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Indexed as:
S.M.A. (Re)

IN THE MATTER OF an appeal by S.M.A.
AICAC File No.: AC-99-123

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[2000] M.A.I.C.A.C.D. No. 14

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and
L. Goodspeed
Heard: February 2, 2000.
Decision: April 11, 2000.
(16 paras.)

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Issues(s) :

Whether Appellant wrongfully denied Income Replacement
Indemnity ('IRI') and rehabilitation program of limited
duration.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.
The appellant, S.M.A., appeared on her own behalf, accompanied
by her husband.

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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] S.M.A. was a victim of two motor vehicle accidents
less than one month apart-on November 27th and December 22nd,
1997.

[para2] We do not believe that any useful purpose would be
served by a detailed analysis of her medical history following
those two accidents. It is enough, we believe, to say that
her care-givers included her family physician (Dr. Marlis
Jabs), Dr. Marshall Stitz (a specialist in physical medicine
and rehabilitation to whom Dr. Jabs referred the Appellant),
the Wellness Institute at Seven Oaks General Hospital (where
she was assessed by Dr. Moira Sommers, clinical psychologist,

and by Ms. Liz Adamkowicz, physiotherapist), Ms. Susan Morrow of Access Physiotherapy, Mr. Murray Machutcheon of Pembina Physiotherapy and Sports Injury Clinic, Ms. Marte Bachynski, occupational therapist, Ms. Karen Reimer, physiotherapist, personnel at Northern Rehabilitation and Consulting Services Inc. and, for purposes of assessment and consultation only, Drs. Conrad Hoy and Tom Lesiuk, each of whom is a specialist in physical medicine and rehabilitation-Dr. Hoy being also an assistant professor in the Department of Medicine at the University of Manitoba.

[para3] It is primarily the opinions of Drs. Hoy and Lesiuk that are material to this Commission's decision. S.M.A. was referred to Dr. Hoy by Northern Rehabilitation for an independent medical examination which took place on October 13th and 19th, 1998. Dr. Hoy's report, dated November 2nd, 1998, diagnoses a chronic pain disorder or syndrome, abnormal illness behaviour, cardiovascular deconditioning, and musculoskeletal deconditioning, accompanied by inaccurate representation by the Appellant of her true abilities. He observed that symptom magnification was evident. He comments "although the examinee meets several criteria for malingering, her behaviour would best be described as an abnormal response to illness." (This same set of exaggerated responses to areas of discomfort was noted by other caregivers.)

[para4] Dr. Hoy's summarized recommendations were that no further diagnostic testing was required, no further physical treatment was called for, and that S.M.A. should simply return to full-time work immediately, without restrictions.

[para5] Upon the basis of Dr. Hoy's report, MPIC's adjuster wrote to S.M.A. on November 19th, 1998, terminating her benefits as of December 7th, 1998. Sometime in February 1999, Dr. Jabs referred S.M.A. for an independent medical examination and assessment by Dr. Tom Lesiuk who, by coincidence, is a colleague of Dr. Hoy in Associated Rehabilitation Consultants. Dr. Lesiuk's report to Dr. Jabs bears date February 24th, 1999. He says that there was little to find on a current musculoskeletal neurological examination, other than some muscle tenderness and muscular symptomatology, resulting in slowness of movement and guarding. His examination did not suggest any significant mechanical symptomatology in the neck and the low back, and he could find no evidence of neurological involvement such as cervical or lumbosacral root. S.M.A. had not described any significant, ongoing sleep dysfunction, nor any signs of depression. Dr. Lesiuk recommended that S.M.A. should continue with her regular flexibility program. He felt that she should have further symptomatic improvement and improvement in her conditioning and endurance, with the addition of some regular general fitness activity. For example, he suggested a low-impact aquacising program and that, since S.M.A. was

complaining of current symptomatology with her work activities,

it would be reasonable as well to decrease the number (of) hours at work while she attempts to work upward with her general fitness activities. When she has worked these in on a regular basis, her symptoms should improve and she should be able to progress upward in the number of hours. I would also suggest that the screening serology be done to rule out metabolic conditions that may cause pain enhancement.

[para6] Following inquiry from MPIC's Internal Review Officer, to whom S.M.A. had appealed, Dr. Hoy, although commenting that he did not believe it essential, agreed that Dr. Lesiuk's recommendation was "acceptable medical practice and if he is her treating physician that is up to his judgment to include that in her rehabilitation program." Dr. Hoy added that a rehabilitation program for S.M.A. should not exceed eight weeks, and that the treating physician re-evaluate at that point and then begin to re-establish S.M.A.'s work hours.

[para7] Dr. Lesiuk concurred and, in consequence, the Internal Review Officer issued a decision on June 11th, 1999, whereby S.M.A. was to be allowed to enter a rehabilitation program for six to eight weeks, during which her IRI benefits would be continued. At the end of that program, Dr. Lesiuk would begin to re-establish S.M.A.'s work hours and her IRI would be adjusted in accordance with that return to work. If, after the reconditioning program, Dr. Lesiuk decided that she could not return to work, the matter would be reviewed by MPIC's adjuster and a decision made as to how her IRI benefits would continue.

[para8] Following the issuance of the Internal Review Officer's decision, MPIC's adjuster contacted Ms. Susan Morrow, physiotherapist, to ask for a report outlining S.M.A.'s reconditioning and work hardening program, exercises, duration of program and discharge. The purpose of that request is unclear, since Ms. Morrow's reports were already fully available on the file. The adjuster then contacted Dr. Hoy by telephone to ask if he had been aware of the extensive rehabilitation and reconditioning program already extended to S.M.A. At his request, she sent Dr. Hoy a copy of Ms. Morrow's handwritten memorandum, whereupon Dr. Hoy, on July 5th, 1999, wrote to the adjuster to say that he was now opposed to any further functional restoration or work hardening program for S.M.A. Upon being shown Dr. Hoy's most recent letter, Dr. Lesiuk concurred with it.

[para9] MPIC's adjuster then, on July 20th, 1999, and apparently without further consultation with the Internal Review Officer, wrote to S.M.A. to tell her that the insurer

would not, after all, be paying for any further functional restoration or work hardening, nor any Income Replacement Indemnity, but would simply pay for a couple of aquacising sessions of \$22.

[para10] MPIC's Internal Review Officer became aware of this contradiction of her own decision by way of a phone call from S.M.A. on July 22nd, 1999. Some further, intramural discussions therefore took place, following which the Internal Review Officer wrote to S.M.A. on August 13th revoking her earlier decision and denying the benefits that had been awarded by it.

[para11] This complete reversal of direction on the part of the insurer seems to have been based upon the premise-in our respectful view, quite erroneous-that Drs. Hoy and Lesiuk had not been aware of the rehabilitation programs in which S.M.A. had already been involved. Ms. Morrow's undated, handwritten letter addressed to MPIC's Internal Review Officer does not seem to have told Dr. Hoy anything that he had not already known. Indeed, he refers to S.M.A.'s treatments by Ms. Morrow in his lengthy report to Northern Rehabilitation.

[para12] This Commission wrote to Drs. Hoy and Lesiuk on February 8th, 2000, asking each of them why, having agreed that it was acceptable medical practice for S.M.A. to undergo a further six- to eight-week rehabilitation program, they had changed their minds when given a copy of Ms. Morrow's letter, since they were already aware of the facts set out in that letter.

[para13] Dr. Lesiuk indicated by telephone that he had "misinterpreted what the file manager had written" and did not now feel that any program was needed for S.M.A. beyond home exercises. (His promised, confirmatory letter has yet to arrive.) Dr. Hoy did reply on February 11th, but his letter merely points out that the initial, slight difference in opinion between himself and Dr. Lesiuk was insignificant, medicine being both an art and a science, and that Ms. Morrow's report supported once again his opinion that S.M.A. would not profit from further physiotherapy.

[para14] With deference to Drs. Hoy and Lesiuk, we have no reason to doubt the evidence of S.M.A. that she had, in fact, advised each of them, both orally and, in one instance at least if not both, by way of a written questionnaire, of her medical history since her two accidents, and that history included her treatments by Ms. Morrow. In our view, therefore, there was nothing new in Ms. Morrow's undated letter that should have caused them to change their respective minds. It follows, therefore, that there were insufficient grounds for the Internal Review Officer to revoke her earlier decision with which, at the time, we would have agreed.

[para15] From all of the evidence on file, it seems unlikely that S.M.A. will ever be completely and permanently free from discomfort, but there are numerous techniques that she can learn that will help her to live a more normal life and to enjoy most, if not all, of her former activities.

DISPOSITION:

[para16] Had this matter come before us a year ago, we would have simply reinstated the original decision of the Internal Review Officer. Now, a year later, we have insufficient evidence to enable us to determine the type or duration of a rehabilitation program that would be appropriate for S.M.A. That question is therefore referred back to MPIC's case manager, and to her supervisor, for the purpose of arranging an up-to-date independent assessment. If that assessment concludes that S.M.A. is still in need of a time-limited rehabilitation program, then, to the extent that she is obliged to be absent from her workplace while participating in that program or in a graduated return to work thereafter, she will be entitled to Income Replacement Indemnity based upon the income thus lost.

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