

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by W.J.
AICAC File No.: 01-64**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Colon C. Settle, Q.C.

APPEARANCES: The Appellant, W.J., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: June 18, 2002

ISSUE: Entitlement to therapeutic treatments.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act (the 'MPIC Act') and Section 5(a) of
Manitoba 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

The Appellant, W.J., was involved in a motor vehicle accident on June 5, 1999, when his vehicle was rear-ended by another vehicle. The Appellant complained of neck and shoulder pain, as well as lower back pain, due to the accident. He was diagnosed with myofascial neck and lower back strain by his family physician, Dr. Casey Woo. The Appellant was noted to be at full function but symptomatic and was working full duties.

Dr. Woo referred the Appellant for physiotherapy treatments. The original physiotherapy report, dated July 30, 1999, based on an initial visit of July 5, 1999, stated that at that time, the

Appellant had cervical regional pain, lumbar regional pain, thoracic regional pain, upper limb numbness and weakness, lower limb numbness and weakness, multiple zones of pain above and below the waste, a sleep disturbance, fatigue and a decrease in function. The Appellant manifested decreased active range of motion of the neck and right shoulder, as well as the low back. He also had decreased strength of the upper and lower extremities. The goal of physiotherapy treatment was to increase the Appellant's active range of motion and increase his strength as well as his functional movement and posture. The treatment plan involved active range of motion exercises, mobilization, stabilization exercises, a strengthening program and functional exercises with posture. Three months of in-clinic therapy was forecast.

The Appellant was reassessed on September 27, 1999. The clinical findings were essentially unchanged. The Appellant continued to attend for physiotherapy treatments until the end of October 1999 when it was determined that he should be referred to a reconditioning program at the Pan Am Sports Clinic to assist in his recovery. The Appellant completed that program and was discharged, with a home program of stretches and exercises aimed at self-management of future complaints, on January 6, 2000.

The Appellant was also referred to Dr. Arneja, a physiatrist, by his family physician, Dr. Woo. He first consulted with Dr. Arneja on November 18, 1999, with complaints of neck and low back pain resulting from the motor vehicle accident of June 5, 1999. Dr. Arneja diagnosed the Appellant with mechanical neck and back pain syndrome, with regional myofascial trigger points of the trapezius, iliocostalis lumborum and gluteus medius muscles. The Appellant underwent local Fluoro-methane vapo-coolant spray to the trapezius, iliocostalis lumborum and gluteii muscles followed by specific stretching exercises and application of local moist hot-packs. He

was instructed to apply moist hot-packs to his neck and back, followed by specific stretching exercises.

The Appellant was next seen by Dr. Arneja on November 30, 1999. At that time he stated that he had noticed significant improvement in the neck and back pain. On physical examination, Dr. Arneja noted increased lordosis of the cervical spine, no spasm or trigger points of the paracervical muscles and range of motion was 15% restricted of normal. Motor strength of the neck extensors graded 4 out of 5. Lumbosacral spine examination, normal lordosis; no spasm and no trigger points of the back and hip girdle muscles. Range of motion 15% restricted of normal and painless. Dr. Arneja noted that the Appellant had made significant improvement in his mechanical neck and back pain syndrome and determined that the regional myofascial trigger points had resolved.

Although the upper back and neck pain had resolved for the most part, the Appellant still complained of continuing discomfort in his lower back. He attended upon Dr. Chester, a chiropractor, for chiropractic treatment. Dr. Chester diagnosed cervicothoracic and lumbosacral musculoligamentous injury. The chiropractor stated that the Appellant was at full function but symptomatic. Exercise for the two regions was recommended, along with eight to ten chiropractic treatments. Dr. Chester also referred the Appellant for massage therapy with physiotherapist, Ian Burron. In the Initial Health Care Report dated July 6, 2000, completed by Ian Burron, the Appellant complained of pain in his sacroiliac region and left buttock worse with activity. The therapist noted pain complaints in the left leg with spine movement and opined that the Appellant suffered from piriformis syndrome and sacroiliac joint irritation. The Appellant was considered to be at full function but symptomatic and capable of working full duties. Massage and stretching to the SI and piriformis region were recommended.

The file was then referred by the case manager to MPIC's Medical Services Team for review. In her inter-departmental memorandum dated October 20, 2000, Dr. Garnet Fougere concluded that further therapeutic treatment was not a medical necessity based on the medical documentation on file. She noted that the Appellant had received extensive therapy and was presumably well educated in flexibility, strengthening, and postural stabilization exercises for the cervicothoracic and lumbar regions. She recommended that he be encouraged to maintain an exercise program independently, in order to optimize the function of his neck and spine region.

Based on Dr. Fougere's opinion, the case manager wrote to the Appellant on October 31, 2000, to advise him that:

We have reviewed all medical information contained in your file with our Health Care Services Team.

This review has indicated that further treatments do not appear to be a medical necessity. Therefore, Manitoba Public Insurance will not fund further therapeutic treatments, as you have reached maximum medical improvement from such treatments.

The Appellant sought an internal review of that decision. In a decision dated May 9, 2001, the Internal Review Officer confirmed the case manager's decision of October 31, 2000, and dismissed the Appellant's Application for Review. The Internal Review Officer noted in her decision that:

You continued with treatment until January of 2000 when you were discharged with a home exercise program. When you returned for another physio assessment on June 29, 2000, your symptoms and complaints were different from the ones that you experienced during the year and a half after your motor vehicle accident. Therefore, I agree that on a balance of probabilities, your latest symptoms are not related to your motor vehicle accident. As a result, I am confirming your Case Manager's decision of October 31, 2000. Therefore, the Manitoba Public Insurance Corporation will not fund any therapeutic interventions beyond October 31, 2000.

The Appellant has now appealed to this Commission. The issue which requires determination in the Appellant's appeal is whether or not he is entitled to further therapeutic interventions beyond October 31, 2000.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a):

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Section 5(a) of Regulation 40/94:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

At the hearing, the Appellant submitted that his lower back complaints were directly related to the motor vehicle accident of June 5, 1999, and have, in fact, continued since the motor vehicle accident. He advised that despite the various types of treatment that he has undergone, he has not been able to completely recover from the injuries he sustained in the motor vehicle accident.

In support of his position, the Appellant filed an updated medical report from Dr. Arneja dated February 18, 2002. In the report, Dr. Arneja reviewed the various appointments that the Appellant had attended for treatment and trigger point injections. In conclusion, Dr. Arneja noted that:

In summary, [W.J.] continues to have persistent lumbosacral and sacroiliac pain and would require further treatments including Cortisone injection in to the left sacroiliac joint followed by mobilization, local ultrasound application, stretching and strengthening exercises to resolve the pain and restore his function. His mechanical neck pain and regional myofascial trigger points of the neck and shoulder girdle have resolved.

The Appellant is seeking the recommended treatment, as set out in Dr. Arneja's report, to be funded by MPIC.

Counsel for MPIC submits that the Appellant has attained maximum medical improvement and, therefore, any further therapeutic interventions are not necessary. Counsel notes that the Appellant has had a large number of attendances for treatment, and a variety of different treatments have been tried. He argues that the symptoms and aches and pains of which the Appellant currently complains are related to the activities of ordinary living and not related to the motor vehicle accident. Lastly, counsel for MPIC submits that further therapeutic treatment is not medically required. He notes that the Appellant has continued to attend for treatment with Dr. Arneja, even after funding was terminated by MPIC, and his pain has not yet resolved. Accordingly, counsel for MPIC concludes that the Appellant's current complaints cannot be causally connected to the motor vehicle accident of June 5, 1999, and that in any event, ongoing therapeutic intervention cannot be considered medically required within the meaning of the MPIC Act and Regulations.

In order for the Appellant to succeed in his appeal, he must demonstrate that his ongoing complaints of lower back pain are causally connected to the motor vehicle accident, and that the medical care which he is seeking is medically required. Section 136(1)(a) provides for reimbursement of medical and paramedical care expenses incurred by a victim of a motor vehicle accident “because of the accident.” Upon a review of all the documentary evidence on the file, the Commission is satisfied, on a balance of probabilities, that the Appellant’s current lower back complaints relate to the motor vehicle accident of June 5, 1999. Lower back complaints were documented throughout the file and, indeed, even in Dr. Woo’s Initial Health Care Report based upon his examination of the Appellant on June 30, 1999. Accordingly, we are satisfied that the current complaints are causally connected to the motor vehicle accident of June 5, 1999.

Subsection 5(a) of Manitoba Regulation 40/94 provides that the medical or paramedical care must be medically required in order to qualify for reimbursement. The Commission is satisfied, on the balance of probabilities, that the course of treatment recommended by Dr. Arneja is medically required within the meaning of subsection 5(a) of Manitoba Regulation 40/94. The treatment is an accepted form of care for rehabilitation of myofascial pain. The Appellant testified that the trigger point injections were successful in alleviating his neck and shoulder pain. Accordingly, in the circumstances, the Commission finds that the course of treatment recommended by Dr. Arneja is medically required within the meaning of subsection 5(a) of Manitoba Regulation 40/94.

Notwithstanding our findings however, we note that Section 136 of the MPIC Act and Section 5 of Manitoba Regulation 40/94, provide that a victim is entitled to reimbursement of an expense, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act. Accordingly, if the course of treatment recommended

by Dr. Arneja is covered pursuant to *The Health Services Insurance Act* or any other Act, no reimbursement by MPIC would be required in the current circumstances. Conversely, if reimbursement is not available, the Appellant would be entitled to reimbursement of his expenses incurred for the course of treatment recommended by Dr. Arneja in his report of February 18, 2002.

Dated at Winnipeg this 27th day of June, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.

[Ed. Note: The note “[Text deleted]” indicates the removal of information which may identify individuals.]