

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-051**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Ms Nikki Kagan

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

HEARING DATES: April 8, 2013 and February 11, 2014

ISSUE(S): Entitlement to reimbursement of physiotherapy treatment
expenses.

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

Reasons For Decision

On June 28, 2007, the Appellant, [text deleted], was a passenger in a vehicle which t-boned another vehicle attempting to make a left turn in its path. As a result of this accident, the Appellant sustained an injury to his left shoulder and a strain to the left side of his neck, along with headaches to the left side of his head. Prior to this accident, the Appellant had been involved in an accident on December 23, 1998, when he was a rear seat passenger and his vehicle was rearended. Following that accident, the Appellant complained of occipital headaches, left sided neck pain and left shoulder pain. On September 15, 1999, the Appellant

was involved in another car accident where he was a passenger. He complained of a severe frontal headache, left jaw, left side neck, left shoulder and left arm pain. Throughout these accidents, the Appellant has continuously complained of tenderness over his left paracervical muscles, left shoulder and left trapezius muscles. Due to the bodily injuries which the Appellant sustained in these motor vehicle accidents, he became entitled to Personal Injury Protection Plan (“PIPP”) benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated February 9, 2012, with respect to his entitlement to reimbursement of expenses for physiotherapy treatments.

At the outset of the hearing on April 8, 2013, the Appellant advised that he received benefits from the Workers Compensation Board for his carpal tunnel syndrome, including his lost time from work. As a result, the Appellant withdrew his appeal regarding his entitlement to PIPP benefits relating to his carpal tunnel syndrome.

On September 26, 2011, MPIC’s case manager issued a decision which advised as follows:

[Appellant’s Doctor] also requested re-initiation of physiotherapy treatment for treatment of a radiculopathy. However, our Health Care Services team has opined that the radiculopathy is not supported being present by the clinical notes and assessments on file. Therefore, the indication of physiotherapy would not be for a condition related to the motor vehicle collision in question and there is no entitlement to funding of further physiotherapy under the Personal Injury Protection Plan (PIPP)

The Appellant sought an Internal Review of that decision. In a decision dated February 9, 2012, the Internal Review Officer dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. The Internal Review Officer found that there was no causal connection between a possible cervical radiculopathy and the motor vehicle accident of June 28, 2007. As a result, the Appellant was not entitled to funding for further physiotherapy treatments.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of expenses for physiotherapy treatment.

Relevant Legislation:

Section 136(1)(a) of the MPIC Act provides that:

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(a) of Manitoba Regulation 40/94 provides that:

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;

Appellant's Submission:

The Appellant submits that as a result of the injuries which he sustained in his motor vehicle accidents, he continues to require physiotherapy treatment in order to treat the chronic pain in his neck and left side of his head. The Appellant advises that even though time has lapsed, the symptoms and discomfort from the accidents have remained. He submits that he continues to suffer with excruciating pain to the left side of his face and left ear, headaches and neck and left

shoulder pain. He maintains that physiotherapy treatment has helped his condition to improve. The Appellant submits that he should be entitled to physiotherapy treatment as he is still not at pre-accident status.

MPIC's Submission:

Counsel for MPIC submits that ongoing physiotherapy treatment is not medically required for the Appellant. Counsel for MPIC argues that although [the Appellant's] chronic left neck pain does have a causal relationship to the motor vehicle collision, his family physician has requested physiotherapy treatment for treatment of a cervical radiculopathy. Counsel for MPIC maintains that there is no evidence that the Appellant suffers from a cervical radiculopathy. As a cervical radiculopathy is not supported as being present by the clinical notes and assessments on the Appellant's file, the indication for physiotherapy would not be for a condition related to the motor vehicle collision in question. As a result, counsel for MPIC submits that the Appellant is not entitled to reimbursement of physiotherapy treatment for a cervical radiculopathy.

Following the submissions of the Appellant and counsel for MPIC, the Commission directed MPIC to request a further assessment from the Appellant's treating physiotherapist with respect to whether a further course of physiotherapy treatment was indicated for treatment of the Appellant's ongoing chronic neck and left-side pain. In due course, a report was received from the Appellant's treating physiotherapist. The hearing was reconvened on February 11, 2014 in order to receive final submissions from the Appellant and from counsel for MPIC.

At this time, the Appellant reiterated that he continues to suffer with chronic pain and he would attend for physiotherapy treatments if they were reimbursed by MPIC. Counsel for MPIC submitted that, although the Appellant experiences chronic pain, there is no objective medical

evidence to establish that physiotherapy treatment would assist his ongoing chronic pain. As a result, counsel for MPIC submits that physiotherapy treatment cannot be deemed medically required for the Appellant.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for physiotherapy treatment.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for physiotherapy treatment:

- 1) the expenses must have been incurred to treat injuries sustained in a motor vehicle accident; and
- 2) the treatments must be “medically required”.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing physiotherapy treatment was medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. The Appellant’s testimony was that his symptoms have continued without any significant improvement in his condition following the treatment that he has received. Based upon the Appellant’s testimony and the physiotherapy reports on the file, we find it most likely that the Appellant has reached maximum therapeutic benefit from physiotherapy. Additionally, the evidence before the

Commission did not establish that ongoing physiotherapy care would provide further sustainable improvement with respect to the Appellant's motor vehicle collision related injuries. As a result, we are unable to conclude that ongoing physiotherapy treatment was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of ongoing expenses for physiotherapy treatment. As a result, the Appellant's appeal is dismissed and the Internal Review decision of February 9, 2012 is confirmed.

Dated at Winnipeg this 27th day of February, 2014.

YVONNE TAVARES

MARY LYNN BROOKS

NIKKI KAGAN