



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by S.S.
AICAC File No.: AC-98-171

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Antoine Frechette
Mr. Les Marks

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

HEARING DATE: October 16, 2003

ISSUE(S):

1. Entitlement to reimbursement of extra charges for physiotherapy treatments; and
2. Entitlement to reimbursement of cost of physiotherapy treatments received from November 5, 1997 to January 1998.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Sections 5 and 9 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 was involved in two separate motor vehicle accidents, on December 16, 1994, and on March 21, 1996. As a result of the injuries which she sustained in those accidents, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The issues which arise in this appeal are:

1. Entitlement to reimbursement of extra charges for physiotherapy treatments; and

2. Entitlement to reimbursement of cost of physiotherapy treatments received from November 5, 1997 to January 1998.

1. **Entitlement to reimbursement of extra charges for physiotherapy treatments**

The Internal Review decision dated July 25, 2002 dismissed the Appellant's Application for Review and confirmed the case manager's decision dated April 9, 2002. The Internal Review Officer found that the Appellant had received the maximum reimbursement under the Physiotherapy Fee Schedule for each physiotherapy treatment and there was no entitlement to reimbursement in excess of the amounts provided for in the Physiotherapy Fee Schedule.

The Appellant appealed that Internal Review decision to this Commission, on the basis that she should be entitled to reimbursement of the actual costs of the physiotherapy treatments which she incurred as a result of the injuries sustained in the motor vehicle accidents.

Section 9 of Manitoba Regulation 40/94 provides that:

Dental care, chiropractic treatment and physiotherapy

9 The expenses payable by the corporation for dental care, chiropractic treatment and physiotherapy provided to a victim shall be fixed by the corporation in such amount as the corporation considers reasonable and proper for the service provided.

Section 9 of Manitoba Regulation 40/94 enables MPIC to establish the level of fees which it will reimburse for physiotherapy treatment. We find that the Appellant received the maximum reimbursement provided under the Physiotherapy Fee Schedule. As a result, we find that MPIC correctly applied the provisions of the MPIC Act and Regulations when determining the Appellant's entitlement to reimbursement of physiotherapy expenses. Accordingly, we dismiss

the Appellant's appeal with respect to this issue, and confirm the Internal Review Officer's decision dated July 25, 2002.

2. **Entitlement to reimbursement of cost of physiotherapy treatments received from November 5, 1997 to January 1998**

The Internal Review decision dated September 29, 1998 dismissed the Appellant's Application for Review and confirmed the case manager's decision of January 16, 1998. In his decision, the Internal Review Officer found that:

I find that physiotherapy treatments numbering far in excess of the limits set by practicing physiotherapists has failed to provide you with any lasting benefit. You admitted to me that the physiotherapy treatments (and the massage therapy treatments) offer you temporary relief from pain only. They are not causing any long-term improvement in your condition. The purpose of therapy should be to improve your condition and I find that it has failed to do that. Accordingly, I think MPI was justified in terminating your treatment benefits as of April 28, 1997. At that time you had reached maximum medical benefit from the treatments.

The Appellant appealed that Internal Review decision to this Commission, on the basis that the physiotherapy treatments from November 5, 1997 to January 1998 continued to provide her benefit. She maintains that the physiotherapy treatments continued to help her manage the occasional flare-up of pain and helped to relieve her muscles. Therefore, she submits that she should be reimbursed by MPIC for the costs of those treatments.

Counsel for MPIC submits that the decision of the Internal Review Officer was reasonable and appropriate in the circumstances. He maintains that the decision was supported by the medical evidence on the Appellant's file, which suggested that the Appellant did not require any more physiotherapy treatments and that she had reached maximum medical improvement from

physiotherapy care. As a result, counsel for MPIC submits that the appeal should be dismissed and the decision of the Internal Review Officer dated September 29, 1998 upheld.

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;

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 between November 5, 1997 and January 1998, 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, based upon the Appellant's evidence that she 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. While the Appellant may have derived some short-term relief from the treatments, the objective evidence on the file did not substantiate ongoing physiotherapy treatments as a medical requirement.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date September 29, 1998.

Dated at Winnipeg this 31st day of October, 2003.

YVONNE TAVARES

ANTOINE FRECHETTE

LES MARKS