

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-59**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Ms. Laura Diamond

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

HEARING DATE: November 15, 2001

ISSUE(S): Reimbursement of physiotherapy treatments.

RELEVANT SECTIONS: Section 136(1)(a) of the Manitoba Public Insurance Corporation Act (hereinafter referred to as the "Act") and Section 5 of Manitoba Regulation MR P215-40/94

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 appeal in this matter arises out of a refusal by MPIC to reimburse [the Appellant] in respect of the cost of physiotherapy treatments between late June 2000 and August 29, 2000.
2. On March 31, 2000, the car in which the Appellant was driving was struck from the rear by another vehicle while stopped in traffic. As a result of the collision, the Appellant suffered soft tissue injuries to her neck, shoulders and back.

3. The Appellant had previously sustained similar injuries in a motor vehicle accident on June 20, 1993, and had settled her claim with MPIC. [Text deleted], a physiatrist [text deleted], treated [the Appellant] in respect of the injuries she sustained in that motor vehicle accident.
4. On June 13, 2000, the Appellant underwent an independent medical examination by [text deleted]. By this time, the Appellant had attended for more than 30 physiotherapy treatments since the date of the March 31, 2000, accident. In his report dated June 13, 2000, [independent doctor] expressed the opinion that the Appellant had recovered from her accident-related injuries and that physiotherapy treatments were not indicated.
5. As a result of the receipt of this report, MPIC terminated the payment of physiotherapy treatments. However, the Appellant continued to attend for physiotherapy treatments subsequent to the end of June 2000 and until August 29, 2000.
6. In a report to MPIC dated September 11, 2000, [Appellant's physiatrist] states that he last saw the Appellant in respect of the injuries sustained in the 1993 accident on February 25, 2000. He indicates that she did not have any complaints relating to her right periscapular region or any symptoms of numbness or pain regarding her upper limbs. He states in his report, "She was functioning well at school and in her part time job without distress." He further states in this report that he did not arrange any further appointments until she suffered her motor vehicle accident of March 31, 2000.
7. [Appellant's physiatrist] reports that he was unable to see the Appellant after the March 31st, 2000, accident until July 14, 2000, when he physically examined her. Prior to that date, the Appellant remained under the care of her family physician and physiotherapist. The physical examination of the Appellant on July 14, 2000, revealed that there was a mild decrease in lateral cervical flexion with otherwise full cervical spine range of motion. Palpable tenderness was noted for the posterior cervicothoracic region with tender trigger points noted. [Appellant's physiatrist] also noted that the Appellant responded well to C3 left and

right paraspinal nerve blocks and to needling in the C2-C3 regions. [Appellant's physiatrist] indicated that he had the clinical benefit of examining the Appellant before and after her March 31, 2000 motor vehicle collision and that her clinical presentation on July 14, 2000 indicated findings not previously noted. He opined that she would likely respond well to additional treatment.

8. The Appellant made application to MPIC to review its decision to terminate the reimbursement to her of the cost of physiotherapy treatments. The review officer, in a letter dated April 10, 2001, to the Appellant, rejected the Appellant's request for compensation in respect of physiotherapy treatments and noted that the only person who recommended ongoing treatment was the Appellant's physiotherapist and that there was no specific recommendation by [Appellant's physiatrist] that it was medically necessary for the Appellant to receive physiotherapy treatments beyond the end of May 2000. The review officer concluded that the physiotherapy treatments that the Appellant had received subsequent to the end of June 2000 were not medically necessary within the meaning of the Act and regulations.
9. As a result of the decision of the internal review officer rejecting compensation, the Appellant appealed that decision to the Commission in a Notice of Appeal dated May 11, 2001.
10. Section 136(1)(a) of the Act states:

Reimbursement of victim for various expenses

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;

Section 5 of Manitoba Regulation MR P215-40/94 states:

Medical or paramedical care

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;

11. Subsequent to the decision of the review officer rejecting the application for review, and prior to the hearing before the Commission on November 15, 2001, the Appellant provided to the Commission medical reports from [Appellant's doctor] dated August 8, 2001, and [Appellant's physiatrist] dated August 29, 2001.

12. [Appellant's doctor], who has treated the Appellant in respect of her motor vehicle accident in 1993 and in respect of the March 31st, 2000, accident, states in his report dated August 8, 2001:

In conclusion I believe there was a definite exacerbation of the neck and upper back symptoms following her March 31, 2000 accident. I feel her physiotherapy treatments that were undertaken from June 1 until August 29, 2000 were justified as her pain symptoms were definitely related to the most recent accident. At the present time she is not totally pain free and her treatments will continue indefinitely. [The Appellant] is financially responsible for her treatments beyond September 1, 2000. It is my opinion that physio treatments received during the months of June 1 to August 29, 2000 were directly attributed to her March 31, 2000 accident and should be covered by MPI.

13. [Appellant's physiatrist], in his report dated August 29, 2001, states:

Further to my medical report dated September 11, 2000 [the Appellant] has asked me to further elaborate on her attendance at physiotherapy after March 31, 2000. In my report of September 11, 2000 I stated that her symptoms were more severe during April and May 2000 and she benefited from physiotherapy aimed at decreasing pain and stretching muscles. This helped her to complete her University examinations as well as returning to work as a waitress. I neglected to state that she continued physiotherapy treatment during June, July and part of August 2000 due to persistence of intermittent symptoms. Following her March 31, 2000 motor vehicle accident she was referred to me by her family physician but I was unable to see her until July 14, 2000. She continued to attend physiotherapy until I could see her and for a few weeks after my July 14, 2000 assessment and treatment.

In my report of September 11, 2000 I documented my history of symptoms and

physical findings based on examinations prior to and after the March 31, 2000 motor vehicle accident. She definitely had more severe and widespread pain complaint following the March 31, 2000 MVA and in my opinion attendance at physiotherapy was justified and I support her family physician in referring her. She suffered a new whiplash type cervical soft tissue spine injury on March 31, 2000 at a time when she had little residual symptoms and signs related to the MVA of June 20, 1993.

Since I did not start my own treatment until July 14, 2001 [*sic*] it is my opinion that attendance for physiotherapy over a period of 4-5 months was justified and allowed her to complete her university exams as well as her part time jobs important in financing her university courses.

14. In response, MPIC obtained a medical report from [text deleted], a medical consultant to MPIC. In this report, [MPIC's doctor] reviews all relevant medical reports, including [Appellant's doctor's] report dated August 8, 2001, and [Appellant's physiatrist's] report dated August 29, 2001, and concludes: "Thus, in response to the question of whether further physiotherapy treatment was a necessity as of late June 2000, it is this reviewer's opinion that the medical documentation did not support further, ongoing physiotherapy treatment."
15. The Appellant, in her submission to the Commission, stated that she was essentially pain-free from the injuries she sustained in her motor vehicle accident on June 20, 1993, when she was involved in the second accident on March 31, 2000. At the time of this accident, the Appellant was attending university and was in the process of studying to write her final examinations. The Appellant submitted that in order to continue to attend university, study and write her final exams, and continue working at a part-time job in order to support herself, she needed physiotherapy treatments to deal with the injuries obtained in the March 31, 2000, motor vehicle accident until [Appellant's physiatrist] could treat her. She further stated that because of the injuries she had sustained in this accident, she had her final exams deferred until June 2000.
16. The Commission finds that the Appellant was sincere and honest in her submission to the Commission and accepts her testimony in respect of her need to receive physiotherapy treatments until she was able to obtain treatment from [Appellant's physiatrist].

17. [Appellant's doctor] and [Appellant's physiatrist] treated the Appellant both before and after the accident of March 31, 2000. Both [Appellant's doctor] and [Appellant's physiatrist] confirm that in their view the Appellant required physiotherapy treatments after June 30, 2000.
18. [Appellant's physiatrist] had the clinical benefit of examining the Appellant shortly before the March 31, 2000, motor vehicle accident and after said accident on July 14, 2000. As a result, [Appellant's physiatrist] was in a better position than [MPIC's doctor] to determine whether or not the physiotherapy treatments the Appellant received after June 30, 2000, were directly attributable to the motor vehicle accident of March 31, 2000, and medically necessary.
19. The Commission therefore determines that, on the basis of the Appellant's submissions and the medical reports of [Appellant's doctor] and [Appellant's physiatrist], it was medically necessary for the Appellant to receive physiotherapy treatments after MPIC terminated its obligation to pay for said treatments in late June 2000.

The Commission therefore orders that:

- A. MPIC reimburse the Appellant for the cost of all physiotherapy treatments between late June 2000 and August 29, 2000, together with interest thereon at the prescribed rate to the date of payment;
- B. This Commission retain jurisdiction in this matter and, if the parties are unable to agree as to the amount to resolve this issue of physiotherapy expenses, either party may refer this dispute back to the Commission for final determination; and
- C. The decision of MPIC's Internal Review Officer dated April 10, 2001, is therefore rescinded.

Dated at Winnipeg this 20th day of November, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

LAURA DIAMOND