

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-99-155

PANEL: Yvonne Tavares, Chairperson
Mel Myers, Q.C.
Wilson MacLennan

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

HEARING DATE: March 19th, 2001

ISSUE: Whether the termination of physiotherapy coverage by MPIC was premature.

RELEVANT SECTIONS: Section 136(1) of the MPIC Act and Section 5 of Regulation 40/94 to the MPIC Act.

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

The Appellant, [text deleted], was injured in a motor vehicle accident ('MVA') on January 14th, 1999, when her car was struck on the driver's side door by another vehicle that ran a red light. The Appellant sustained a cervical and lumbar strain and initiated care with both a physiotherapist and a chiropractor.

The Initial Physiotherapy Report dated January 26th, 1999, diagnosed a cervical and lumbar strain, left greater than right and classified the injury as a Whiplash Associated Disorder 2. The physiotherapist anticipated that due to multiple zones of pain, the Appellant would require approximately three to four months of treatment at a frequency of two times per week.

A report dated February 17, 1999 from her chiropractor, [text deleted] noted that,

“Objectively the patient had decrease ROM in the cervical spine by 50% in all directions with pain. Lumbar spine ROM was also decreased by about 75% in all directions with pain. Hypertonicities were noted in the posterior cervical and lumbar spine as well as the suboccipital, trapezium and parascapular region. Cervical compression testing of the cervical spine revealed joint pain with restriction that was diffuse throughout the cervical region. Lumbar spine testing included positive Kemp’s L4, L5 and positive Yoeman and Patrick’s bilaterally.”

In a Doctor's Report dated March 4th, 1999, [text deleted], the Appellant's general practitioner at the time, noted the following:

"Physical exam showed ROM cervical spine-flexion limited extension normal-lateral rotation decreased to 60 degrees bilaterally-L-S spine decreased flexion, extension and left side flexion. There is muscular spasm bilaterally in L-S paraspinal region. Also stiffness in the middle of back.

...

According to her physiotherapy report as well as my weekly exams, at this point of time it is not known when she will achieve maximum therapeutic benefits from her present treatment. There is no anticipated permanent impairment from her MVA related injuries."

A subsequent Physiotherapy Report based on a reassessment of April 15th, 1999, indicated that the physiotherapist was continuing to wean the Appellant off of treatment to once a week. The physiotherapist noted that the Appellant had improved function and mobility and anticipated treatments to continue for four to six more weeks at a frequency

of one to two times per week. Based on this subsequent Physiotherapy Report, the file was referred to [MPIC's doctor] of MPIC's Medical Services Team. In his Inter-departmental Memorandum of May 7th, 1999, [MPIC's doctor] commented that:

"Based on a review of the information on file indicates that at this time, passive therapy likely cannot be described as a medical necessity. The strengthening and stabilization exercises at this point could likely be conducted in the patient's home. The patient is also receiving manual therapy with her chiropractor, decreasing the necessity of physiotherapy of a manual nature.

I would suggest that two or three more physiotherapy visits are approved to ensure that this patient is well educated in her home exercise program. Further therapy cannot be described as a medical necessity."

Based on [MPIC's doctor's] review, [text deleted], Claims Examiner wrote to the Appellant on May 20th, 1999, to notify her that,

"It is our position that there is no available evidence that a medical necessity for additional physiotherapy exists in this case. As such, we will allow 2 - 3 more sessions of physio effective May 15, 1999".

The Appellant sought an internal review of that decision. In his decision of September 10th, 1999, the Internal Review Officer confirmed the Claims' decision. The Internal Review Decision was based on a further Inter-departmental Memorandum of [MPIC's doctor] dated September 2nd, 1999. [MPIC's doctor] indicated in that Memorandum that the Appellant had had in excess of the 18 in-clinic visits which represents the norm as agreed upon between the Private Practice Physical Therapists of Manitoba and the Manitoba Public Insurance Corporation for her kind of injury. Addressing the physiotherapist's report of August 12th, 1999, [MPIC's doctor] indicated that the proposed form of treatment (needling, acupuncture and dry needling), while reasonable, cannot be described as a medical necessity.

A further medical report dated April 3rd, 2000, was submitted by the Appellant's physiotherapist in support of her appeal to the Commission. The report noted that:

"The dates of June 24, 30, 1999, July 8, 15, 22, 29, 1999, August 5, 19, 27, 1999, September 24, 1999, October 8, 1999, and November 2, 1999, and January 24, 2000, were paid for by [the Appellant] even though she was being treated for her injuries resulted from the MVA. On those dates she still complained of right-sided lower back and buttock pain, worse with sitting for a long period of time, or with prolonged activity during the day. Treatment included manual therapy techniques, ultrasound, acupuncture, heat, stretches, stabilization, and strengthening exercises as well as her home program.

[The Appellant] was last reviewed on March 24, 2000. She stated that she was doing well and had few complaints of pain. I do believe the injuries that were treated from June 24, 1999 to January 24, 2000 inclusive, were as a result of the MVA."

A medical report dated August 23rd, 2000, from [text deleted], an orthopaedic back specialist, was also submitted to the Commission. In his report [Appellant's orthopaedic back specialist] states that,

"On physical examination her back range of motion is 80% normal with very mild discomfort at extremes.

...

X-ray examination of the lumbar spine shows some disc degeneration of L5-S1 which is in keeping with her age.....

...

This lady sounds like she had an acute back strain which took approximately a year to improve. At this juncture in time she seems to be functioning well."

In her submission to the Commission, the Appellant indicated that she continued to suffer from acute low back pain even after MPIC terminated coverage for her physiotherapy treatments. She continued to attend for physiotherapy treatments on the advice of her general practitioner and the advice of her treating physiotherapist. The Appellant submits

that these individuals were in the best position to determine whether or not she continued to require the physiotherapy treatments. The Appellant also testified that the acupuncture treatment that she received from the physiotherapist assisted her greatly in relieving the pain from the injuries she had sustained in the MVA.

From all of the information available from MPIC's file, and from the oral testimony of the Appellant at the hearing of her appeal, we have been unable to conclude that the Appellant had reached maximum therapeutic benefit from the physiotherapy treatments by May 15, 1999, when MPIC terminated coverage. The Appellant's continued attendance for physiotherapy treatment at her own expense is a strong indication that she continued to derive therapeutic benefit from those sessions. Furthermore, the referral by her own general practitioner to a specialist in August, 1999, leads us to the conclusion that the Appellant was still continuing to suffer symptoms from the MVA of a severity to warrant such a referral. We also have regard to the opinions of both of her treating practitioners, that such continued treatment was necessary and beneficial.

Accordingly, the Commission finds that [the Appellant] shall be reimbursed for the costs of the physiotherapy treatments from June 24, 1999 to January 24, 2000, inclusive.

Dated this 20th day of April 2001.

YVONNE TAVARES

MEL MYERS, Q.C.

WILSON MACLENNAN