

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by A. K.
AICAC File No.: AC-01-37**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Antoine Frechette
Mr. Guy Joubert

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

HEARING DATE: November 5, 2002

ISSUE(S): Entitlement to reimbursement of various expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act (the "MPIC Act") and Sections 5(a),
10(1)(d) and 38 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 September 4, 1998, and on June 9, 1999. 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 involve the reimbursement of various expenses including:

1. reimbursement of the cost of Celebrex medication;
2. reimbursement of the cost of a hand/wrist brace; and
3. reimbursement of the cost of physiotherapy treatments incurred to date and the Appellant's entitlement to reimbursement of ongoing physiotherapy treatments.

At the hearing of this Appeal, counsel for MPIC acknowledged that the internal review decision dated March 16, 2001, was broad enough to deny reimbursement for all expenses and therapeutic interventions related to the two motor vehicle accidents. Accordingly, the Commission had the requisite jurisdiction to hear the Appeal regarding reimbursement of the Celebrex medication and the hand/wrist brace, although these matters had not been specifically addressed by the Internal Review Officer in his decision.

The relevant section of the MPIC Act regarding reimbursement of expenses is Section 136(1) which provides 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;
- ...
- (d) such other expenses as may be prescribed by regulation.

1. Reimbursement of the Cost of Celebrex Medication

Celebrex is a nonsteroidal anti-inflammatory medication. After the accident of June 9, 1999, A. K. advised that she was prescribed Celebrex by her family physician, Dr. Kathleen Ross. The Appellant is seeking reimbursement of the cost of this medication, which she has taken since that accident. She submits that she only began using Celebrex after the second motor vehicle accident and therefore the continued use of this medication is due to the injuries which she sustained in that accident.

Section 38 of Manitoba Regulation 40/94 provides as follows:

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

There was no evidence presented at the Appeal Hearing that the ongoing requirement for the Celebrex medication was related to either of the motor vehicle accidents. As a result, we find that the Appellant has failed to establish, on a balance of probabilities, that the Celebrex medication was required for a medical reason resulting from the accidents.

2. Reimbursement of the Cost of a Hand/Wrist Brace

Following the motor vehicle accident of June 9, 1999, A. K. was required to replace her existing hand/wrist brace with a larger brace due to the swelling of her right hand. A. K. reports that her right hand sustained an impact during the motor vehicle accident of June 9, 1999, which caused it to swell.

Section 10(1)(d)(iv) of Manitoba Regulation 40/94 provides as follows:

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
 - (iv) specialized medical supplies.

The Initial Health Care Report from Dr. Kathleen Ross respecting the examination of the Appellant on June 11, 1999, prescribed a right wrist brace. Additionally, there is a prescription from Dr. Kathleen Ross dated August 17, 1999, for a right wrist brace for paresthesia of the right third, fourth and fifth fingers. Dr. Ross also comments on the requirement for the right wrist brace in her report dated June 26, 2001, wherein she notes the following:

One other cost which should be covered is the large size wrist/hand brace that [A. K.] needed to buy when her arm/hand was swollen. She is usually able to manage her CTS with her medium size brace. The swelling was post-MVA.

Based on the temporal relationship between the swelling of the Appellant's right hand and the motor vehicle accident of June 9, 1999, the Commission accepts that the motor vehicle accident caused the Appellant's right hand to swell. Based on Dr. Kathleen Ross's prescription of the right hand/wrist brace, we find that the brace was medically required and therefore necessary or advisable for her rehabilitation. As a result, the Commission finds that the Appellant is entitled to be reimbursed for the cost of the right hand/wrist brace which she purchased due to the injuries sustained in the motor vehicle accident.

3. Reimbursement of the Cost of Physiotherapy Treatments to Date & Reimbursement of Ongoing Physiotherapy Treatments

After her motor vehicle accident of September 4, 1998, the Appellant was referred for physiotherapy treatment by her family physician, Dr. Ross. She attended for physiotherapy treatments with Doug Christie Physiotherapy. On April 21, 1999, the Appellant's case manager wrote to her to advise as follows:

Please be advised that we have reviewed the above noted matter with a member of our Medical Services Team, Dr. M. MacKay and would advise that based on the medical information on file, you have received appropriate treatments for the exacerbation of your pre-existing conditions. It is probable that your ongoing symptoms are directly related to your pre-existing problems and therefore we will not be in a position to consider any further therapeutic intervention beyond today's date.

As previously noted, the Appellant was involved in a subsequent motor vehicle accident on June 9, 1999. As a result of the injuries which she sustained in this accident, she was referred for further physiotherapy treatments. In a letter dated September 29, 1999, MPIC's case manager wrote to the Appellant to advise her that MPIC would not fund further physiotherapy until they were in receipt of medical information to support therapeutic intervention. In a letter dated

October 6, 1999, MPIC's case manager advised the Appellant as follows:

After considering the length of time you have had your chronic symptoms for and the type of collision you were involved in on June 9, 1999, it is reasonable to conclude that the symptoms you presented to Dr. Ross in all probability stem from your pre-existing chronic condition. There is insufficient information identifying a medical condition that developed as a direct result of this motor vehicle accident which would necessitate physiotherapy treatments in the management of the condition.

Based on the above we will not be in a position to consider any further medical treatments, with respect to the above noted accident.

The Appellant sought an internal review of the case manager's decision. In his decision dated March 16, 2001, the Internal Review Officer confirmed the case manager's decision and dismissed A. K.'s Application for Review. In his decision, the Internal Review Officer noted that:

While you may continue to experience ongoing problems which may require treatment, it has not, in my view, been established that the treatment is medically required as a result of injuries sustained in either of the motor vehicle accidents in question. In that regard I am inclined to agree (with) Dr. MacKay that any exacerbation of your pre-existing injury which occurred in the September 1998 motor vehicle accident would have resolved, in all probability and that there "...is insufficient objective clinical findings identifying a medical condition arising from the June 9, 1999 motor vehicle collision which in turn requires therapeutic interventions". Although the head tremor would appear to have commenced at some point in time after the motor vehicle accident of September, 1998, it has not been established that it was caused by the accident. Rather, the evidence would suggest that your ongoing problems are attributable to your significant pre-existing conditions.

I am therefore unable to conclude that Mr. Hawryluk erred in arriving at his decisions of April 21, 1999 and October 6, 1999 and accordingly I am upholding those decisions and dismissing your Applications for Review.

The Appellant has now appealed the decision of the Internal Review Officer dated March 16, 2001 to this Commission. She is seeking reimbursement for the cost of physiotherapy treatments which she has undertaken since April 21, 1999, together with reimbursement for ongoing physiotherapy treatments which she continues to receive.

In support of her requirement for physiotherapy treatment, the Appellant relies on the medical reports from Dr. Dubo, physiatrist and her family physician Dr. Ross.

In his report dated January 6, 2000, Dr. Dubo states:

Prior to November 1999 I last saw her on July 28, 1998 prior to her motor vehicle accidents. In July 1998 she did have widespread pain complaints including headaches, neck and shoulder girdle pain. She also had pain symptoms in her upper limbs and numbness in the hands.

However following the motor vehicle accident of September 4, 1998 she developed more severe and persistent symptoms of pain especially in the posterior neck, right greater than left upper trapezius and right shoulder region. She also had increased symptoms of pain involving the right thumb and numbness in the last three fingers of the right hand. She noted that her headaches were similar to those she had prior to her two motor vehicle accidents.

A major new complaint following the September 4, 1998 MVA and continuing up to the present time has been coarse tremor involving her right shoulder girdle, arm, forearm and hand. She controls this by holding her arm at her side with her elbow flexed but when attempting to move the upper limb she develops uncontrollable tremor or shaking of the entire upper limb. She also has head tremor when she attempts to extend her neck and it decreases when she leans her head forward.

....

I do not feel that prolonged physiotherapy will lead to significant improvement although it does give her some transient relief. A new treatment direction should be undertaken. If I am to initiate a trigger point directed treatment program I would want her to be under the supervision of a physiotherapist at PARS who would initiate a stretching program in conjunction with my trigger point injections and overall supervision of her program by myself.

In his report dated July 16, 2001, Dr. Dubo notes that:

Since it was evident that she had made significant improvement in regards to pain reduction and improved range of motion of the cervical spine and right shoulder (especially on active neck and shoulder movements), I decided to set up a further series of treatment appointments. At this stage, she still requires a period of physiotherapy with emphasis on further stretching of cervical and shoulder girdle muscles as well as strengthening.

In her report dated June 26, 2001, Dr. Ross notes the following with respect to A. K.'s requirements for physiotherapy treatment:

I strongly urge you to grant funding to this extremely unfortunate lady who has been paying privately for about a year for physio and massage. Yes, she has chronic pain from previous injuries, but clearly, and by more than just my observation, she has suffered new injury and flare-ups of old injuries from her MVA's of Sept. 4, 1998 and June 9, 1999. She had no arm or neck tremors prior to the 1998 accident and her right shoulder musculature was not anyway near as weak as it is now. The vast majority of her treatable pain is caused by muscular injury and is not demonstrable through x-ray, MRI, or CT scans.

....

Since September 1999, [A. K.'s] physiotherapist has been Karen Dobbin, rather than Doug Christie. She has taken a much different approach with her: instead of heat/ice/interferential etc., she is much more "hands-on" oriented. The right arm tremors have improved, the right swelling has resolved, and there has been temporary improvement in the severity of pain to injured areas generally. Unfortunately, her right arm strength and movement haven't improved so far. Certainly a large portion of her visits to Ms. Dobbin are for MVA related new injuries and exacerbations of old trigger points and should be compensated for by MPIC.

Counsel for MPIC submits that there is no evidence that physiotherapy treatments are medically necessary. In support of his position, he relies on the opinion of Dr. Michael MacKay, medical consultant to MPIC's Claim Services Department. Dr. MacKay's opinion was set out in an Inter-departmental Memorandum dated January 19, 2000, wherein he concludes that:

It is noted that [A. K.] was receiving physiotherapy treatments prior to the motor vehicle collision for her chronic symptoms. It is further noted that the treatments she received following the September 1998 motor vehicle collision resulted in an improvement in her condition. It is my opinion that the medical evidence indicates that the mild exacerbation [A. K.] might have experienced as a result of the September 4, 1998 motor vehicle collision resolved, in all probability and therefore, further therapeutic interventions would not be viewed as a medical necessity in the management of this exacerbation. It is my opinion that there is insufficient objective clinical findings identifying a medical condition arising from the June 9, 1999 motor vehicle collision which in turn requires therapeutic interventions.

Accordingly, counsel for MPIC submits that the Appellant has not established that the physiotherapy treatments were medically required and therefore the decision of the Internal Review Officer, dated March 16, 2001, should be upheld.

Section 5(a) of Manitoba Regulation 40/94 provides as follows:

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 find that the mild exacerbation which A. K. might have experienced as a result of the September 4, 1998 motor vehicle collision resolved by April 21, 1999, on a balance of probabilities. Therefore, further therapeutic interventions beyond April 21, 1999, would not be viewed as a medical necessity in the management of this exacerbation.

With respect to the June 9, 1999 motor vehicle accident, we find that even though it was a relatively minor motor vehicle collision, the accident did have an impact on this Appellant. The effects of this accident on the Appellant's presentation are noted by her family physician, Dr. Ross, by Dr. Dubo, and also by Dr. Brian J. Schmidt, neurologist. In his report dated June 24, 1999, Dr. Schmidt notes with respect to the Appellant's condition that:

However, immediately following the rear-end collision on June 9 she noted "shaking" in the right shoulder and right arm as well as shaking of the head. She states the right arm was numb and weak for approximately one week. She states she was unable to use the right hand. She states the symptoms have partially resolved with physiotherapy.

As a result, we find that the treatment plan as recommended by Dr. Dubo in his letter dated January 6, 2000, was medically required in the Appellant's circumstances (that is, a stretching program under the supervision of a physiotherapist, in conjunction with the trigger point injections). As such, the physiotherapy treatments which the Appellant undertook in conjunction with the treatments administered by Dr. Dubo, from January 8, 2001 to August 31, 2001, were medically required. Accordingly, the Appellant shall have the costs of those physiotherapy treatments reimbursed to her by MPIC.

In his report dated January 6, 2000, Dr. Dubo comments that "*I do not feel that prolonged physiotherapy will lead to significant improvement although it does give her some transient relief*". On the basis of Dr. Dubo's comments, we find that the physiotherapy treatments which the Appellant undertook after the motor vehicle accident of June 9, 1999, but prior to January 8, 2001 were not medically required.

With respect to reimbursement of ongoing physiotherapy treatments, we find that the Appellant has failed to establish, on a balance of probabilities, that ongoing physiotherapy treatment is medically required.

Dated at Winnipeg this 27th day of January, 2003.

YVONNE TAVARES

ANTOINE FRECHETTE

GUY JOUBERT