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

IN THE MATTER OF an appeal by N.M.S.
AICAC File No.: AC-99-161

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[2000] M.A.I.C.A.C.D. No. 46

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares, and
L. Diamond
Heard: June 29, 2000.
Decision: December 5, 2000.
(13 paras.)

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Issues(s):

- (1) Causation - whether patellofemoral problems due to MVA;
- (2) Whether Appellant entitled to IRI or physiotherapy.

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Relevant Sections:

Sections 70(1), 85(1), 86(1) and 136(1) of the MPIC Act.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.
The appellant, assisted by Alan Bedard, attended by telephone
conference call.

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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] N.M.S. has suffered from chondromalacia patellae, or patellofemoral joint syndrome, for some 11 years - at least since June of 1989 when her doctor's clinical notes indicate she was having pain in her right knee. In August of 1991 another clinical note indicates that she was experiencing bilateral patellofemoral syndrome with the right side being more problematic than the left. Several further notations over the following few years were to similar effect.

[para2] On September 3rd, 1994, N.M.S. sustained an injury in a motor vehicle accident which exacerbated those problems, particularly at the right knee; she was referred for physiotherapy which seems to have helped matters. A further motor vehicle accident on July 5th, 1995, again produced an exacerbation of her right patellofemoral syndrome as well as causing some problems with her back.

[para3] She appears to have been involved in yet another motor vehicle accident in November, 1995, for which she saw her doctor in January of 1996 and, again, in October 1996, complaining of significant worsening of her patellofemoral syndrome. She was given a prescription for a knee brace in November 1995 but declined a referral to an orthopedic surgeon for an assessment of her symptoms in January 1996. In October of 1997 she again complained to her physician of increased pain, this time in the left knee.

[para4] That brief history brings us up to July 10th, 1998, when, at about 3:45 in the afternoon, the vehicle she was driving was struck on the driver's side. N.M.S.'s vehicle was rendered a total loss. She attended upon Dr. Jack Nepon, who first saw her on July 15th, 1998, complaining of pain in her left knee and her back. N.M.S. told Dr. Nepon that she had hit her left kneecap on the driver's side door of her car, resulting in a contusion noted by Dr. Nepon. He diagnosed a lumbar sprain and an aggravation of her chondromalacia patellae, as well as a contusion of the lateral patella. He recommended the use of ice and exercises. He ordered an X-ray to be taken of her knee.

[para5] At the time of her 1998 accident, N.M.S. was in receipt of Social Assistance and going through an upgrading and job search program provided by the Social Assistance department. Her family home was in [text deleted], but she had been living in Winnipeg for six or seven months.

[para6] Since N.M.S. was a "non-earner", within the meaning of the MPIC Act, at the time of her accident, she had no entitlement to Income Replacement Indemnity ('IRI') for the first 180 days immediately following the accident. N.M.S.'s case manager at MPIC referred her for an Independent Medical Examination by Dr. Tom Lesiuk, a psychiatrist, who examined her on December 4th, 1998. Dr. Lesiuk's 18-page, detailed report contains a diagnosis of mild musculoskeletal deconditioning and "left knee pain complaints - most likely related to pre-existing chondromalacia patellae. This is noted to be worse in the left patella than the right patella currently." Under the heading "Causation", Dr. Lesiuk offers the view that, based upon the available information, to a reasonable degree of medical certainty, there was no causal relationship between N.M.S.'s current complaints and her reported motor vehicle injury. He felt that the acute injuries that might have resulted from the accident were

healed by the time of his examination and that N.M.S.'s present symptoms appeared to be related to her pre-existing bilateral chondromalacia of the patella. He felt that, while N.M.S.'s prognosis for complete resolution of pain complaints was poor, the prognosis for restoration of function was good. Dr. Lesiuk also notes that

The claimant perceives significant disability, however, based on the physical examination and functional testing, there does not appear to be any significant disability.

Dr. Lesiuk added his opinion that N.M.S. had at least a light work capacity and should be capable of working eight hours per day, five days per week, lifting no more than 20 pounds, lifting 10- to 15-pound objects repeatedly but limiting her squatting, kneeling and stair climbing. He did not feel that any further therapeutic intervention was called for, but he did suggest an orthopedic evaluation of N.M.S.'s pre-existing bilateral chondromalacia.

[para7] N.M.S. was then referred by Dr. Nepon to Dr. Warren Froese, an orthopedic specialist at the Manitoba Clinic, specifically with regard to her left knee. Dr. Froese, in a report to Dr. Nepon of March 18th, 1999, finds that N.M.S. had a stable knee and full range, with good patellar mobility although some tenderness on the left and right sides. There was no evidence of meniscal tearing and X-rays were normal. Dr. Froese noted that N.M.S. had had a contusion to the lateral aspect of her knee with pre-existing anterior knee pain, but no mechanical evidence of any ongoing problems. He suggested that she would benefit from ongoing physiotherapy, and suggested a referral to the Health Sciences Centre for that purpose since N.M.S. was within walking distance of that facility. Dr. Froese did not believe that N.M.S.'s condition would prevent her from working at a desk job, which he encouraged her to do. He advised no surgical intervention and makes no causal connection between the motor vehicle accident and N.M.S.'s ongoing discomfort.

[para8] N.M.S.'s case manager at MPIC, by a letter of February 9th, 1999, had denied payment of Income Replacement Indemnity benefits and any further medical expenses or treatments. N.M.S. appealed that decision to MPIC's Internal Review Officer who, on July 20th, 1999, after reviewing the opinions of Drs. Lesiuk and Froese, confirmed that decision. N.M.S. now appeals from the Internal Review Officer's decision to this Commission.

[para9] We have had the benefit of further reports from Dr. Nepon, Dr. D. A. Brain (N.M.S.'s general practitioner in [text deleted]) and, in particular, from Dr. D. Balageorge, an orthopedic specialist at the Manitoba Clinic to whom Dr. Brain referred N.M.S.

[para10] Dr. Balageorge, in his first report to Dr. Brain of February 10th, 2000, notes that N.M.S. had a full, pain-free range of motion to both knees. The right knee did not show any abnormality except her patella which disclosed signs consistent with chondromalacia patellae. In the left knee, there was no increased heat or effusion. Mediolateral joint lines were normal, as were collateral ligaments, ACL and PCL. N.M.S. was quite tender over the lateral aspect of her patella in the patellofemoral joint area with her knee in extension and ballottement of the patella did cause her some discomfort. X-ray examination showed no abnormalities. Dr. Balageorge concluded, at that point, that it was possible N.M.S.'s accident might have aggravated a pre-existing condition, but there was evidence of problems with her knee prior to the accident. In a more recent report, requisitioned by this Commission on July 6th, 2000, but not received here until November 21st, Dr. Balageorge says, in part,

I think in order to fairly state that this ongoing problem is probably related to the motor vehicle accident, there should be some evidence of damage to the patellofemoral joint. The only evidence that we can depend upon at this time is that of...X-ray examinations (which) show no specific abnormalities.

....it is probable that she may have aggravated the patellofemoral joint. Anything that she would have done would probably have healed, as opposed to being an enhancement of her chondromalacia patellae.

With this reasoning in mind, and no further evidence radiographically of any deterioration, I would have to state that the ongoing symptoms are probably part of the natural history of her chondromalacia patellae. I think any physical insult of a minor degree could have caused her to have some transient pain. I think under normal circumstances this would not have caused her any ongoing problems. It is possible that cartilage may have been damaged during the motor vehicle accident and these at times can be picked up on MRI or during arthroscopy. These are not very common and therefore improbable in this lady.

[para11] Given the fact that none of N.M.S.'s care-givers is prepared to attribute her ongoing problems to her 1998 motor vehicle accident, and given the opinion of Drs. Balageorge and Lesiuk that any injury sustained by N.M.S. in that accident has almost undoubtedly healed long ago, we are unable to find a reasonable, causal connection between her accident and her continuing symptoms.

[para12] It follows, therefore, that we are unable to award her any Income Replacement Indemnity and, equally, are unable to find MPIC responsible for any further therapies for

her.

[para13] N.M.S.'s appeal is, therefore, dismissed.

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