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Indexed as:  
T.J.C. (Re)

IN THE MATTER OF an appeal by T.J.C.  
AICAC File No.: AC-97-71

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[1997] M.A.I.C.A.C.D. No. 43

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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 4, 1997.  
Decision: November 18, 1997.  
(6 pp.)

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Issue(s):

- (a) Whether victim entitled to cost of gymnasium membership;
- (b) Whether victim entitled to cost of new mattress.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 136(1) and 138.  
Regulation 40/94, ss. 5 and 10(1)(d)(iii).

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Appearances:

Manitoba Public Insurance Corporation ('MPIC')  
represented by Keith Addison.  
The appellant, T.J.C., 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] The Appellant, T.J.C., was involved in a motor vehicle accident on December 20th, 1996, as a result of which he sustained lumbar strain and sacroiliac joint disfunction. At the time of his accident, T.J.C. was [text deleted] years of age and was employed in building and yard maintenance by [text deleted] and, concurrently, as head doorman at the [text

deleted], both in the city of Winnipeg.

[para2] Following his accident, T.J.C. was treated by his chiropractor, Dr. Geffrey Gelley, Dr. Peter Nemeth, a specialist in sports medicine, Dr. Christa Mason, a practitioner in family and sports medicine, and by two or more physiotherapists at the Reconditioning Department of the Pan Am Sports Medicine Orthopaedic and Rehabilitation Centre. His reconditioning program at the Pan Am Centre lasted for eight weeks, at the conclusion of which he was discharged from their program. He had, in the meantime, returned to work on January 29th of 1997. T.J.C.'s present appeal relates to two matters only: MPIC's refusal to pay for a year's membership in a commercial gymnasium for him, and MPIC's refusal to purchase a new mattress in substitution for the waterbed that he has hitherto been using.

[para3] In the context of the waterbed, T.J.C. testified that he had been using one for as long as he could remember or, as he put it, "since I was old enough to have one". This item falls within the language of Section 10(1)(d)(iii) of Regulation 40/94, which reads, in part, as follows:

"Rehabilitation Expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following: ...

(d) reimbursement of the victim at the sole discretion of the corporation for ...

(iii) medically required beds, equipment and accessories."

The sole question, therefore, is whether a particular form of new mattress that T.J.C. seeks can properly be described as 'medically required'. T.J.C.'s current physician, Dr. Christa Mason, expressed the view that T.J.C.'s complaints of increased pain in his back every morning was "probably due to his current bed. I have advised him to purchase a more supportive mattress". In subsequent correspondence addressed to Dr. Mason by Dr. Neil Craton, a specialist in sports medicine on the staff of MPIC, Dr. Craton pointed out that he was "unaware of any reasonable data to indicate that specialized mattresses can decrease the type of low back pain associated with motor vehicle accident related trauma", adding that he was therefore unaware of the medical necessity of that type of product. Since Dr. Mason did not respond to that letter, we have to assume that she was essentially in agreement with those comments and that her suggestion for a new mattress was just that - that is to say, a suggestion

rather than a prescription based on medical necessity. That being so, we have to concur with the decision of MPIC's acting review officer in denying T.J.C.'s claim for a new mattress.

[para4] In the context of T.J.C.'s claim for a gym membership, the material on his file, taken together with his testimony at the hearing of his appeal, is somewhat confusing. We have the report from the Pan Am Reconditioning Centre of April 14th, 1997, indicating that they had implemented a full back protocol for T.J.C. which he had tolerated quite well, that his range of motion was then nearly complete in all areas and that he was able to function fully without any major complaints. That report went on to say that T.J.C. was now relying upon stretching and exercises for his back pain but that "Further supervised reconditioning is not required, this patient should be able to self-manage his condition and therefore is discharged from our program".

[para5] Similarly, a few days later on April 20th, 1997, Dr. Mason writes to MPIC to say that she was continuing to follow T.J.C. regarding injuries sustained in his motor vehicle accident. She says "He no longer requires supervised reconditioning, but should continue with stretching and strengthening exercises. As such, I have advised him to purchase a membership at a local fitness centre". However, on April 24th, Dr. Mason writes a further letter to MPIC to say that she has re-examined T.J.C., that his condition has deteriorated considerably since "being cut off reconditioning and not being able to afford a gym membership". She adds that she has advised T.J.C. to return to supervised reconditioning until his pain improves, then continue his reconditioning exercises at a local fitness centre.

[para6] On April 28th, the letter from Dr. Craton to Dr. Mason referred to above expresses the view that what T.J.C. really needs is a Swiss gym ball, and a thorough education in the meticulous technique of a lumbar stabilization protocol involving the use of that gym ball. A Swiss gym ball was, in fact, purchased for T.J.C. His chiropractor, Dr. Gelley, reports that "I have already put T.J.C. on a home lumbar stabilization program with the gym ball. This has been helpful but has not rehabilitated his back as fully as when he was under the reconditioning program at the Pan Am ...". Dr. Gelley goes on to express the view that it would be in T.J.C.'s best interests to see Mr. Rizzuto (the director of the Reconditioning Centre at Pan Am) to review his previous program, to make sure that he is doing the exercises safely and correctly, and then to continue his program at a fitness facility. Dr. Gelley feels that T.J.C. would be best suited to a type of more aggressive program that would offer him more benefit than a home stabilization program and that he would rely more on active rather than on passive care, in which

latter phrase he includes chiropractic manipulation.

[para7] T.J.C. wishes to be returned to the Pan Am Reconditioning Centre, and counsel for MPIC having concurred in the disposition that follows:

- (i) Ms Darlene Thomson, T.J.C.'s case manager at MPIC, will make arrangements with Mr. Phil Rizzuto, the director of the Reconditioning Department at the Pan Am Centre, for T.J.C. to attend there at a mutually convenient time and date, so that T.J.C.'S physical reconditioning needs may be fully assessed;
- (ii) to the extent that Mr. Rizzuto deems it necessary or advisable, T.J.C. will receive such further rehabilitation program as will, in Mr. Rizzuto's view, restore him to his pre-accident condition;
- (iii) if Mr. Rizzuto is of the view that a further rehabilitation program is needed, then concurrently with that program T.J.C. is to receive, from the Pan Am Centre, proper training in the use of the Swiss gym ball and such further education in his home exercise program as may be appropriate;
- (iv) if Mr. Rizzuto feels that no further rehabilitation program is required, T.J.C. shall still receive the foregoing training with the Swiss gym ball and such further re-education in his home exercise program as Mr. Rizzuto may feel appropriate; and
- (v) the foregoing steps will be at MPIC's expense.

[para8] We are not of the view that the purchase of a gymnasium membership is something that the insurer should be required to pay for in the present circumstances. Once T.J.C. has been fully restored to pre-accident condition, he should be able to maintain that condition by following the prescribed home care exercises.

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