

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by A.W.S.
AICAC File No.: AC-97-109**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Mr. Keith Addison
the Appellant, A.W.S., appeared in person

HEARING DATE: March 26th, 1998

ISSUE: Whether Appellant entitled to resumption of physiotherapy.

RELEVANT SECTIONS: Sections 136(1)(a) and 138 of the MPIC Act ('the Act') and
Section 5 of Regulation 40/94

**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

On June 12th, 1995 the van that was being driven by A.W.S. was in collision with a tree. He sustained strain/sprain injuries to his neck, upper back and lower back as well as injury to his left knee.

A.W.S. is, and was at the time of his accident, self-employed in a two-man operation, primarily concerned with the repair of television sets and related equipment.

He initially attended upon Dr. Gwozdecki who referred him for physiotherapy which A.W.S. did receive for a number of months following his accident.

In October of 1996 the Appellant consulted Dr. Gilbert Bohemier, chiropractor, from whom he received about half a dozen spinal adjustments; he discontinued his chiropractic treatments of his own accord.

On January 27th, 1997 A.W.S. consulted Dr. Lori Ebbeling, since the treatments that he had been receiving up to that point had not seemed to be of much help. Dr. Ebbeling, in turn, referred the Appellant to Dr. Thomas Lesiuk, a specialist in physical medicine and rehabilitation at the Winnipeg Clinic, who examined him in June of 1997. Meanwhile, A.W.S.'s program of physiotherapy was taken over by another team, although it is not clear to us whether this was done at the suggestion of Dr. Ebbeling or at the Appellant's own initiative. In the event, MPIC's medical consultants and case management team decided, after discussion with the Appellant's physiotherapist, that further, passive therapy would probably not provide much benefit and that the Appellant required only a short course of some eight treatments, spread over four weeks, aimed at reconditioning his musculature, would suffice. It was also recommended that he receive proper education in a home exercise program.

Dr. Ebbeling provided a report bearing date May 27th, 1997, wherein she states that the Appellant

Continues to suffer from cervical and thoracolumbar paraspinal myofascial pain syndrome. The muscle tightness and trigger point pain has worsened since physiotherapy was discontinued. I feel that physiotherapy should be continued at least until he is assessed by Dr. Tom Lesiuk on August 13th, 1997. I examined [A.W.S.] today and the muscle tightness and trigger point tenderness has markedly increased since the discontinuance of the physiotherapy and exercise program.

A.W.S. appealed to the Internal Review Office of MPIC from the decision of the insurer to limit his continuing physiotherapy to the program noted above but, by letter of June 20th, the decision of the Internal Review Officer merely confirmed that earlier decision.

Meanwhile, the Appellant had been examined by Dr. Lesiuk who, in a report dated June 13th, 1997 but not, apparently seen by the Internal Review Officer, describes the results of a thorough examination of the Appellant's musculoskeletal system. He noted a minor restriction in the degree of forward flexion and extension with some discomfort on the top of the shoulder produced on range of movement. He also noted tenderness on palpating the trapezius musculature, posterior scalene musculature, infraspinatus and, most marked on the current examination, palpating over the thoracic iliocostalis muscles.

Dr. Lesiuk felt that his examination of the Appellant suggested the presence of largely latent myofascial pain syndrome activity, which was in keeping with the views of Dr. Ebbeling. The Appellant's history suggested more severe pain, likely with active myofascial pain syndrome activity present previously. The primary involvement, said Dr. Lesiuk, was in the scapular girdle musculature and posterior trunk musculature. He suggested that A.W.S. should benefit from doing a regular and effective stretching and flexibility program for the muscles involved and, as well, the addition of some general fitness activities that incorporate utilization of the shoulder girdle and neck muscles, such as swimming.

CONCLUSIONS:

The four-week course of therapy recommended by Dr. MacKay in March of 1997 appeared to achieve its purpose at the time, and A.W.S.'s apparent deterioration since then seems almost certainly due to his non-compliance with his home exercise program. However, we do not necessarily ascribe that non-compliance to a lack of will on A.W.S.'s part. Rather, it seems to us that he probably had failed properly to absorb the instruction that he was getting, and was therefore unable to do those

exercises properly. In our view, therefore, A.W.S. needs a further, brief course of physiotherapy including - and this would be the most important facet of it - re-education in the context of home exercises and self-help. To that end, we referred A.W.S. for an independent physiotherapy assessment by Ms Andrea Vinci whose report of April 23rd, 1998 contains the following recommendations:

1. [A.W.S.] has not had massage treatment of his muscle pain. I would recommend this as it has been shown to be an effective treatment for muscle fascial restrictions. A course of 6-8 treatments is usually enough for the patient to get over the initial pain and for the therapist to apply deep pressure to release fascia. After this time, it would be advisable for him to maintain his flexibility as his personal responsibility towards wellness.
2. [A.W.S.] did have a good knowledge and practice of proper body mechanics for lifting on the job and correct posture and sitting. He already uses an obus form back support for his chair.
3. [A.W.S.] had some difficulty remembering the exercises that were given to him as a home program in 1995. A program of 2 times per week for a four week period in a physiotherapy facility had been suggested by Dr. Michael MacKay in March 1997, but was not carried out. I would recommend a specific strengthening program using this 2 times a week for a four week guideline. This would provide [A.W.S.] enough time to get over the initial soreness, learn the exercises properly and get into a good routine. From here he will become independent to follow a written out program on his own.

Those recommendations seem entirely sensible to us, aimed, as they are, at helping A.W.S. to take charge of his own restoration as soon as is possible, and those recommendations will, therefore be embodied in the order of this Commission.

The matter is therefore referred back to A.W.S.'s Case Manager at MPIC, Mr. Norman Greenberg, to whom Ms Vinci should render her invoices. A.W.S., for his part, will make his own arrangements with Ms Vinci to attend at her clinic at mutually convenient times and dates in order for him to receive the massage therapy treatments referred to in paragraph 1 of her recommendations, and the

physiotherapy/exercise program referred to in paragraph 3 of her recommendations. We concur in the views expressed by Ms Vinci that the time frames that she suggests should be adequate, with A.W.S.'s cooperation, to bring him to the level at which he can continue and complete his own restoration by faithful adherence to a program of home exercises.

Dated at Winnipeg this 13th day of May 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED