

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L. A. E.
AICAC File No.: AC-01-123**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Wilson MacLennan
Ms. Barbara Miller

APPEARANCES: The Appellant, L. A. E., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: December 5, 2002

ISSUE(S): Entitlement to reimbursement of physiotherapy treatments

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

Reasons For Decision

The Appellant, L. A. E., was injured in a motor vehicle accident ("MVA") on November 21, 1996, wherein he sustained soft tissue injuries to his neck and lower back. As a result of his injuries, the Appellant undertook treatment which included chiropractic care, physiotherapy treatments and medications.

On May 9, 2001, the Appellant's case manager wrote to him to advise that MPIC would not consider any further funding for physiotherapy treatments.

L.E. sought an internal review from that decision. In her decision dated October 31, 2001, the Internal Review Officer confirmed the case manager's decision and dismissed L. E.'s Application

for Review. It is from this decision that L. E. now appeals. The issue which requires determination in L. E.'s appeal is whether or not he is entitled to reimbursement of physiotherapy treatments.

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

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.

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 this appeal, L. E. testified that ever since the MVA, he has suffered with chronic back pain. According to the Appellant, his doctor advised him that this latest recurrence of back pain was connected to the original injury arising out of the motor vehicle accident. The Appellant feels that the physiotherapy treatments that he was receiving, help alleviate the constant pain and contribute to his day-to-day functioning and well-being. Additionally, the Appellant states that he was merely following his doctor's advice, who maintained that continued physiotherapy was required in order to remedy his condition. The Appellant contends that since

the physiotherapy treatments were prescribed by his treating physician, he should be entitled to be reimbursed for those physiotherapy treatments from MPIC.

Counsel for MPIC submits that physiotherapy treatment was not providing L. E. 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.

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 March 12, 2001, 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 his condition, and he was merely following his doctor's advice, based on the Appellant's evidence that he derived no lasting benefit from the physiotherapy treatments, the Commission finds that, on a balance of probabilities, the Appellant had likely reached maximum therapeutic benefit from physiotherapy treatment. In this regard, we also rely on the medical opinion of Dr. Lau who noted in his report dated June 15, 1999 that:

The use of passive modalities such as heat, ultrasound, traction, TENS, etc. could be used as adjuncts to help promote comfort and decrease symptoms. However, these should be kept to a minimum and should only serve as a compliment or adjunct to the exercise program. Prolonged reliance on these passive techniques risks the development of dependency.

As a result, we find that physiotherapy treatments are not medically required within the meaning of Section 5 of Manitoba Regulation 40/94. We note that, although physiotherapy treatment may

no longer provide any lasting benefit for the Appellant, Dr. Lau in his assessment dated June 15, 1999, did recommend that the Appellant be referred to another psychiatrist for further assessment and treatment. These may be options that the Appellant may wish to explore in consultation with his family physician.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date October 31, 2001.

Dated at Winnipeg this 16th day of December, 2002.

YVONNE TAVARES

WILSON MACLENNAN

BARBARA MILLER