

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-39**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: November 5, 2001

ISSUE(S): Whether the Appellant was entitled to reimbursement with respect to physiotherapy treatments and in respect to the purchase of an ergonomic pillow pursuant to Section 136(1) of the Manitoba Public Insurance Act ('Act').

RELEVANT SECTIONS: Section 136(1)(a) and (d) and Section 5 and Section 10(1)(d) of Manitoba Regulation 40/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

1. The Appellant, [text deleted], has appealed a decision of MPIC's Internal Review Officer dated March 19, 2001, wherein the Internal Review Officer confirmed the case manager's decision which denied the Appellant reimbursement of expenses incurred with respect to physiotherapy treatments and the purchase of an ergonomic pillow.
2. On March 26, 1997, the Appellant was a pedestrian who was struck down by a [text deleted] while she attempted to cross a traffic light controlled intersection. The Appellant

was hit on the right side of the body, knocked to the pavement, transported to the [hospital #1's] Emergency Department, and was released without admission. She reported sustaining bruises to the right leg between the knee and the hip, the left side elbow, left hip with pain in the small of her back.

3. [Appellant's doctor], who treated the Appellant in respect of her injuries, forwarded an Initial Care Health Report to MPIC dated April 16, 1997, wherein he stated that the Appellant had suffered a contusion of the lumbar sacroiliac spine, strain to the neck and shoulder, and abrasion to the left elbow.
4. The Appellant received physiotherapy treatment at [text deleted] Physiotherapy. She was off work until April 21, 1997, when she returned to work on a graduated basis and resumed regular duties on May 5, 1997. By June 1997, the Appellant's symptoms were subsiding and she was placed on a home exercise program. She was discharged from physiotherapy care in August of 1997.
5. Subsequently, in 1998 and 1999 the Appellant experienced flare-ups of back pain which prompted her to seek medical attention. The MPIC case manager, in her report dated January 19, 2001, states that she was advised by the Appellant as follows:

You reported suffering your first relapse at the end of 1997 when you threw your back out while reaching with your right arm for a box of cereal from an upper shelf. You apparently returned to physiotherapist, [text deleted], and were given further treatment. This treatment was claimed under [text deleted] coverage.

You then reported a second relapse in October 1998 that occurred while standing on a step stool, reaching with both hands to hang decorations at your workplace. You reported that this action caused a "twinge" that resulted in pain over the right small of your back above your buttocks and a bit over to the left side. On November 2, 1998, [Appellant's doctor] prescribed Advil and referred you for physiotherapy. You confirmed seeing [Appellant's physiotherapist] under [text deleted] coverage, and that after a month your pain subsided.

You reported a third relapse in 1999 over the same area that may have occurred after sleeping wrong. Although there was pain, you indicated your mobility was not restricted, therefore, you did not follow up with your doctor or

physiotherapist. Instead you self-managed by taking Advil and exercising. You confirmed symptoms cleared within a couple of weeks.

In December 1999, you reported a fourth relapse which occurred while you were standing, leaning over a desk to write. This caused the same area (small of the back on the right side) to go out again. You followed up with your doctor and physiotherapist and, after eight treatments, ending January 6, 2000, it resolved.

You have indicated the pain and stiffness is noticeable when arising from bed first thing in the morning, and any sudden jarring annoys it. You also indicated you are unable to sit for long periods, you constantly have to move around on the job, and you must maintain a stretching/strengthening exercise program at home. As well, your employer has accommodated you by moving your desk closer to the reception area, and by providing an ergonomic chair.

6. As a result of the Appellant's request to MPIC for reimbursement of physiotherapy expenses and to entitlement to future rehabilitative benefits, the case manager requested an assessment from the Appellant's personal physician, [text deleted], and the physiotherapist, [text deleted], who treated her.
7. [Appellant's physiotherapist], in her report dated March 6, 2000, indicated that in respect to the Appellant's previous complaints, these complaints were resolved through physiotherapy treatments and in a program of home exercise. In respect of the occurrence on November 3, 1998, the physiotherapist was of the opinion that the recurrence was due to a change in [the Appellant's] work station, as well as an increase in her level of stress in her personal life. In respect to the last incident, the physiotherapist reports that the Appellant was last seen on January 6, 2000, and at that time, the Appellant's lumbar exacerbation had been resolved.
8. [Appellant's doctor], in a narrative report to MPIC dated March 8, 2000, stated:

Most recently I saw her December 13, 1999. While leaning over a desk writing, suddenly her back went out on December 7, 1999. I related this acute lumbosacral spine strain to her initial accident and considered it an exacerbation of her previous injury. I referred her for physiotherapy.

[The Appellant] has been my patient since 1993. Her past medical history is positive for being hospitalized in her late teens for 2 – 3 weeks in her late teens at

the [hospital #2] on account of a lower back injury sustained in a [text deleted] accident without ongoing pain since, until her MVA in 1997.

I suspect that [the Appellant] will have ongoing episodic back pain as this has been the record since her unfortunate accident.

9. The case manager, prior to rendering a decision in respect of the request for compensation by the Appellant, referred the Appellant's entire medical file to [text deleted], a medical consultant with MPIC's Health Care Services. [MPIC's doctor], after reviewing the entire medical file, concluded in a report to MPIC dated October 26, 2000, as follows:

After reviewing [the Appellant's] file, it is my opinion that even though it is possible that the episodes of low back pain [the Appellant] experienced in 1998 and 1999 are related to the March 26, 1997 pedestrian/motor vehicle incident, it is not probable based on the medical evidence presently contained in [the Appellant's] file. It is my opinion that the medical evidence does not establish a probable cause and effect relationship as a result of the following evidence:

- [The Appellant] sustained a severe traumatic injury to her lower back in [text deleted].
- The incident in question likely exposed [the Appellant's] lower back to a minor trauma.
- [The Appellant's] lower back symptoms were mostly right sided when she was initially assessed.
- The treatments provided to [the Appellant] resulted in a complete resolution of her subjective complaints and objective findings.
- [The Appellant's] episodes of low back pain in 1998/1999 developed as a result of a specific activity.
- Each episode resolved fully with the treatments provided to her.
- There is no documentation identifying a structural alteration occurring to [the Appellant's] lumbosacral spine and/or pelvis as a result of the incident in question that in turn would render her more susceptible to recurrent back problems.

Since it is my opinion that the medical evidence does not establish a probable cause/effect relationship between the episodes of back pain [the Appellant] experienced in 1998 and 1999 and the incident in question, the therapeutic interventions she received in order to address these episodes would not be the responsibility of Manitoba Public Insurance. The documents presently contained in [the Appellant's] file do not provide sufficient objective medical evidence identifying a condition arising from the collision in question for which further therapeutic intervention(s) would be viewed as a medical necessity in the management of the condition.

10. The case manager accepted the medical opinion of [MPIC's doctor]. In a letter to the Appellant dated January 19, 2001, the case manager stated that in view of [MPIC's doctor's] medical opinion, "we are unable to establish a probable cause/effect relationship between the episodes of back pain you experienced in 1998 and 1999 and the injuries sustained from this motor vehicle accident. Therefore, we are unable to consider any past or future rehabilitative therapeutic care/expenses incurred or about to be incurred."
11. The Appellant made Application for Review on February 28, 2001. In her application the Appellant asserted that she had had a [text deleted] accident in [text deleted] but had suffered no residual effects in the [text deleted] years following that incident. However, she states that as a result of the accident on March 26, 1997, she now suffers constant lower back pain which has affected the quality of her life. She further states that she has seen her doctor and physiotherapist, done her exercises, complied with all that MPIC has requested, but still continued to have recurrent back problems. As a result, she requests reimbursement of her ongoing physiotherapy expenses.
12. The Internal Review Officer, in his letter dated March 19, 2001, rejects the Application for Review and states:

[MPIC's doctor] has done a thorough review of the medical material. He has taken into account the major objection you make concerning the decision under review. I accept his recommendations, as did your case manager. The weight of the medical evidence available does support the conclusion that what you describe as "recurrences" of symptomatology in 1998 and 1999 are more likely related to other causes than to your motor vehicle accident in March 1997. In this connection, it should be noted that your characterization of your complaints in 1998 and 1999 as a "recurrence" of the complaints you had immediately following your car accident seems inaccurate. As [MPIC's doctor] points out, your physiotherapist's initial assessment focused on findings involving the right side of your lower back and your right hip. Her reassessments in 1998 and 1999, by contrast, focused on left-sided symptoms.

In all the circumstances, the decision under review was a reasonable one and I can see no basis for interfering with it.

13. The Appellant, in her submissions to the Commission at the appeal hearing, indicated that her back problems were not constant but had occurred on specific occasions as a result of specific incidents as outlined above in this award. She stated that with the passage of time there has been an improvement in her back problems.

Decision

Section 136 of the MPIC Act provides that

Section 136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (d) such other expenses as may be prescribed by regulation.

The definition of victim is set out in Section 70(1) of the Act which states “**victim** means a person who suffers bodily injury in an accident.”

Section 5, Regulation 40/94, provides that

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under The Health Services Insurance Act or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Section 10(1)(d)(iii) and (iv) of Regulation 40/94 provides that:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- (d) reimbursement of the victim at the sole discretion of the corporation for
 - (iii) medically required beds, equipment and accessories

(iv) specialized medical supplies

The onus is upon the Appellant to establish, on a balance of probabilities, that she is entitled to the reimbursement of expenses incurred with respect to physiotherapy treatments and with respect to the purchase of an ergonomic pillow due to the injuries she sustained in the motor vehicle accident. The Commission has determined, based on the information contained in the several medical reports of [Appellant's doctor], the report of the physiotherapist, [text deleted], dated March 6, 2000, and the report of [MPIC's doctor] dated October 4, 2000, that the Appellant is unable to establish a probable cause/effect relationship between the episodes of back pain that she experienced in 1998 and 1999 and the injuries she sustained in her motor vehicle accident on March 26, 1997.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of the MPIC's Internal Review Office dated March 19, 2001.

Dated at Winnipeg this 7th day of November, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN