

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-156**

PANEL: Mr. Mel Myers, Chairperson
Mr. Wilf DeGraves
Dr. Patrick Doyle

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

HEARING DATE: May 11, 2011

ISSUE(S): Entitlement to physiotherapy treatments.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5(a) of Manitoba
Regulation 40/94.

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

[The Appellant] [text deleted] was involved in a motor vehicle accident on June 8, 2007. At that time the Appellant was operating a vehicle which came to a stop and his vehicle was hit on the driver's side door by another vehicle. The Appellant attended at the [text deleted] Hospital on his own volition and the Emergency Medical Report documents chest complaint from blunt trauma. The Emergency Report also documents that the Appellant had a history of hypothyroid, fibromyalgia and chronic pain.

The Appellant's medical history in respect of the motor vehicle accident is set out succinctly in the decision of the Internal Review Officer dated September 25, 2009:

- “A Primary Health Care Report completed by [Appellant's Doctor #1] based on an examination of September 26, 2007 documents a clinical diagnosis of fibromyalgia exacerbation. The report documents a severe injury in 1994 with a diagnosis of fibromyalgia in 1996.
- A medical report from [Appellant's Doctor #2] dated July 14, 2008 documents that on examination there was mild weakness of ankle and toe dorsiflexion. Reflexes were symmetric. There was a mild sensory disturbance over the top of the right foot and lateral calf. You were referred for an MRI.
- A medical report by [Appellant's Doctor #2] dated September 24, 2008 documents that a recent MRI (of) the lumbo sacral spine revealed mild central spinal stenosis with no definite evidence of an L5 root lesion.
- A medical report completed by [Appellant's Doctor #1] dated October 3, 2008 documents that you were seen on June 13, 2007, five days after the motor vehicle accident. On examination you had bruises to the left side of your lower chest wall and were complaining of low back pain and pain in both legs. [Appellant's Doctor #1] noted that your symptoms were aggravated by fibromyalgia which increased your generalized pain. You were seen again on October 2, 2008 and your complaints were generalized body soreness, low back pain and tenderness in the para-vertebral muscles from mid thoracic to the sacrum. [Appellant's Doctor #1] included copies of his clinical notes dating back to May 13, 2005. These notes document ongoing history of chronic pain, fibromyalgia and depression. Medications Effexor, Tylenol 3, and Xanax were consistently prescribed.
- On May 19, 2006, you requested a referral to [Appellant's Doctor #3] of [Rehabilitation (Rehab) Facility]. [Appellant's Doctor #3] provided a report dated November 6, 2007 based on an examination of November 6, 2007. [Appellant's Doctor #3] provided a diagnosis of chronic soft tissue pain complaints, subjective cognitive symptoms (fibro fog), and chronic work disability secondary to chronic soft tissue pain complaints. Therapeutic recommendations were to continue exercising regularly, a return to the work force and to now stop looking to the medical community to eradicate your symptoms and “cure” you.”

The Appellant testified that he saw [Appellant's Physiotherapist], on May 12, 2008, a period of 11 months after the motor vehicle accident for an assessment. [Appellant's Physiotherapist] issued an initial physiotherapy report based on this examination which documents the Appellant's symptoms as ongoing low back pain, right leg thigh pain, and right

foot symptoms. [Appellant's Physiotherapist] recommended physiotherapy treatments for 2 to 3 weeks.

The Appellant testified that he received physiotherapy treatments from [Appellant's Physiotherapist] and paid his fees in the amount of approximately \$200 but was unable to provide a receipt to the Commission in respect of these physiotherapy costs.

On November 16, 2008 the Appellant made an application to MPIC for reimbursement of the physiotherapy costs.

The case manager referred the Appellant's file to [MPIC's Doctor] for the purpose of obtaining a medical opinion regarding the causality between the reported symptoms communicated by the Appellant to [Appellant's Physiotherapist] on May 12, 2008 and the motor vehicle accident. The case manager also wanted to know whether in [MPIC's Doctor's] opinion physiotherapy treatments were required.

[MPIC's Doctor] provided an interdepartmental memorandum to the case manager on December 24, 2008 and stated:

“The claimant suffered from longstanding generalized soft tissue pain that he considered disabling at the time of the motor vehicle collision. Episodically, he reported to his family physician that his pain condition was made worse by the motor vehicle collision.

In my opinion, the claimant's lower back/right lower limb status early in 2008, characterized by perceived significant pain, paresthesia and motor deficit relates to factors other than the motor vehicle collision. The aforementioned worsening pain and emergence of right lower limb symptoms appeared to be the reason that the claimant attended [Appellant's Physiotherapist], on May 12, 2008. In my opinion, the claimant's attendance for assessment on May 12, 2008 reflects acute unrelated symptom presentation. It appears that the claimant also took the opportunity to have his chronic, longstanding myofascial pain assessed. In my opinion, causality is not supported.” (underlining added)

Case Manager's Decision:

On February 3, 2009, the case manager wrote to the Appellant in respect of the request from the [Appellant's Physiotherapist], to provide physiotherapy treatments to the Appellant as outlined in his report of May 12, 2008. The case manager indicated that the Appellant's entire medical file had been reviewed by [MPIC's Doctor]. In her review, [MPIC's Doctor] indicated there was insufficient evidence to support a causal relationship between the signs/symptoms as of May 12, 2008 and the motor vehicle accident of June 8, 2007. As a result, MPIC was unable to approve funding of the requested treatment.

The Appellant made an Application for Review of the case manager's decision on April 2, 2009.

Internal Review Officer's Decision:

The Internal Review Officer held a hearing on May 20, 2009 and issued a decision on September 25, 2009 confirming the case manager's April 2, 2009 decision and dismissed the Appellant's Application for Review.

The Internal Review Officer reviewed the Appellant's medical file and adopted [MPIC's Doctor's] view that there was no causal relationship between the Appellant's signs and symptoms and the motor vehicle accident of June 8, 2007. The Internal Review Officer stated:

“The purpose of this review is to determine if the decision of February 4, 2009 is supported by medical evidence.

There are two conditions which must be met before Manitoba Public Insurance becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:

1. The expenses must have been incurred because of the accident (i.e. the treatment must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the *Act* (copy enclosed).
2. The treatment must have been “medically required” in accordance with Section 5 of Manitoba Regulation 40/94 (copy enclosed).

I must agree with [MPIC's Doctor's] opinion which is supported by the medical evidence in your file that there does not appear to be a causal relationship between your current signs and symptoms and the motor vehicle accident.

Accordingly, there is sufficient evidence to support the decision under review and no basis has been shown for interfering with the decision of February 4, 2009.”

The Appellant filed a Notice of Appeal dated December 20, 2009.

Appeal:

The relevant provisions of this appeal are:

MPIC Act:

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;

Manitoba Regulation 40/94:

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;

The Appellant testified at the appeal hearing and provided a five page report outlining the health problems he had since the motor vehicle accident and the medical treatment he sought to

alleviate the pain. In this report he was extremely critical of the manner in which MPIC dealt with his concerns.

The Commission pointed out to the Appellant that it did not have jurisdiction to provide a remedy for all of the pain and suffering he had endured since the motor vehicle accident. The Commission further advised the Appellant that the only issue before the Commission was his appeal from the Internal Review Officer's Decision denying the Appellant reimbursement of the cost of physiotherapy treatments. In response, the Appellant indicated that he misunderstood the purpose of his appeal to the Commission.

The Appellant testified that he had a pre-existing condition of fibromyalgia and myofascial pain prior to the motor vehicle accident. He further testified that he had not suffered from fibromyalgia or myofascial pain for a significant period of time prior to the motor vehicle accident.

He further testified that:

1. A few days after the motor vehicle accident his chronic myofascial pain condition worsened and that his shoulder, upper back, lower back, abdominal, pectoral and rib cage muscles started to tighten up and never relaxed.
2. Prior to the motor vehicle accident he had never experienced the kinds of muscle problems in his lower back, buttocks and legs that he had after the motor vehicle accident.
3. His chronic myofascial pain was exacerbated by the motor vehicle accident and caused significant pain throughout his entire body.
4. The motor vehicle accident had a terrible impact on the Appellant's quality of life.

The Appellant submitted that because of the motor vehicle accident he was required to obtain physiotherapy treatments and requested that the Commission direct MPIC to reimburse him for the payment of [Appellant's Physiotherapist's] fees in the amount of approximately \$200.

At the conclusion of the Appellant's submission, the Commission asked the Appellant whether he could explain why he waited 11 months in seeking physiotherapy treatments. The Commission pointed out that [Appellant's Doctor #1's] clinical notes indicated that the Appellant continued to complain about myofascial pain for a significant period of time after the motor vehicle accident. The Appellant acknowledged that although he initially testified that he did not suffer from chronic myofascial pain prior to the motor vehicle accident, [Appellant's Doctor #1's] clinical records contradicted his testimony in this respect.

MPIC's legal counsel submitted that the Appellant:

1. Had continued to suffer from fibromyalgia or myofascial pain prior to the motor vehicle accident and referred to the medical reports of [Appellant's Doctor #1] and his clinical notes in order to contradict the Appellant.
2. Had an ongoing history of chronic pain in respect of fibromyalgia and/or myofascial pain and that the motor vehicle accident did not cause an aggravation of this condition.
3. Did not see the physiotherapist, [Appellant's Physiotherapist], until 11 months after the motor vehicle accident
4. Did not make an Application for Reimbursement of the physiotherapy costs from MPIC until November 16, 2008, a period of approximately 17 months after the motor vehicle accident.

MPIC's legal counsel further submitted that:

1. The Internal Review Officer was correct in adopting [MPIC's Doctor's] medical opinion that there was no causal relationship between the Appellant's complaints of fibromyalgia and/or myofascial pain and the motor vehicle accident.
2. The Appellant had not established on a balance of probabilities a causal connection between the Appellant's complaints and the need for physiotherapy treatments.

Discussion:

The Commission finds that the Appellant did suffer from chronic pain due to fibromyalgia and/or myofascial pain prior to the motor vehicle accident. The Commission notes that [Appellant's Doctor #1], in his referral letter of June 5, 2008 to [Appellant's Doctor #2], reported that the Appellant had fibromyalgia since 1994 when he fell off a ladder and injured his back. In this letter [Appellant's Doctor #1] reported that the Appellant had not been able to work since that time.

An examination of [Appellant's Doctor #1's] clinical notes:

1. Contradicts the Appellant's statement that he did not suffer from chronic fibromyalgia and/or myofascial pain for a significant period of time prior to the motor vehicle accident.
2. That the Appellant attended his office on the following dates complaining about chronic pain of fibromyalgia and/or myofascial pain and was provided with prescriptions for anti-inflammatories and Tylenol 3's:
 - August 19, 2005
 - October 14, 2005
 - November 25, 2005
 - March 10, 2006

- May 19, 2006
- September 1, 2006
- November 10, 2006
- December 15, 2006

The Commission further notes that on one occasion after December 15, 2006 and before the April 24, 2007 motor vehicle accident, the Appellant attended at [Appellant's Doctor #1's] office in respect of chronic fibromyalgia and/or myofascial pain, when [Appellant's Doctor #1] prescribed anti-inflammatories and Tylenol 3.

[Appellant's Doctor #1's] clinical notes clearly demonstrate that the Appellant complained in 2005 and 2006 of chronic fibromyalgia and/or myofascial pain prior to the motor vehicle accident.

The Commission further notes that:

1. [Appellant's Doctor #1's] clinical notes indicate that the Appellant continued to attend his office after the motor vehicle accident to complain of chronic fibromyalgia and/or myofascial pain on the following dates: June 13, 2007, September 26, 2007, November 22, 2007, December 20, 2007, February 13, 2008, May 15, 2008, June 5, 2008, June 26, 2008 and October 2, 2008.
2. The Commission notes that on all these occasions [Appellant's Doctor #1] prescribed anti-inflammatories and Tylenol 3 to deal with the Appellant's chronic fibromyalgia and/or myofascial pain.

The Commission determines that the Appellant's failure to seek physiotherapy treatments shortly after the motor vehicle accident demonstrates that:

1. The Appellant suffered from chronic fibromyalgia and/or myofascial pain before and after the motor vehicle accident.
2. The motor vehicle accident did not cause the exacerbation of fibromyalgia and/or myofascial pain.

The Commission agrees with [MPIC's Doctor] that:

1. The Appellant attended the physiotherapist on May 12, 2008, 11 months after the motor vehicle accident, because there was an emergence of lower limb symptoms.
2. The Appellant took the opportunity at that time to have his longstanding chronic myofascial pain assessed by [Appellant's Physiotherapist].
3. There is no causal relationship between the motor vehicle accident and the Appellant's complaints of chronic pain.

Decision:

The Commission recognizes that the Appellant suffered longstanding generalized soft tissue pain which adversely affected the Appellant's quality of life and as a result he had consulted several doctors in respect of his complaints. An examination of the medical reports of [Appellant's Doctor #1], [Appellant's Doctor #3] and [Appellant's Doctor #2] does not establish that at the time the Appellant saw [Appellant's Physiotherapist] on May 12, 2008 his chronic complaints of fibromyalgia and myofascial pain were causally connected to the motor vehicle accident.

[Appellant's Physiotherapist] assessed the Appellant on May 12, 2008, a period of 11 months after the motor vehicle accident. He recommended physiotherapy treatments but did not indicate that there was a causal connection between the Appellant's complaints and the motor vehicle accident.

The Appellant did not provide any medical evidence to contradict [MPIC's Doctor's] medical opinion on the issue of causality. The Commission also finds that there were several contradictions in the Appellant's testimony on the issue of causality.

The Commission therefore finds that the Appellant has failed to establish on a balance of probabilities that there was a causal connection between the Appellant's requirement for physiotherapy treatments and the motor vehicle accident. For these reasons the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated September 25, 2009.

Dated at Winnipeg this 1st day of June, 2011.

MEL MYERS

WILF DEGRAVES

DR. PATRICK DOYLE