

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.H.
AICAC File No.: AC-97-114**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Les Cox

APPEARANCES: The Appellant, L.H., was represented by
Mr. Peter Klymkiw;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: September 18, 2001 and October 21, 2002

ISSUE(S): Entitlement to reimbursement of physiotherapy treatments
beyond February 8, 1997

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

Reasons For Decision

The Appellant, L.H., was involved in two motor vehicle accidents - on May 18, 1995 and shortly thereafter on June 10, 1995. As a result of the accidents, she sustained soft tissue injuries to her neck, shoulder and back, which were diagnosed by her treating physician as a cervical strain. As a result of those injuries, the Appellant undertook treatment which included physiotherapy treatments, massage therapy and medications.

On February 5, 1997, MPIC's case manager wrote to the Appellant to advise her that reimbursement of physiotherapy treatments would cease effective January 31, 1997. This date was later amended to February 8, 1997.

L.H. sought an internal review of that decision. In his decision dated September 15, 1997, the Internal Review Officer confirmed the case manager's decision and dismissed L.H.'s Application for Review. In support of his decision, the Internal Review Officer relied on Dr. Mackay's (medical consultant to MPIC's Claims Services Department) Inter-departmental memorandum dated July 22, 1997, and noted the following:

In his opinion the physiotherapy you are currently receiving is not directed at correcting a functional deficit or improving your functional level. You told me yourself that your continuing weekly physiotherapy treatments alleviate your discomfort for one or two days, following which you return to the same level of discomfort until the next scheduled physiotherapy treatment. Dr. Mackay's opinion is that this is indicative of a treatment dependency and further treatment is not necessary as sufficient time has elapsed to allow adequate healing of your original soft tissue symptoms and rehabilitation of the affected tissue. You have reached maximal therapeutic benefit and no further treatment is necessary. I find I must agree with his opinion.

It is from this decision that L.H. now appeals. The issue which requires determination in L.H.'s appeal is whether or not reimbursement of physiotherapy treatments was terminated prematurely.

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

Section 136(1)(a) 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:

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

Subsection 5(a) of Manitoba 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 of her appeal, L.H. testified that ever since the motor vehicle accidents in May and June of 1995, she has suffered with constant pain in her neck and left shoulder. This pain radiates to her face, jaw and arm and causes headaches. She feels that the physiotherapy treatments that she was receiving, help alleviate the constant pain and contribute to her day-to-day functioning and well-being.

Counsel for the Appellant submitted that the termination of funding for physiotherapy treatment was arbitrary. He maintains that the physiotherapy treatments helped to ease the Appellant's pain, accordingly, she derived some benefit from the treatments and, therefore continued funding for physiotherapy should be provided by MPIC. Additionally, counsel for the Appellant argues that the Appellant was simply following the advice of her treating physician, who maintained that continued physiotherapy was required in order to remedy her condition. In support of his position, counsel for the Appellant refers to Dr. Hildahl's report dated January 26, 2001, wherein Dr. Hildahl concludes the following with respect to the Appellant's ongoing treatment:

In summary, [L.H.] has developed chronic neck pain with left shoulder involvement. In my opinion the termination of MPIC benefits was premature as her symptoms had not yet been resolved. Clearly the amount of time elapsed from date of injury to the termination of benefits was not, for this particular patient, adequate time for recovery. I would therefore support [L.H.'s] appeal to MPIC for a review of her claim.

Counsel for the Appellant also relies on Dr. Hildahl's report dated August 28, 2001, wherein Dr. Hildahl comments as follows:

In my opinion [L.H.] has developed chronic pain symptoms as a result of her motor vehicle accident. Unfortunately these symptoms do not provide much in the way of subjective evidence. Never the less, her pain is real and she continues to get relief from periodic physiotherapy provided by a therapist of her choice instead of seeking relief through medication.

Counsel for MPIC submits that physiotherapy treatment was not providing L.H. with any continuing or lasting relief and, therefore, it cannot be deemed medically required within the meaning of Section 5 of Manitoba Regulation 40/94. He refers the Commission to Dr. Johnson's independent medical report dated October 25, 2001, wherein Dr. Johnson states:

Given the longevity of the pain condition and the lack of resolution, physiotherapy treatment at this point, with no other changes in her condition, will and is functioning as a maintenance therapy. I don't feel another 6 months or 3 years of therapy in her present condition will allow her to be any better than she is today. I don't feel further physiotherapy treatment beyond February 8, 1997 are medically required given that the cause of her pain has not been fully addressed.

After a careful review of all of the evidence, both oral and documentary, we are unable to conclude, on a balance of probabilities, that the physiotherapy treatments received by the Appellant after February 8, 1997, were medically required within the meaning of Section 5 of Manitoba Regulation 40/94.

Although the Appellant subjectively felt that ongoing physiotherapy treatment was required in order to treat her condition, and she was merely following her doctor's advice, the objective evidence on the file did not substantiate ongoing physiotherapy treatment. While the Appellant may have derived some short-term relief from the treatments, the Commission finds that, on a balance of probabilities, the Appellant had likely reached maximum therapeutic benefit from physiotherapy treatment by February 8, 1997. In this regard, we rely on the medical opinion of

Dr. Johnson who noted in his report dated October 25, 2001 that, "*I don't feel further physiotherapy treatment beyond February 8, 1997, are medically required given that the cause of her pain has not been fully addressed.*"

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date September 15, 1997.

Dated at Winnipeg this 15th day of November, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

LES COX