

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.P.
AICAC File No.: AC-01-134**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, R.P., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Jim Shaw.

HEARING DATE: September 13, 2002

ISSUE: Reimbursement of expenses related to chiropractic
treatments, Rolwing and athletic therapy.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act (the 'MPIC Act') and Sections 5 and 8 of
Manitoba Regulation 40/94

Reasons For Decision

The Appellant, R.P., was involved in a motor vehicle accident ('MVA') on August 26, 1999. As a result of the motor vehicle accident, the Appellant experienced low back pain and neck pain for which he sought chiropractic treatment. He also participated in exercise therapy sessions with an athletic therapist and undertook Rolwing treatments in order to relieve his lower back pain.

The Appellant is appealing the decision of MPIC's Internal Review Officer, dated September 10, 2001, with regards to reimbursement of chiropractic costs, costs for Rolwing treatments, and costs for athletic therapy.

1. Reimbursement of costs for Rolwing treatments

The Appellant is seeking the amount of \$560 for reimbursement of costs relating to Rolfing treatments. Rolfing is a type of deep tissue massage therapy which the Appellant has undertaken. The Appellant testified that this form of treatment has helped him immensely to relieve his lower back pain.

Coverage for massage therapy is determined by reference to Section 8 of Manitoba Regulation 40/94, which provides as follows:

Massage therapy

8 The corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.

As far as we are able to discern, the Rolfing practitioner, Ms. Theresa A. Matwe, is not a physician, chiropractor, physiotherapist or athletic therapist. Notwithstanding that the Internal Review Officer ordered reimbursement for the Appellant of a previous series of Rolfing treatments, the Commission has no such latitude and is bound by the provisions of the MPIC Act and Regulations. We therefore must dismiss the Appellant's claim for reimbursement of Rolfing treatments since it does not fall squarely within the provisions of Section 8 of Manitoba Regulation 40/94.

2. Reimbursement for costs of athletic therapy

The Appellant undertook a reconditioning program at "Back to Health" consisting of exercise therapy sessions and education with an exercise therapist. He was discharged from that program to a home-based exercise strengthening program. The home exercises were designed to assist him with any further exacerbations of low back pain. The Appellant testified at the hearing that he also had a videotape of the exercises which reinforced his home exercise program. He is seeking reimbursement for an additional two sessions with the exercise therapist on July 3 and

11, 2001, relating to assistance in his recovery from an exacerbation of his lower back pain symptoms.

Subsection 5(a) of Manitoba Regulation 40/94 provides that:

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;

There was no information on the file to support a re-attendance at “Back to Health.” As the Appellant was capable of performing his home exercise program, we find that he has not shown, on a balance of probabilities, that the attendances for athletic therapy on July 3 and 11, 2001 were medically required.

3. Reimbursement of costs for chiropractic treatment

The Appellant seeks reimbursement for the cost of chiropractic treatment from December 27, 2000, being the date coverage was terminated by MPIC, to approximately May 22, 2001, when he switched from chiropractic treatments to Rolfing. The Appellant submits that MPIC should cover whatever treatment is required to make him better and to reach a healthy conclusion to his accident-related injuries.

Counsel for MPIC submits that there is insufficient evidence to establish that further treatments beyond December 27, 2000, were medically required.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a) of the MPIC Act provides that:

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 Manitoba Regulation 40/94 provides that:

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;

In his Inter-departmental memorandum dated May 3, 2001, Dr. Russell Baron, Chiropractic Consultant to MPIC's Health Care Services team, expressed the following opinion:

After reviewing the information on file, it would appear to me that this claimant has had a rather extensive exposure to past interventions both chiropractic and athletic therapy. After reviewing the information, it would appear that by and large these treatments have been ineffective at providing this claimant sustainable relief. It is my opinion that the file contents are not supportive of ongoing chiropractic intervention as having a likely outcome of long-term sustainable benefit. The claimant has had somewhere in the neighborhood of 80 interventions over the past two years and it is my opinion that this claimant has likely achieved his maximum therapeutic benefit and perhaps maximum medical improvement with respect to these injuries.

In a report dated June 18, 2001, Dr. F. K. Shariff, who saw the Appellant for a third-party examination, noted the following:

At the time he was seen there was no indication for any further investigation or active treatment except that he should possibly continue with the type of exercises that he has been doing and increase his physical activities gradually, as tolerated.

In a report dated June 17, 2002, provided by Dr. Douglas Starodub, the Appellant's treating chiropractor notes that:

[R.P.] was treated until May 22, 2001, because his condition required it. We feel we have done the utmost to restore [R.P.] to pre-accident status. It is our opinion that [R.P.] may need care from time to time for his residual problems, and have advised him to seek care on an "as-needed" basis.

In a subsequent Inter-departmental memorandum from Dr. Baron, dated August 26, 2002, he notes the following:

Since June 2001, there is no clinical information to support either ongoing chiropractic care or Rolfing as a therapeutic necessity related to the motor vehicle accident in question. It would appear that this claimant is, on the balance of probability, at his maximum medical improvement and that although he may have ongoing intermittent discomfort in his low back, ongoing treatments are unlikely to have a therapeutic effect other than that, which has been achieved.

Having regard to the opinions of the foregoing medical practitioners, we find that the Appellant has not established, on a balance of probabilities, that continued chiropractic care is medically required. Neither Dr. Starodub, his treating practitioner, Dr. Shariff, the independent examiner, nor Dr. Baron are of the opinion that continued chiropractic care is medically required. We therefore find that MPIC was justified in terminating payments for further chiropractic care for the Appellant on December 27, 2000, as it did.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date September 10, 2001.

Dated at Winnipeg this 20th day of September, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN

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