

Appellant subsequently sought reimbursement of the purchase of the mattress and box spring from MPIC.

In a letter dated May 4, 2000, MPIC's senior case manager advised the Appellant that her request for reimbursement of the mattress purchase was denied, since the mattress was not considered a medical necessity within the terms of the MPIC Act and Regulations.

The Appellant sought an internal review of that decision. In support of her Application for Review, the Appellant submitted a further report from Dr. Kelly Krzyzaniak, dated September 6, 2000. In this report, Dr. Krzyzaniak comments as follows:

As a result of a motor vehicle accident in 1996, the stated individual has chronic neck/back pain which requires the use of a support mattress – Sears-O-Pedic (integrated coil) comfort plus. This helps the management of the pain.

The Internal Review Officer also requested an additional report from Dr. Krzyzaniak, outlining her objective findings with respect to the Appellant, as well as the medical necessity of the bed. The Internal Review Officer also requested that Dr. Krzyzaniak provide her with any information with respect to the corrective purpose of the bed and how it was physically helping the Appellant.

In a report dated November 24, 2000, Dr. Krzyzaniak responded to the Internal Review Officer as follows:

As you are aware, the above patient had a MVA in 1996 which caused a closed head injury. Since then she has an incomplete left 3rd nerve palsy, short term memory loss and recurrent headaches for which she has been seen by a neurologist and an ophthalmologist. She also had a mandibular fracture which required wiring. Post-MVA she experienced chronic neck and back pain for which she attended physiotherapy. Part of her home exercises included instructions on sleeping in proper postures. It was felt a supporting mattress

would be beneficial in helping this discomfort and it has been noted to have been quite helpful. I hope this information is beneficial.

The Internal Review Officer also sought an opinion from Dr. Craton of MPIC's Health Care Services team regarding the medical necessity of the mattress. In an Inter-departmental Memorandum dated December 29, 2000, Dr. Craton replied as follows:

At this time, it is my opinion that the prescription of any particular mattress for the management of back pain is reasonable. However, it is my opinion, that such a prescription cannot be described as a medical necessity. The use of specific mattresses is elective, in my opinion.

In a decision dated January 18, 2001, the Internal Review Officer upheld the case manager's decision and dismissed the Application for Review. She noted in her decision that:

To make sure I had all of the necessary information, Dr. Krzyzaniak was contacted on January 16th, 2001. She advised that the mattress would likely improve S.'s condition **as a whole** as it is beneficial for the discomfort she experiences while sleeping. However, for the mattress to be a medical necessity it must contribute to her recovery rather than an overall benefit. I agree with Dr. Craton's assessment that the purchase of this mattress was elective rather than medically necessary.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in the Appellant's appeal is whether or not she is entitled to reimbursement for cost of the mattress and box spring. The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(b) of the MPIC Act:

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:

- (b) the purchase of prostheses or orthopedic devices.

Section 138 of the MPIC Act:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Section 184(1) of the MPIC Act:

Powers of commission on appeal

184(1) After conducting a hearing, the commission may

- (a) confirm, vary or rescind the review decision of the corporation; or
- (b) make any decision that the corporation could have made.

Section 10(1) of Manitoba Regulation 40/94:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- ...
- (d) reimbursement of the victim at the sole discretion of the corporation for
 - ...
 - (iii) medically required beds, equipment and accessories.

At the hearing of this matter, the Appellant's representative advised that since the motor vehicle accident of June 29, 1996, the Appellant had been experiencing a lot of pain and trouble sleeping. She further advised that the purchase of the pillow top mattress had been beneficial for the Appellant, and that it had helped her achieve a much better night's sleep. The improvement in the Appellant's sleep had resulted in an improvement in her general health and ability to function. Accordingly, the Appellant's representative submits that the mattress and box spring

have contributed to improving the overall health and well-being of the Appellant and as such the cost of the items should be reimbursed by MPIC.

In support of her position, the Appellant's representative relies on an additional medical report from Dr. Kelly Krzyzaniak, dated August 31, 2001. In Dr. Krzyzaniak's report, she notes the following:

Since I have been caring for her, her main complaints have been recurrent headaches, neck and back pain. The neurologist, Dr. Eggertson, feels that these headaches as well as short term memory loss are likely to be permanent problems. Varying treatments including medication and physiotherapy have been attempted to treat her headaches/neck & back pain. However, none have been able to resolve these issues. Home exercises have been performed as well. In an attempt to relieve some of her chronic neck/back discomfort, her family approached MPIC about buying a better supportive mattress and were advised to proceed with the purchase. From a medical perspective, it is often recommended that firm support for sleeping be used as an additional treatment. I whole heartedly support this purchase.

Counsel for MPIC submits that the Appellant has not shown that the mattress and box spring were a "medical necessity" within the meaning of the MPIC Act and Regulations. He notes that the mattress and box spring may have been beneficial for the Appellant, but not "medically required." Therefore, he submits that there is no entitlement to reimbursement of the cost of the mattress and box spring.

Discussion

Section 136(1)(b) provides for the reimbursement of expenses incurred by the victim because of the accident for the purchase of "orthopedic devices." A medical opinion provided to this Commission stated that in the circumstances of this case, a mattress and box spring should be considered an orthopedic device since it is prescribed in the spirit of treating an orthopedic condition, that being chronic neck and back pain.

Section 138 of the MPIC Act embodies the general philosophy upon which the MPIC Act is based, that being that the insurer should take appropriate steps to facilitate a victim's return to normalcy. Both of these sections are, of course, subject to the Regulations. Section 10(1)(d)(iii) of Regulation 40/94 provides for reimbursement to a victim of the cost of "medically required beds...", but at the discretion of the insurer. Section 184(1) of the MPIC Act allows this Commission to substitute its own decision for that of the corporation.

Upon examining the relevant sections of the Act and Regulations having a bearing on the Appellant's appeal, the determinative factor in assessing entitlement to reimbursement for the expense of a mattress and box spring is therefore whether the mattress and box spring are "medically required."

As this Commission has previously noted, when a qualified professional practitioner, whose services are covered by the MPIC Act, prescribes a particular kind of bedding, and if it is apparent that, in light of all the circumstances, there is a strong likelihood that the items in question will materially improve the victim's chances of recovery, then it is reasonable for the corporation's discretion to be exercised in favour of the victim. Granted, all of the surrounding facts must be taken into consideration.

In the appeal at hand, we are of the opinion that, although the mattress and box spring certainly were beneficial for the Appellant, they could not be considered medically required in the current circumstances. The opinion provided by the Appellant's family physician that "*the mattress would likely improve S.'s condition as a whole as it is beneficial for the discomfort she experiences while sleeping*" falls short of establishing that the mattress and box spring materially improved her recovery from chronic neck and back pain. Accordingly, we find that the

Appellant has failed to show, on a balance of probabilities, that the mattress and box spring were medically required within the meaning of the MPIC Act and Regulations.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date January 18, 2001.

Dated at Winnipeg this 28th day of August, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.