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Indexed as:
O.J.B. (Re)

IN THE MATTER OF an appeal by O.J.B.
AICAC File No.: AC-97-99

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[1997] M.A.I.C.A.C.D. No. 41

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Manitoba Automobile Injury Compensation Appeal Commission
C.T. Birt, Q.C., L. Goodspeed and L. Cox
Heard: November 7, 1997.
Decision: November 13, 1997.
(5 pp.)

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Issue(s):
Eligibility for Personal Home Care Services.

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Relevant Sections:
Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, s. 131.
Regulation 40/94, s. 2.

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Appearances:
Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Keith Addison.
O.J.B., the appellant, represented herself.

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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

THE FACTS:

[para1] O.J.B. was in a rear-end automobile accident on
May 15, 1996 in which she sustained a Whiplash Associated
Disorder, classification 2, with specific injuries to her neck
and lower back. Immediately after the accident she underwent
x-rays and was examined by her physician, Dr. Melody McKenzie,
on May 22, 1996. Dr. McKenzie diagnosed a mild cervical and
moderate lumbar muscular injury. O.J.B. was prescribed
medication, a physiotherapy treatment plan and advised to

maintain her domestic duties at a level she could tolerate.

[para2] On October 10, 1996, at her examination with Dr. McKenzie, O.J.B. was found to be fully functional, although she said that she had difficulty vacuuming and lifting.

[para3] On October 25, 1996, O.J.B. underwent an independent medical assessment by Dr. D. Kayler. He found that her complaints, relating to her neck and shoulder were accident related. There were no findings of a permanent disability and she was found to be significantly, but not completely, recovered from her accident. Dr. Kayler noted that she had pre-existing degenerative disc disease likely playing a continued role in her neck and back complaints.

[para4] O.J.B. reported to the adjuster that she was unable to perform her regular household duties and requested assistance to carry out these tasks. According to the Regulations, in order to receive reimbursement for home care expenses, an individual would have to undertake an assessment and score a minimum of 5 out of 27 on the Home Assistance evaluation grid established under Regulation 40/94.

[para5] A physiotherapy assessment was completed on December 4, 1996, from which it was determined that physiotherapy would be continued, along with directions for strengthening exercises to be carried out at home. On December 12, 1996, a Home Assistance evaluation was conducted by Dr. M. McKenzie in which O.J.B. scored 14 out of 27. This qualified O.J.B. for home assistance expenses incurred from the date of her accident and for assistance to continue until a later assessment period when it would be determined if she could resume her usual household duties.

[para6] On January 15, 1997, O.J.B. underwent a further Home Assistance assessment with an Occupational Therapist which resulted in a score of 0.5 out of 27. It was concluded that O.J.B. no longer required assistance. However, M.P.I.C. decided that the cleaning assistance she was receiving would be withdrawn gradually over a 4 to 6 week period. Having made this arrangement, M.P.I.C. advised O.J.B. that her home assistance was terminated as of February 25, 1997.

[para7] O.J.B. was involved in a second automobile accident on January 24, 1997. On February 4, 1997, O.J.B. was examined by Dr. Michael Stevenson who found her to be at a level of "full function with symptoms" and advised her to maintain her usual activities with some restrictions with vacuuming and the dishwasher. Dr. Stevenson completed a Home Assistance assessment on O.J.B. in which she scored 1.5 points out of 27 indicating that she did not qualify for home assistance.

THE LAW:

[para8] The victim is entitled to be reimbursed for any expenses that are incurred as a result of an automobile accident to the extent that those expenses qualify under the terms of the Act and Regulations. The authority for O.J.B. to receive Home Assistance is found in section 131 of the Act and in Regulation 40/94.

[para9] Section 131 of the Act reads as follows:

"Reimbursement of personal assistance expenses

Subject to the regulations, the corporation may reimburse a victim for expenses of not more than \$3,000 per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance."

[para10] Section 2 of regulation 40/94 reads as follows:

"Reimbursement of personal home assistance under Schedule A

2. Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under The Health Services Insurance Act or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A."

[para11] Schedule A provides a method of evaluating the needs of the victim regarding home assistance. Points are assigned to areas of need on an evaluation grid. They are totalled to determine the qualifying percentage that is then applied to the maximum amount allowed under Section 131 of the Act.

[para12] The Appellant's condition, related to the May 15, 1996 accident, resulted in a sufficiently high ranking on the Home Assistance grid to qualify O.J.B. for home assistance. Her condition progressively improved to the point at which, when O.J.B. underwent an evaluation on January 20, 1997, she no longer qualified for this assistance. The Appellant was re-evaluated on the same grid, after her second accident on January 24, 1997. Based on the Home Assistance assessment undertaken by Dr. Stevenson and his February 4, 1997 Medical Report, O.J.B. again did not score high enough to qualify for home assistance which, therefore, was terminated on February 25, 1997.

[para13] Considering Dr. Stevenson's subsequent medical

reports and another disqualifying Home Assistance evaluation of July 14, 1997 it is clear that O.J.B. had not qualified for reimbursement of home care expenses after February 25, 1997. Therefore based on the Act and its Regulations we find that the Home Assistance was properly terminated on February 25, 1997 and the decision of the Acting Internal Review Officer is upheld.

DISPOSITION:

[para14] We therefore dismiss the appeal and confirm the decision of the Acting Internal Review Officer dated August 21, 1997.

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