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Indexed as:
S.L.T. (Re)

IN THE MATTER OF an appeal by S.L.T.
AICAC File No.: AC-99-102

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[2000] M.A.I.C.A.C.D. No. 29

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares,
and W. MacLennan
Heard: August 2, 2000.
Decision: August 21, 2000.
(15 paras.)

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Issues(s):
Entitlement to physiotherapy.

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Relevant Sections:
Section 136 of the MPIC Act and Section 5 of Manitoba
Regulation No. 40/94.

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Appearances:
Manitoba Public Insurance Corporation ('MPIC') was represented
by Joan McKelvey.
D.T. appeared for the appellant.

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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.L.T.'s claim is for reimbursement in the total amount \$183, being the monies that she expended for eight physiotherapy treatments that she received in July and August of 1998, plus a mileage allowance for travel between her home and the Pan Am Sports Medicine Centre.

[para2] The Appellant's claim arises from a motor vehicle accident that occurred on April 28th, 1997. It has to be said that the accident, in which S.L.T.'s vehicle was rear-ended, was not a serious one. Neither of the vehicles involved seems

to have sustained material damage, but S.L.T., whose head was turned to the left at the time of the impact, did sustain injuries to her neck and lower back.

[para3] She consulted Dr. Kent Ferrari, of the Pan Am Sports Medicine, Orthopedic and Rehabilitation Centre, on July 11th, 1997, some two and one-half months after her accident. He prescribed physiotherapy and gave her a prescription for Naprosyn. He noted a decreased range of motion in her neck and a tender right paraspinal area; he diagnosed neck sprain with chronic pain.

[para4] S.L.T. received a course of physiotherapy, also at the Pan Am Clinic, commencing on July 18th, 1997, involving the application of heat, massage, transcutaneous electrical nerve stimulation, and stretching exercises. She went there on a weekly basis until about mid-November of 1997, at which point MPIC refused further funding; her physiotherapist felt that she could safely be discharged at that point.

[para5] Concurrently with her physiotherapy, S.L.T. had been attending a gymnasium on a regular basis, primarily for strengthening exercises. She continued to do so until late January or early February of 1998, at which point her gym membership expired and, she testified, she could not afford to renew it.

[para6] At the time of her accident, S.L.T. was living at [text deleted], Manitoba, but was working as a nanny for a family in Winnipeg. On July 2nd, 1998, she commenced a series of office jobs for different employers until, at or about the beginning of 1999, she enrolled at [text deleted] in a computer analyst course.

[para7] Meanwhile, in May or early June of 1998, S.L.T. had again started to experience pain in the cervical and thoracic regions of her spine. S.L.T. contacted her adjuster in mid-June 1998 to tell him of her recurring neck problems. It is significant to note, from S.L.T.'s testimony, that her adjuster told her to see Dr. Ferrari and that, if Dr. Ferrari recommended further therapy, she should encounter no problem from MPIC. She reported this to Dr. Ferrari on June 22nd, 1998, indicating that she had been getting better but had deteriorated since she had stopped attending her gym classes. He recommended four weeks of physiotherapy, which she received at the Pan Am Clinic.

[para8] Her physiotherapist noted that S.L.T. had reported that she "felt great" until July 1998 but had started a computer job and stopped workouts at her gym, following which her cervical and thoracic regional pain had reappeared. By September 4th, 1998, S.L.T., having received eight physiotherapy sessions, had decided to reattend at her gym,

was feeling much better and no longer felt that she required the physiotherapy.

[para9] S.L.T. then sought reimbursement from MPIC for the eight physiotherapy sessions she had received from July 13th to August 31st, 1998, both inclusive.

[para10] MPIC then wrote to both Dr. Ferrari and to S.L.T.'s physiotherapist, Ms. Lynne Barber, seeking their comments. Dr. Ferrari offered the opinion that S.L.T.'s symptoms would be related to her motor vehicle accident, as she had no prior neck or shoulder pain or discomfort at all. While commenting that "the current exacerbation may be related to increased work demands, as well as not maintaining regular physical activity workouts", Dr. Ferrari still said "I do feel that these symptoms are a result of the motor vehicle accident, however with physiotherapy and at home program exercises, she should be able to control these symptoms and it should not be permanent." Somewhat puzzling is the fact that, in Dr. Ferrari's clinical notes, he records on June 22nd a prescription for four weeks of physiotherapy-S.L.T. actually received eight weeks of therapy, as noted above-and on September 24th, 1998, he recommends two more months of physiotherapy. However, by the latter date, S.L.T. had already decided for herself that she did not need further professional therapy and would return to her gymnasium.

[para11] S.L.T. makes the point that, although her appointment with Dr. Ferrari was not until June 22nd, 1998, she had been experiencing increasing pain for some six to eight weeks before that. A report from Ms. Barber, dated October 28th, 1998, indicates:

- (i) S.L.T. presented in July 1998 with symptoms very similar to those with which she had presented in April 1997. Those symptoms were pain in the neck region, especially on extension and left-side flexion, with tight scalenes and trapezius, as well as right lower back pain on extension;
- (ii) S.L.T. had always been compliant with home exercises; attending the gym had seemed to be the most beneficial but, due to financial restraint, S.L.T. had been unable to renew her membership. She had started working at a computer/desk job and her symptoms had reappeared. (The Commission notes that this is not entirely accurate, since S.L.T. had been complaining of recurrent neck pain in June of 1998, several weeks before starting her new job.)
- (iii) Ms. Barber felt that, now that S.L.T. had returned to her gym membership and appeared

to be keeping up her home exercises, further physiotherapy would not be required.

[para12] On January 6th, 1999, MPIC's adjuster in charge of S.L.T.'s claim wrote to tell her that the Corporation did not believe that the need for further physiotherapy, if it existed in July of 1998, was causally related to her motor vehicle accident of the previous year, and that payment for that additional physiotherapy would not be forthcoming.

[para13] The foregoing decision was confirmed by MPIC's Internal Review Officer, Mr. Terry Kumka, in a letter of May 31st, 1999. Mr. Kumka based his decision primarily upon the opinion of Dr. Michael MacKay. Dr. MacKay based his opinion, that S.L.T.'s 1998 symptoms were not causally related to her accident, upon the following points:

- a) the apparently light impact between the two vehicles;
- b) the paucity of documentation of objective physical findings identifying a medical condition resulting in persistent or chronic symptoms;
- c) the fact that S.L.T. had felt "great" immediately prior to starting her new job;
- d) the nature of that new job which S.L.T. commenced in July 1998, involving the cervical and upper back regions in repetitive strain; and
- e) "Causation cannot be based on the observation of symptoms occurring in a similar region in the absence of objective findings identifying a medical condition that would account for persistent symptoms."

Conclusion

[para14] We find that, on a balance of probabilities-albeit a slender one-the flare-up of problems in her neck, shoulder and lower back being experienced by S.L.T. in the summer of 1998 were related to her 1997 accident. While we have carefully considered Dr. MacKay's thoughtful analysis, we are nevertheless prepared to accept the opinions of Dr. Ferrari and Ms. Barber. We cannot ascribe the problems that, clearly, arose in May or June of 1998 to the new occupation that S.L.T. had not even commenced until July.

[para15] S.L.T. is therefore entitled to reimbursement of the sum of \$183, the amount claimed, plus mileage allowance and interest.

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