound, which has not yet been completed; and
- Pending the outcome of any future home inspection on whether the worker's home residence is structurally sound, the determinative issue in this appeal is that of home ownership.

- [8.2] In considering the foregoing undisputed matters, both the panel and parties at the hearing agreed to restate Issue 1 as follows:

"Does the worker own his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2?"

Witness

- [9] The panel approved the representative's request that the worker's partner or common-law spouse (spouse) attend the hearing.
- [10] At the hearing, the panel confirmed with the spouse that she intended to be a witness and also a support person for the worker. She would provide information, assist the worker with the panel's questions, and answer any questions the panel may have.
- [11] Although the spouse was acting in the capacity of a witness, given her dual role as a support person for the worker, we determined it was appropriate that she attend the entirety of the hearing.
- [12] The WCB legal representative confirmed that she had no objection to the spouse's role in the hearing, and that she need not be excluded from any part of the hearing.

Issues

- [13] **Issue 1: Does the worker own his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2?**
- [14] **Issue 2: Is the worker entitled to medical aid in the form of a power wheelchair?**

Analysis - Issue 1

- [15] **Does the worker own his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2?**

Legislation and Policy

- [16] For this appeal issue, the panel considered the following:
- [16.1] The applicable sections of the WCA that were in force at the time of hearing; specifically, sections 13.1, 13.2 and 89(1).
- [16.2] The applicable policies in effect at the time of the WCB's February 3, 2024, decision; specifically, Policy 04-07, Part I and Policy 04-07, Part II, Application 2.

- [16.3] Although not binding on the Appeals Commission, the panel also considered WCB Business Procedures 8.7: Home and Workplace Modifications and 8.7C: Home Modification Guidelines – Addendum.
- [16.4] Section 10 of the *Interpretation Act*, RSA 2000, c I-8 (the *Interpretation Act*).
- [17] Full excerpts of the *WCA*, WCB policies, WCB Business Procedures and *Interpretation Act* referenced above are included in Appendices A, B, C and D respectively.

Jurisdiction of the Appeals Commission

- [18] The jurisdiction and authority of the Appeals Commission flow from sections 13.1 and 13.2 of the *WCA*, which state, in part:
- [18.1] The Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the *WCA* and the regulations in respect of appeals from decisions of a review body under section 9.4, which in this case is the DRDRB (section 13.1(1)(a)).
- [18.2] The Appeals Commission is bound to apply policies related to a matter under appeal and may:
- confirm, reverse or vary the decision or determination appealed (section 13.2(6)(d)); or
 - refer any matter back to the review body or the WCB for further action or decision, with or without direction (section 13.2(6)(f)).

Home modifications

- [19] Section 89(1) of the *WCA* states, in part, that the WCB shall take whatever measures it considers necessary to assist a worker return to work and lessen or eliminate a handicap resulting from an injury, which may include physical, social, psychological or other rehabilitation services.
- [20] Policy 04-07, Part I, and Policy 04-07, Part II, Application 2, together provide that:
- [20.1] The WCB provides support and assistance in a consistent, timely and cost-effective manner to help severely injured workers become more independent.
- [20.2] The WCB determines and provides the type and amount of assistance required because of a compensable injury, based on the medical evidence and/or an occupational therapist's recommendation.

- [20.3] Support and assistance are provided in the form of devices, aids, allowances and services that increase a worker's independence, which may include home modifications to assist with a worker's mobility, or medical aids necessary for reaching and maintaining reasonable levels of health and safety.
- [20.4] The term "mobility" under policy refers to an injured worker's ability to move about their environment.
- [20.5] The types of home modifications (minor or major) provided are dependent on the worker's functional ability, as indicated by an occupational therapist's assessment.
- [20.6] The WCB will consider major structural modifications when all the following conditions are met:
- the worker owns the home;
 - the home is the worker's primary residence; and
 - the home is structurally sound, as confirmed by an independent certified home inspection.

Key Submissions

Appellant's representative

- [21] Set out below is our summary of the representative's written and oral submissions:
- [21.1] First, the representative noted that the facts of the worker's case is not in dispute – he has a compensable injury (cauda equina syndrome), is considered severely injured under Policy 04-07, Part I, and requires the recommended interventions (major home modifications). At issue is whether the worker meets the policy definition of homeowner for the purpose of major home modifications.
- [21.2] On October 31, 2023, an occupational therapist recommended major structural home modifications to address the worker's severe mobility limitations and provide a safe, accessible living environment – wheelchair accessible bathroom and wheel-on commode, interior elevator, front-entry ramp, lowered kitchen appliance, and replacement of carpeting with smooth flooring.

- [21.3] The representative suggested that the worker's home is his primary residence, and that the property is structurally sound. The technicality cited by the WCB as grounds for denying the recommended major home modifications was that he did not own the home, as the property's title was solely in his spouse's name. Although attempts were made to resolve this issue, none were successful.
- [21.4] In support of the worker's appeal on this issue, the representative advanced the following:
- The worker has been in a common-law relationship for over 15 years and has a statutory interest in family property, including the matrimonial home.
 - Under section 3(1)(b) of the *Family Law Act* in his home province, the definition of spouse includes individuals who have lived in a marriage-like relationship for two years or more;
 - Part 5 of the *Family Law Act* also states that both spouses are equally entitled to a half interest in family property, including the matrimonial home, regardless of who is named on the legal title; and
 - The foregoing legal framework therefore provides the worker a presumptive 50% ownership interest in the home, and other rights and legal interests that are enforceable in court;
 - The worker's rights are legally enforceable and fully recognized by the courts and registries in his home province; that is, his interest in the home is statutorily guaranteed, non-excludable in separation or death proceedings, and is durable and defensible;
 - The ownership clause in Policy 04-07 was never intended to be adversarial but to ensure that major structural modifications are made only to homes in which a worker has an established legal interest, and to protect public resources. It was never intended to exclude legitimate claimants on technicalities that are inconsistent with common sense and legislative purpose; and
 - Instead, the WCB has adopted a rigid, literal definition of ownership that excludes even statutorily guaranteed property rights. However, according to the representative:
 - WCB's policy does not define "owns" nor does it specify that ownership only speaks to legal title of a property, which is a critical omission;

- The only place that defines the term “own” is in WCB’s business procedures, which are not binding on the Appeals Commission and therefore, the panel is not obligated to follow them; and
- Absent a restrictive definition, it is entirely reasonable and consistent with both legislative intent and family property law, to interpret “ownership” as including the equitable interests of a property held by common-law spouses.

[21.5] In conclusion, the representative advised it is both reasonable and necessary that the WCB recognize the worker’s de facto ownership as fulfilling the policy requirements for the funding of major structural home modifications.

Appellant

[22] We summarized the worker’s oral testimony at the hearing as follows:

[22.1] Although the worker initially indicated he did not have much to add to his representative’s submission, he did note and/or reiterate that:

- He and his spouse have been together for 17 years and does not see anything changing with respect to their relationship or living situation;
- His spouse is the only name on the title of their home because their mortgage interest rate was lower with her name only due to issues with his credit;
- In addition, to remortgage would double their interest rate and be detrimental to their financial situation;
- The worker advised that he understands major home modifications can be provided only once and if anything were to happen regarding the home, he is willing to accept responsibility of that risk; and
- Finally, the worker stated it does not make sense to deny him the major home modifications, as he clearly requires them because of his compensable injury and the issue of home ownership should not pose a barrier to getting the assistance he needs. Without the major home modifications, he remains at increased risk of injury.

Witness

[23] The following is our summary of the spouse’s hearing testimony:

[23.1] She and the worker have been in a relationship for about 17 years and have lived together for about 15 years.

- [23.2] The present home (purchased around 2021) is the second property she and the worker lived in together.
- [23.3] The first property was bought prior to their relationship; however, the worker had equity in that home (contributed to the mortgage and related expenses) and when sold that equity was reinvested in the second or current property.
- [23.4] The spouse indicated that she is unable to withdraw the worker's equity in the home, he pays half the mortgage and contributes to the other costs of the home.
- [23.5] When they purchased the second home, the spouse explained they maxed their threshold for borrowing because of the worker's poor credit, which is why he was not placed on the title.
- [23.6] There is three years left on the mortgage before it must be renewed and acknowledged that it might be possible to get the worker on the title.
- [23.7] According to the spouse, the worker's cauda equina syndrome is not acute, but progressive, meaning that his condition will only worsen. His legs have atrophied from the knees down and are unable to weight bear unsupported.
- [23.8] The panel understood from the spouse's testimony that she is aware that major home modifications can only be provided on a one-time basis and that she agrees with having the recommended modifications completed as needed.

WCB legal representative

- [24] The WCB legal representative's written and oral submissions are summarized below as follows:
- [24.1] Policy 04-07 and the relevant business procedure clearly provides that the WCB will only consider major structural modifications when a worker owns the home – it is a condition that must be met with no exceptions given on the matter.
- [24.2] The policy and business procedure only contemplates the provision of minor modifications where the worker rents, leases or lives with family such as common law, parent or other family members.
- [24.3] The proof of home ownership condition is required as the WCB needs to ensure that the costs of the home modifications are justified, and that permanent modifications are not being made for temporary use.

- [24.4] If the worker does not own the property, their interest may be at risk if they must move or are forced to move. As major home modifications are only provided on a one-time basis, if the worker owns the home and sells, then they may use the value of those funds to purchase a new home that is already modified, or have it modified.
- [24.5] The WCB legal representative argued that the family law statute referenced by the representative provides only a potential share of a home (distinction between familial versus excluded property), it does not guarantee it. It is not the WCB's role to determine whether the home falls within family property or excluded property at the time of separation.
- [24.6] She also advised that there is not sufficient evidence establishing the worker has an interest ownership in the home.
- [24.7] During the hearing, the panel asked the WCB legal representative as WCB policy does not define "own" whether it would be appropriate to use another source to interpret the term. In her response, the panel understood her to suggest that:
- It might have been intended that no definition of the term "own" was provided in policy, as it would give WCB decision-makers discretion to decide individual cases and ensure fairness; and
 - However, both policy and WCB's business procedure do provide some context for the term "own". For example:
 - The policy makes a distinction between "own" and "rented", where the latter is only eligible for minor modifications, not major modifications;
 - In WCB's business procedures, it states that a worker must show proof of ownership and gives examples of the types of evidence accepted to establish that requirement. It is an interpretative aid, as it provides more specific context what home ownership means in the applicable policy; and
 - Therefore, it is not clear whether it is necessary to rely on other sources to define "ownership".

Question to be Answered

- [25] Given the undisputed facts in this case, as outlined in paragraph [8.1] above; to decide this appeal issue we must answer the following question:
- [25.1] Does the weight of evidence establish that the worker owns his home residence, as required in Policy 04-07, Part II, Application 2, Question 3?

Evidentiary Findings and Analysis

[26] The panel finds that the weight of evidence supports that the worker owns his home residence as required by Policy 04-07, Part II, Application 2, Question 3.

[27] Our decision is based on the following authorities, evidence and analysis:

[27.1] As noted, Question 3 of Policy 04-07, Part II, Application 2, explains the extent of home modifications provided depends on individual circumstances and that major structural modifications will only be considered if all the following three conditions are met:

- the worker owns the home;
- the home is the worker's primary residence; and
- the home is structurally sound, as confirmed by an independent certified home inspection.

[27.2] We understand there is no dispute in this case that:

- Pursuant to Policy 04-07, Part I, the worker is severely injured;
- The home is the worker's primary residence; and
- The worker needs major home modifications due to the mobility and balance issues caused by his compensable injury, as is set out in the occupational therapist's Home Modifications Assessment Report of January 12, 2024. In that report, an occupational therapist specifically recommended the following home modifications to increase the worker's independence, as his greatest barriers at the time of assessment were reduced mobility and balance issues:
 - A ramp from the garage into the home to eliminate the use of stairs;
 - Installation of a pullout microwave and freezer to allow the worker to make simple meals;
 - Complete renovation of the ensuite bathroom;
 - Installation of a ramp to access the entire first floor while using a wheelchair;

- Changing the flooring from carpet to a flat, smooth surface, such as tile, hardwood or laminate; and
- Installation of an elevator to allow access to all three floor levels while using a powered wheelchair.

[27.3] The determinative issue, based on the amended issue statement, is whether the worker owns the home in question, as required by WCB Policy 04-07 and is therefore entitled to further consideration under the policy for major home modifications.

[27.4] We are satisfied that the evidence supports:

- The worker is in a marriage-like or common law relationship with his spouse, and they have lived together for 15 years;
- They live in a home which was purchased in 2021;
- The worker has made significant financial contributions to the home and has a significant financial interest in the home; and
- The house is in the spouse's name for financial reasons.

[27.5] The panel recognizes that the home was purchased from proceeds of a prior home that the spouse brought into the relationship. However, given that the worker has contributed financially to both homes, and the second home was purchased several years after the worker and his spouse lived together in a marriage-like or common law relationship, the panel finds that the worker, as a spouse, has property rights in the home.

[27.6] The panel finds that his property rights in the home are based on his relationship with his spouse and his financial contributions to the home are sufficient to satisfy the definition of "owns" in Policy 04-07, Part II, Application 2.

[27.7] In making this finding, we recognize that WCB policy does not define the term "owns", nor does it provide any guidance on the types of evidence that would assist in establishing proof of home ownership for the purpose of determining entitlement to major structural home modifications. At the hearing, we understood that the WCB legal representative suggested having only a financial interest in a home is not sufficient to establish ownership - there must be some legal right to the home and proof that clearly establishes that right. The legal representative further advised that WCB's business procedure may be useful as an interpretative guide for defining "owns" or "home ownership" under 04-07, Part II, Application 2, as it is contextually specific to that policy.

- [27.8] In reviewing WCB Business Procedures 8.7 and 8.7C, which are referenced in Appendix C, we observe the types of evidence cited as establishing proof of home ownership include Land Title, purchase agreement, tax notice, copy of a deed, etc. However, the business procedures only list examples of what proves home ownership. In any event, the panel is not bound by WCB business procedures.
- [27.9] Absent a clear definition, we are satisfied there is nothing in Policy 04-07 that limits the meaning of the term “owns” to whoever is named on the legal title to the property. To put it another way, we understand the policy does not specifically preclude consideration of other types of ownership, such as when a spouse has an interest based on the relationship and their financial interest.
- [27.10] Instead, in deciding this matter we considered section 10 of the *Interpretation Act*, which states that an enactment shall be construed as being remedial, and given the fair, large and liberal construction and interpretation that best ensures the attainment of its objective. To that end, we reiterate the objective of Policy 04-07 is to aid or assist severely injured workers to become more independent. This includes but is not limited to the provision of major home modifications to assist with their mobility in and around their own home. To restrict the definition of “owns” to the names listed on a purchase agreement, tax notice, title or deed would preclude any worker who is severely injured from consideration of home modifications when they live in a house that for financial reasons only has their spouse’s name on the legal title or deed.
- [27.11] In deciding this issue, the panel also considered the following:
- The worker and his spouse have been in a long-term, committed relationship for about 17 years and have cohabited together for 15 years;
 - The worker’s spouse, as the title holder of the home, has consented to the major home modifications; and
 - The worker is aware that major home modifications are only provided on a one-time basis and accepts that if anything were to happen requiring him to relocate, he would not have any further entitlement under policy to that type of assistance.

[27.12] We acknowledge the WCB legal representative's submission that the WCB has a duty to ensure the long-term interests of workers are protected with respect to the provision of major home modifications, by ensuring that home ownership is established so that the value of the modifications remain accessible to a worker in the event they sell the home.

- However, as explained above, based on our interpretation of Policy 04-07, and in consideration of the circumstances of this particular case, we are satisfied the worker meets the requirement of home ownership.

[28] As set out above, the panel finds that the weight of evidence supports that the worker owns his home residence as required by Policy 04-07, Part II, Application 2, Question 3.

[29] The panel therefore finds that the worker is entitled to further consideration of major home modifications, in particular, consideration of whether his home is structurally sound.

[30] Pursuant to section 13.2(6)(f) of the *WCA*, we refer this matter back to the WCB for further investigation to determine whether the worker's home is structurally sound. Once completed, the WCB is to re-adjudicate the worker's entitlement to major home modifications under Policy 04-07.

Conclusion

[31] In summary, the panel is satisfied that the worker is entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2, given that:

[31.1] The weight of evidence supports, on a balance of probabilities, the worker owns his home residence as required by WCB policy.

[31.2] An independent certified home inspection has not yet been completed to determine whether the worker's home is structurally sound, as required under Policy 04-07, Part II, Application 2, Question 3.

[32] Pursuant to section 13.2(6)(f) of the *WCA*, we direct this matter back to the WCB for further investigation.

[33] Following the completion of an independent certified home inspection, the WCB is to re-adjudicate the worker's entitlement to major home modifications under the policy.

[34] Any decisions arising from the investigation and re-adjudication of this matter is subject to the same review and appeal processes.

Decision - Issue 1

- [35] The weight of evidence supports that the worker owns his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2.
- [36] Pursuant to section 13.2(6)(f) of the *Workers' Compensation Act*, the panel directs the Workers' Compensation Board obtain an independent certified home inspection to determine whether the worker's home is structurally sound.
- [37] Once obtained, the Workers' Compensation Board is to re-adjudicate the worker's entitlement to major home modifications under policy.

Analysis - Issue 2

- [38] **Is the worker entitled to medical aid in the form of a power wheelchair?**

Legislation and Policy

- [39] For this appeal issue, the panel considered and/or relied on the following authorities:
- [39.1] The applicable sections of the *WCA* that were in force at the time of hearing; specifically, sections 1(1)(p), 13.1, 13.2, 78(1) and 80(1).
- [39.2] The applicable policies in effect at the time of the WCB's December 19, 2023, decision; specifically, Policy 04-06, Part I.
- [40] Full excerpts of the *WCA* and WCB policy referenced above are included in Appendices A and B respectively.

Jurisdiction of the Appeals Commission

- [41] Again, our jurisdiction to hear and decide this issue of appeal is set out in sections 13.1 and 13.2 of the *WCA*, as summarized under Issue 1 above.

Medical aid

- [42] Section 78(1) of the *WCA* authorizes the WCB to provide and pay for the costs of medical aid to a worker who suffers an accident.
- [43] Section 80(1) adds that the WCB shall determine all questions as to the necessity, character, sufficiency and amount payable in respect of medical aid provided to a worker.

- [44] Policy 04-06, Part I states, in part, that the WCB provides and pays reasonable and necessary medical aid to treat or alleviate the effects of injuries that result from a compensable accident. Concerning the objectives for the provision of medical aid to eligible workers, the policy explains it is to promote the safe, early recovery and return to work of the worker, alleviate the effects of a workplace injury, and to make the best use of current, generally accepted medical knowledge. This includes, but is not limited to, appliances, apparatuses, transportation and any other matters and things that the WCB authorizes or provides (per section 1(1)(p) of the WCA).

Key Submissions

Appellant's representative

- [45] We summarized the representative's submissions on this issue as follows:
- [45.1] The worker has profound mobility limitations as a direct consequence of his compensable injury (cauda equina syndrome), and it is undisputed in this case that he requires a wheelchair.
- [45.2] At issue is whether the wheelchair must be powered; specifically, whether the existence of a non-compensable condition such as diabetes permits the WCB to deny a power wheelchair when the primary cause for the need of the medical aid is compensable.
- [45.3] The WCB suggested that because the worker's diabetes may have contributed to his upper-limb weakness, a powered wheelchair is not compensable. However, the representative asserted that this is a flawed interpretation and requested that the panel consider the following:
- The worker attempted using crutches to remain mobile but over time, this caused further injuries – shoulder strain, wrist strain, and symptoms that were consistent with carpal tunnel syndrome. This resulted in a deterioration of the worker's ability to self-propel a manual wheelchair;
 - Per Policy 02-01 and Policy 03-02, when a compensable injury or its consequences lessens the effectiveness of a lesser medical aid, or its use increases its harmfulness, the WCB has a duty to authorize a more suitable alternative;
 - The WCB must take the worker as they find them, per the thin-skull doctrine. Even if the worker's diabetes contributed to his upper-limb issues, the primary cause or need of a wheelchair for mobility is his compensable spinal injury;

- According to the representative, denying a powered wheelchair based on a partial, non-compensable condition violates the thin-skull doctrine, which undermines the legal principal workers are entitled to full compensation if a pre-existing condition makes them more vulnerable, and defeats the spirit of fair accommodation for severely injured workers;
- A powered wheelchair is not an enhancement of a benefit but a necessity, given the worker's limitations caused by the compensable injury and harms created by his over-reliance on crutches or manual chairs. It also increases the worker's risk of further harm;
- The worker's compensable cauda equina syndrome materially contributed to his need for a powered wheelchair, which is necessary to alleviate the effects of that injury and increase his functional independence;
- The worker's irreversible neurological impairments, pressure wounds, and upper-body overuse were all triggered by and have evolved as a result from the compensable injury;
- While diabetes may have affected the worker's endurance, the condition in this case is immaterial as it did not render him dependent on wheeled mobility; and
- The worker's condition cannot be managed safely with a manual wheelchair or crutches. The provision of a powered wheelchair is consistent with Policy 04-06, which obligates the WCB to provide aides that are reasonably necessary to maintain a worker's independence and prevent further deterioration.

[45.4] In conclusion, the representative requested that the panel reverse the DRDRB's June 5, 2024, decision and award the worker a powered wheelchair as necessary medical aid under Policy 04-06.

Appellant

[46] Set out below is our summary of the worker's oral submissions at the hearing on this issue:

[46.1] Although the worker indicated he did not have much to add to his representative's submission on this issue, in discussing the matter the worker advised that:

- In his home residence, he currently uses a walker and crutches for mobility and that he is essentially homebound now;

- He has an emergency manual wheelchair - lightest one they could find – but his home is not conducive to its use; and
- He has not yet obtained a powered wheelchair, as the doorways in many parts of the home are too narrow to use it.

Witness

[47] We summarized the spouse's oral submissions on this issue as follows:

- [47.1] At the time of the hearing, the worker has not yet purchased a powered wheelchair.
- [47.2] Due to the worker's build (large torso and height), he requires a custom wheelchair, and they are unsure as to its costs.
- [47.3] The worker would also benefit from a powered wheelchair, as he could directly drive it into a vehicle for transport.
- [47.4] The worker is at increased risk of re-injury from falling due to his limited mobility and the ineffectiveness of his crutches and walker. He is primarily housebound because of his limited mobility and a powered wheelchair would increase his ability to move about safely.

WCB legal representative

[48] The following is our summary of the WCB legal representative's submissions on this issue of appeal:

- [48.1] First, the WCB legal representative referenced section 80(1) of the *WCA* and the relevant sections set out in Policy 03-01, Part II and Policy 04-06.
- [48.2] Next, she directed the panel to the reporting by WCB's medical consultant, as documented in a December 14, 2023, memo. In the memo, the medical consultant opined that the need for a powered wheelchair was requested because of sensory change in the worker's upper extremities, which are not claim related.
- [48.3] The DRDRB correctly applied the applicable policy; that is, a powered wheelchair was recommended due to a condition that the medical consultant outlined was not due to the claim.
- [48.4] Therefore, the DRDRB's June 5, 2024, decision to deny coverage of a powered wheelchair is accordingly correct in all aspects.

- [48.5] Regarding the representative's submission on the thin skull doctrine, the WCB legal representative asserted it is not applicable as it relates more to a tort law analysis.

Question to be Answered

- [49] To decide this appeal issue, the panel must answer the following question:

- [49.1] Does the weight of medical evidence establish that medical aid in the form of a powered wheelchair is reasonably necessary to treat or alleviate the effects of the worker's compensable injuries under this claim?

Evidentiary Findings and Analysis

- [50] The panel finds that the worker is entitled to medical aid in the form of a powered wheelchair under the claim.

- [51] Our decision is based on the following authorities, evidence and analysis:

- [51.1] The panel understands that WCB Policy 04-06 allows for the provision of reasonable and necessary medical aid to treat or alleviate the effects resulting from a compensable injury.
- [51.2] In a Personal Care Allowance and Home Equipment Initial Assessment report, dated November 7, 2023, an assessing occupational therapist recommended the worker be provided a powered wheelchair for mobility inside the home when his functioning was low, and outside the home regularly. We note that per the occupational therapist, the worker had limited sensation in his hands and inconsistent grip strength and the use of a manual wheelchair would put too much stress on his wrists/hands, thereby worsening his symptoms. Instead, a powered wheelchair would alleviate those issues and increase his independence.
- [51.3] In a memo dated December 14, 2023, we understand that a WCB medical consultant opined that the worker's progressive back pain and some of his lower extremity sensory changes and weakness were due to his compensable injuries. While multifactorial, the worker's decreasing mobility was in part due to the circumstances of the claim and therefore, his need for ambulatory aids (canes, walkers, or wheelchair), would be considered claim related. However, the medical consultant noted that the worker's need for a powered wheelchair rather than a hand propelled wheelchair was because of weakness and sensory change in his upper extremities, which are unrelated to the claim.

- [51.4] On December 19, 2023, we observe that the WCB accepted the medical consultant's opinion and approved the purchase of a manual wheelchair only, as his need for a powered wheelchair was due to his upper extremity issues, which were not compensable.
- [51.5] We are satisfied that coverage of a powered wheelchair is reasonable and necessary to treat or alleviate the effects resulting from the worker's compensable injuries under this claim for the following reasons:
- The occupational therapist's reporting clearly establishes that the worker requires a wheelchair to treat the effects of his compensable injuries that have significantly impacted his ability to independently mobilize within and outside his home. We understand this is not a disputed matter in this case;
 - The occupational therapist also specifically recommended a powered wheelchair because the worker has limited sensation in his hands and inconsistent grip strength, and the use of a manual wheelchair would put too much stress on his wrists/hands;
 - The panel is satisfied that the occupational therapist's reporting supports that an effect resulting from the worker's compensable condition is limited mobility and recommended a powered wheelchair to alleviate that effect;
 - The panel acknowledges the WCB legal representative's argument that the worker's upper extremity issues are not compensable or claim-related conditions, per the medical consultant's reporting;
 - However, the panel is not satisfied, based on the occupational therapist's report, that a manual wheelchair would alleviate the effects of the compensable injuries; that is, limited mobility. In considering the foregoing medical evidence and file information, we find that the worker has entitlement to the provision of medical aid under Policy 04-06 in the form of a powered wheelchair;
 - Given that the worker has problems with his hands/wrists that limit his ability to use a manual wheelchair, it is unlikely it would actually assist him in achieving greater mobility;
 - In making this finding, we place greater weight on the occupational therapist's opinion because she physically assessed the worker in his home environment and is in the best position to make such a recommendation; and

- We place less weight on the WCB medical consultant's reporting because they did not assess the worker, and also did not provide an explanation of how a manual wheelchair would treat or alleviate the worker's lack of mobility and increase his independence given his hand/wrist problems.

[52] We acknowledge the WCB legal representative's argument that the power wheelchair was recommended due to the worker's non-compensable issues. However, for the reasons outlined above, we are satisfied that the power wheelchair is reasonable and necessary to alleviate the effects of the compensable injury, that is the worker's limited mobility.

[53] As a result, we are satisfied that the weight of medical evidence establishes that medical aid in the form of a powered wheelchair is reasonably necessary to treat or alleviate the effects of the worker's compensable injuries under this claim.

[54] We therefore accept the worker's appeal and reverse the DRDRB's June 5, 2024, decision on this issue.

Conclusion

[55] In summary, the panel is satisfied that the weight of medical evidence and the provisions set out in Policy 04-06, establish the worker's entitlement to medical aid in the form of a powered wheelchair.

[56] Given our determination, we accept the worker's appeal and reverse the DRDRB's June 5, 2024, decision on this issue.

Decision – Issue 2

[57] The worker is entitled to medical aid in the form of a powered wheelchair.

[58] The worker's appeal of this issue is accepted.

[59] The June 5, 2024, decision of the Dispute Resolution and Decision Review Body on this issue is reversed.

Decision Summary

[60] **Issue 1: Does the worker own his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2?**

[60.1] The weight of evidence supports that the worker owns his home and is therefore entitled to further consideration of major home modifications under Policy 04-07, Part II, Application 2.

- [60.2] Pursuant to section 13.2(6)(f) of the *Workers' Compensation Act*, the panel directs the Workers' Compensation Board obtain an independent certified home inspection to determine whether the worker's home is structurally sound.
- [60.3] Once obtained, the Workers' Compensation Board is to re-adjudicate the worker's entitlement to major home modifications under policy.
- [61] **Issue 2: Is the worker entitled to medical aid in the form of a power wheelchair?**
- [61.1] The worker is entitled to medical aid in the form of a powered wheelchair.
- [61.2] The worker's appeal of this issue is accepted.
- [61.3] The June 5, 2024, decision of the Dispute Resolution and Decision Review Body on this issue is reversed.

This decision is made with the full agreement of the hearing panel.

Decision signed in Calgary, Alberta on July 17, 2025.

G. Kelly
Hearing Chair
(on behalf of the panel)

Hearing Panel:	G. Kelly	– Hearing Chair
	M. McAvoy	– Commissioner
	C. Clark	– Commissioner

Typed by: ss
DEC08D (20230511)

Appendix A

Legislation - Workers' Compensation Act, RSA 2000, c W-15 (WCA)

(In force since April 1, 2024)

Section 1(1)(p):

"Interpretation

1(1) In this Act, . . .

- (p) 'medical aid' includes medical and other services provided by a person licensed to practise the healing arts in Alberta, and nursing, hospitalization, drugs, dressing, x-ray treatment, special treatment, appliances, apparatuses, transportation and any other matters and things that the Board authorizes or provides;"

Section 13.1(1):

"Power of Appeals Commission

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

- (a) appeals from decisions of a review body under section 9.4,
- (b) repealed 2020 c32 s3(8),
- (c) appeals from determinations of the Board under section 21(3), and
- (d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court."

Section 13.2(6):

“Appeals . . .

(6) In the hearing of an appeal under this section, the Appeals Commission

- (a) shall give all persons with a direct interest in the matter under appeal an opportunity to be heard and to present any new or additional evidence,
- (b) is bound by the board of directors’ policy relating to the matter under appeal,
- (c) shall, subject to subsection (6.1), permit the Board to make representations, in the form and manner that the Appeals Commission directs, as to the proper application of policy determined by the board of directors or of the provisions of this Act or the regulations that are applicable to the matter under appeal,
- (d) may confirm, reverse or vary the decision or determination appealed,
- (e) may direct that its decision be implemented within a specified time period, and
- (f) may refer any matter back to the review body or the Board, as the case may be, for further action or decision, with or without directions.”

Section 78(1):

“Provision of medical aid

78(1) The Board may

- (a) provide medical aid to a worker who suffers an accident, or
- (b) pay for the cost of medical aid provided to a worker who suffers an accident.”

Section 80(1):

“Amount of medical aid

80(1) The Board shall determine all questions as to the necessity, character and sufficiency of, and the amount payable in respect of, any medical aid provided to a worker who suffers an accident.”

Section 89(1):

“Board to provide vocational and rehabilitation services

89(1) The Board shall take whatever measures it considers necessary to assist a worker injured in an accident and entitled to compensation to return to work and to lessen or eliminate any handicap resulting from that injury and, without limiting the generality of the foregoing, may offer to do any or all of the following:

- (a) provide physical, social and psychological services;
- (b) relocate a worker who suffers from an occupational disease and the worker’s dependants if, in the opinion of the Board, a change of industry or occupation is advisable;
- (c) provide vocational or other rehabilitation services;
- (d) reimburse a worker engaged in a vocational or rehabilitation program the worker’s actual and reasonable expenses, including the cost of relocation, if applicable.”

Appendix B

Workers' Compensation Board Policy

Policy 04-06, Part I: Health Care (Issue Date: January 4, 2023)

"POLICY:

WCB provides or pays for any reasonable and necessary *medical aid* to treat injuries or alleviate the effects of injuries resulting from compensable accidents.

In providing medical aid WCB's objectives are:

- to promote safe and early recovery and return to work,
- to alleviate the effects of workplace injury or illness by facilitating the timely and safe delivery of appropriate, quality and cost-effective care and treatment, and
- to make best use of current, generally accepted medical knowledge.

WCB has the authority to decide the nature, sufficiency, and cost of health care, bearing in mind individual needs and system well-being.

All medical aid authorized by WCB is provided without charge to the worker. Neither WCB nor the worker will reimburse *service providers* for 'extra or balance billing' for the treatment of a compensable injury or condition.

This policy is effective September 24, 2002, unless noted otherwise in a specific policy section(s).

INTERPRETATION

1.0 Medical Aid

Section 80 of the *Workers' Compensation Act (WCA)* gives WCB the authority to determine what medical aid is necessary and the appropriate payment for that aid. This authority extends to medical aid outside the province as well as within.

Medical aid is defined in s.1(1)(p) of the *WCA* and includes medical and other services provided by a person licensed to practice the healing arts in Alberta, nursing, hospitalization, drugs, medical dressings, x-ray treatment, special treatment (e.g., chiropractic, physical therapy, etc.), appliances, apparatuses, transportation (e.g., inter-hospital transfers), and any other matters and things WCB authorizes or provides. . . ."

Policy 04-07, Part I: Services for Workers with Severe Injuries (Issue Date: April 3, 2018)**“POLICY:**

To help *severely injured workers* become more independent, WCB provides *support and assistance* in a consistent, timely and cost-effective manner.

WCB determines the worker's eligibility according to the severity of the injury and the worker's functional needs. Each case is judged on its own merit.

This policy is effective December 1, 2013, except when noted otherwise in a specific policy section(s).

INTERPRETATION**1.0 Severely Injured Workers**

A worker is considered severely injured when:

- a) because of the compensable injury, the worker has severe and prolonged functional limitations; and
- b) because of those functional limitations, needs temporary or permanent assistance with communication, mobility, or self-care.

Severe injuries include such injuries as spinal cord injuries, severe burns, moderate to severe brain injuries, major amputations, significant respiratory conditions, total loss of vision, terminal cancers, bilateral arm or bilateral leg fractures, and any other injuries of similar severity.

2.0 Support and Assistance

Not all severely injured workers need the same level of support and assistance. WCB determines and provides the type and amount of assistance required as a result of the compensable injury, based on medical evidence and/or an occupational therapist's recommendation.

Workers with severe injuries may require extensive medical, social, psychological, and vocational support and assistance. Support and assistance is provided in the forms of devices and aids; allowances and services for increasing independence; and skills training. Some examples are:

- communication aids
- home and/or vehicle modifications to assist with the worker's mobility
- medical aids necessary for reaching and maintaining reasonable levels of health and safety
- personal care, home maintenance, and clothing allowances

- offering psychological counselling for the worker and worker's family to help them deal with the consequences of the injury
- legal costs for a court appointment of a Co-decisionmaker, Guardian or Trustee"

Policy 04-07, Part II, Application 2, Questions 1, 2 and 3: Mobility (Issue Date: April 3, 2018)

"1. What is meant by the term 'mobility'?"

The term 'mobility' refers to an injured worker's ability to move about the environment. To improve mobility, WCB provides necessary home and/or vehicle modifications.

2. What kind of home modifications will WCB consider?

The type of home modifications provided by WCB are dependent on the worker's functional ability as indicated by an occupational therapist's assessment.

The modifications can be minor or major. For example, when the worker is eligible for full structural home modifications, WCB pays for changes such as:

- access to all living space (this includes the basement, but not the attic)
- widening doorways
- enlarging rooms to accommodate wheelchair maneuvering
- extensions to bathrooms and/or bedrooms
- kitchen renovations
- any extra costs incurred for the modifications to meet the building codes

WCB also provides modifications to improve the worker's access to the residence, including such things as wheelchair ramps, widening or construction of sidewalks, or concrete transfer pads.

The home modification plans must be approved by both WCB and the worker.

3. *Apart from the worker's mobility needs, what other factors does WCB consider in home modifications?*

The extent to which WCB provides home modifications depends on individual circumstances. WCB will only consider major structural modifications when all the following conditions are met:

- the worker owns the home
- the home is the worker's primary residence
- the home is structurally sound, as confirmed by an independent certified home inspection

Additionally, if the home is a mobile home, it must be securely blocked or on a concrete pad or foundation."

Appendix C

Workers' Compensation Board Business Procedures

Business Procedure 8.7: Home and Workplace Modifications (Approved: 11/15/2022)

“ . . .

Home Modifications

Home modifications allows the worker access to and around the home. Modification requests come from a variety of sources (e.g., case manager, worker, physician, social worker, caregiver, guardian, trustee, occupational therapist etc.).

Home modification needs are based on the worker's level of disability. . .

1A. Case Manager . . .

Once ownership status of the worker's home is determined, proof of ownership (e.g., Land Title, purchase agreement, tax notice, etc.) must be requested. This is usually done by the contractor. . . .”

Business Procedure 8.7C: Home Modification Guidelines – Addendum (Approved 12/16/2021)

“Addendum

Overview and Considerations . . .

The worker and claim owner should be encouraged to consider:

- The impact of home modifications on worker's present residence, given that current policy states the WCB will pay for **only one** major home modification. **Note:** Proof of home ownership **must** be provided (e.g. copy of deed or land title). Permanent modifications cannot be done on rental properties. . . .”

Appendix D

Interpretation Act, RSA 2000, c I-8

(In force since April 1, 2023)

Section 10:

“Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.”