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Indexed as:
O.A. (Re)

IN THE MATTER OF an appeal by O.A.
AICAC File No.: AC-97-63

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[1997] M.A.I.C.A.C.D. No. 40

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and F.L. Cox
Heard: November 3, 1997.
Decision: November 5, 1997.
(5 pp.)

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Issue(s):

- (a) Whether Appellant entitled to reinstatement of physiotherapy;
- (b) Whether Appellant entitled to home care benefits.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, s. 184(1)(b).
Regulation 40/94, ss. 2 and 5.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC')
represented by Tom Strutt.
O.A., the appellant, appeared in person.

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MAIC 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

[para1] O.A. sustained injuries on the 15th day of March 1995, when the corner of her vehicle was struck by another car, causing her to lose control, collide with a telephone poll and wind up in someone's front yard on the other side of the street from that on which she was travelling.

[para2] She was [text deleted] years of age at the time and, despite indications of osteoporosis and other signs of the degenerative process of aging she was, by her testimony, healthy and active prior to her motor vehicle accident. She cared for a sick husband for several years prior to his death, did all her own housework, cut her grass, shoveled her snow, painted her home and, in general, had no material disabilities. Since her accident, she says, she has suffered from continual pains emanating from the right shoulder and the right side of her lower neck, radiating from there down through the right arm and hand and up into the back of the right side of her head.

[para3] O.A.'s physician, Dr. Jacob Hollenberg, sent her for physiotherapy sessions which she attended from about May 4th, 1995 until the 15th day of August 1996, when Manitoba Public Insurance Corporation ('MPIC') discontinued those benefits.

[para4] While O.A. has appealed from that decision, seeking the reinstatement of her physiotherapy treatments, at the hearing of her appeal she candidly agreed with the conclusion of her own physician and that of MPIC's in-house medical team, to the effect that, since 15 months of physiotherapy do not seem to have achieved much benefit, there is little purpose to be served in resuming them. We concur.

[para5] MPIC also paid O.A. some minimal home care expenses for a period during which she seemed to need assistance with certain of her household functions. MPIC also retained the services of Northern Rehabilitation and Consulting Services to do a detailed assessment of O.A.'s domestic needs and, responding to advice from that source, purchased a lighter weight vacuum cleaner and a couple of other cleaning tools in order to make those tasks easier for her.

[para6] However, entitlement to home care services at the expense of MPIC rests upon the victim's ability to meet certain criteria under Regulation No. 40/94 and, despite two detailed assessments under that Regulation, O.A. failed, by quite a large margin, to qualify. We have noted, on earlier occasions, the fact that the 'grid' contained in the Regulation contains certain anomalies. For example, a victim's total dependency upon others in the context of all housecleaning and laundry only merits 2 points - the same number as is given to total inability to prepare one's breakfast. More dramatically, perhaps, no points at all are assigned to the victim who is completely unable to shovel snow or cut grass - a disability from which O.A. seems to suffer. A minimum of 5 points on that grid system is required for the victim to qualify for assistance. Unfortunately, this Commission is not empowered to change the Regulations. At

best, we can only recommend that they be revisited by those having responsibility for amending them. As matters stand, O.A. is not entitled to any home care assistance. That said, it must also be added that O.A.'s condition has allowed her to manage without outside assistance for quite some time, - albeit, she says, with some difficulty. She is able to drive herself around the city, and although a friend accompanies her when she does her weekly shopping, the fact is that O.A. would, in our respectful view, be quite capable of doing that by herself, if need be. There are, however, some things that she cannot do without assistance, consisting for the most part of heavier domestic chores such as snow clearing, yard work, window washing and the like. These, as noted above, are noticeably absent from the language of the disability grid which, under the circumstances, is of no help to O.A.

[para7] What, then (if anything), can be done to assist this Appellant in the context of the MPIC Act? The main factor that became apparent to this Commission upon hearing and reading all of the available evidence was that, despite all of the medical reports obtained from Dr. Hollenberg, those reports seem to consist, almost entirely, of a regurgitation of complaints that had been voiced by O.A.; we could find no diagnosis based upon any objective signs that might indicate the cause of O.A.'s discomfort (which appears to have its origin in her motor vehicle accident) nor any suggested treatment other than the now discarded physiotherapy.

[para8] We therefore propose to refer O.A. to a mutually acceptable specialist for an independent medical examination. Following the receipt of the resulting report, which we shall communicate to both parties, we shall be able to decide whether there is anything further that ought to be done by the insurer for O.A., in which latter event the matter will then be referred back to her case manager at MPIC to make the appropriate arrangements. We recognize that this procedure is not, strictly speaking, addressing the subject matter of O.A.'s appeal, but we find our jurisdiction to make this referral in Section 184(1)(b) of the MPIC Act which reads as follows:

"Powers of commision on appeal

184(1) After conducting a hearing, the commission may
...

(b) make any decision that the corporation could have made."

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