

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-86**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Colon Settle, Q.C.

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

HEARING DATE: December 3, 2001

ISSUE: Reimbursement for a series of Orthovisc injections.

RELEVANT SECTIONS: Sections 136(1)(d) and 70(1) of The Manitoba Public Insurance Corporation Act ('the Act') and Section 5(a) of Manitoba Public Insurance Regulation No. P215 – R.M. 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. On August 28, 2000, [the Appellant] was involved in a motor vehicle accident wherein she suffered severe injuries to her legs, teeth and neck.
2. Prior to the accident, on May 25, 2000, [the Appellant] received a series of Orthovisc injections to relieve osteoarthritis-related pain to her right knee. The said Orthovisc injections succeeded in relieving her of this pain. [The Appellant] personally paid the sum of

\$345 for said injections because they were not covered by Manitoba Health at that time. Unfortunately, as a result of the motor vehicle accident on August 28, 2000, her right knee was again in pain, and benefits gained by the injections were lost to [the Appellant].

3. [The Appellant's] request to MPIC for partial reimbursement of the Orthovisc payments was rejected by the case manager and confirmed by a decision of the Internal Review Officer dated July 3, 2001, which [the Appellant] has now appealed to the Automobile Injury Compensation Appeal Commission ('the Commission').
4. In [the Appellant's] submission to MPIC and before this Commission, she argues that she paid for the Orthovisc injections and that the medical evidence suggested that such injections would give patients in her condition relief for a period of six to nine months. She further asserts that, unfortunately, the relief that she obtained from these injections was disrupted by the automobile accident which occurred on August 28, 2000.
5. [The Appellant] has acknowledged that further Orthovisc injections subsequent to the motor vehicle accident of August 28, 2000, would not relieve her of any pain to her right knee. The Internal Review Officer, in his written decision dated July 3, 2001, referred to a discussion he had with [the Appellant] at the review hearing on July 3, 2001, and stated:

At the hearing, I asked you whether any doctors had suggested that another series or orthovisc injections would relieve the pain you currently feel in your right knee. You indicated that due to the swelling, internal bruising and inflammation suffered by you, the condition of your right knee has deteriorated to the point where an orthovisc injection would be of no help.

6. In order to be entitled to reimbursement of medical expenses in respect of an injury, the injury must be directly related to a motor vehicle accident and be medically required.

Section 136(1)(d) of the Act sets out the following:

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:

- (d) such other expenses as may be prescribed by regulation.

Section 70(1) of the Act defines a victim as “a person who suffers bodily injury in an accident.”

Section 5(a) of the Manitoba Public Insurance Regulation No. P215 – R.M. 40/94 states as follows:

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.

7. The Orthovisc injections in question were administered prior to the motor vehicle accident of August 28, 2000, in respect of a pre-existing osteoarthritic condition. As a result, these injections were not medically required to treat injuries that [the Appellant] sustained as a direct result of this motor vehicle accident.
8. Upon a careful review of all the documentary evidence made available to the Commission, the oral testimony of the Appellant, [text deleted], and arguments submitted by [the Appellant] and by counsel for the Manitoba Public Insurance Corporation, this Commission finds that:

- (i) there is a lack of a probable relationship between the Appellant's injuries sustained in the motor vehicle accident which occurred on August 28, 2000, and her pre-existing condition of osteoarthritis-related pain to her right knee; and
- (ii) there is no objective medical evidence that Orthovisc injections are medically required.

Therefore, by the authority of Section 184(1) of The Manitoba Public Insurance Corporation Act, the Commission orders that:

- A. the appeal of [the Appellant] be dismissed; and
- B. the decision of the Internal Review Officer, bearing date July 3, 2001, be hereby confirmed.

Dated at Winnipeg this 4th day of December, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

COLON SETTLE, Q.C.