



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.W.
AICAC File No.: AC-03-13**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Deborah Stewart
Mr. Wilson MacLennan

APPEARANCES: The Appellant, D.W., was represented by L.W.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: July 22, 2004

ISSUE(S):

1. Entitlement to reimbursement of orthotic footwear;
2. Entitlement to rehabilitation program;
3. Adequacy of Permanent Impairment benefits;
4. Entitlement to personal care assistance benefits.

RELEVANT SECTIONS: Sections 127, 129, 131 and 136(1)(b) of The Manitoba Public
Insurance Corporation Act (the 'MPIC Act') and Sections 2,
11 and Schedule A of Manitoba Regulation 40/94 and Section
2 and Schedule A of Manitoba Regulation 41/94.

**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, D.W., was involved in a single vehicle roll-over accident on April 6, 1997. As a result of the injuries which the Appellant sustained in that accident, she became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing two separate internal review decisions, dated December 4, 2002 and January 15, 2004, respectively, with regards to the following issues:

1. Entitlement to reimbursement of orthotic footwear;
2. Entitlement to rehabilitation program;
3. Adequacy of Permanent Impairment benefits;
4. Entitlement to personal care assistance benefits.

1. Entitlement to reimbursement of orthotic footwear

The case manager's decision of June 17, 2003 approved funding for the cost of an orthotic as required. This decision was confirmed by the Internal Review Officer in his decision of January 15, 2004. At the appeal hearing, the Appellant's representative confirmed that the Appellant had been reimbursed by MPIC for the cost of one pair of orthotic shoes. However, he was concerned about reimbursement of the cost of replacement orthotic footwear and additional orthotic footwear (including boots) for the winter months.

The issue of ongoing reimbursement of the Appellant's orthotic footwear was not specifically dealt with by the case manager or the Internal Review Officer in either of their decisions. As such, it is not a matter over which this Commission has jurisdiction.

If the Appellant incurs further expenses for orthotic footwear, she will need to make a claim for reimbursement with MPIC. Her claim can then be assessed by her case manager. Of course, if she disagrees with the case manager's decision, she will continue to have recourse to the internal review and appeal procedures at that time, should she so choose.

2. Entitlement to rehabilitation program

At the appeal hearing, the Appellant's representative advised that this was no longer an issue which the Appellant wished to pursue, and accordingly, she withdrew her appeal of this matter.

3. Adequacy of permanent impairment benefits

The Internal Review decision dated January 15, 2004 confirmed the case manager's decisions which awarded the Appellant the following permanent impairment benefits:

1. Calf muscular atrophy of greater than 1.5 cm
Part 1; Division 1; Subdivision 1; Item 11(q)(ii) – 2%
2. Alteration of cerebral tissue following a concussion
Part 1; Division 2; Subdivision 1; Item 5(b) – 1%

The Appellant presented no medical evidence at the hearing of the appeal to contradict the assessment of the permanent impairment benefits as determined by MPIC.

Upon a careful review of the Schedule of Permanent Impairments, and the relevant medical evidence in the Appellant's file, the Commission is satisfied that the permanent impairment benefits as determined by MPIC are fair and appropriate awards in the circumstances of this case.

As a result, the Commission dismisses the Appellant's appeal with respect to the foregoing permanent impairment awards and confirms the decision of MPIC's Internal Review Officer bearing date January 15, 2004.

4. Entitlement to personal care assistance benefits

The Appellant is claiming personal care assistance benefits from April 1998. The Internal Review decision of December 4, 2002 determined that she was not entitled to personal care assistance benefits beyond May 27, 2002. The Internal Review decision of January 15, 2004

determined that she was not entitled to personal care assistance benefits from April 1998 to May 27, 2002.

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

Section 131 of the MPIC Act:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 2 of Manitoba Regulation 40/94:

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under *The Health Services Insurance Act* or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A.

Section 131 of the MPIC Act provides for reimbursement of personal assistance expenses subject to the Regulations. Section 2 of Manitoba Regulation 40/94 provides that MPIC shall reimburse a victim for an expense of personal home assistance in accordance with Schedule A. Schedule A provides a method of evaluating the needs of the victim regarding personal and home care assistance. Points are assigned to areas of need on an evaluation grid. They are totalled to determine the qualifying percentage of expenses that is then applied to the maximum provision under Section 131 of the MPIC Act. The Appellant would have to score a minimum of five points on the grids in order to qualify for reimbursement of personal care assistance. If the score is less than five, no reimbursement of expenses is provided.

With respect to the Appellant's claim for personal care assistance benefits beyond May 27, 2002, we find that MPIC correctly applied the provisions of the MPIC Act and regulations when determining the Appellant's entitlement to reimbursement of personal care expenses. The Appellant does not qualify for reimbursement of personal care expenses pursuant to the MPIC Act and Regulations, as she does not score high enough on the grids in order to qualify for assistance. Accordingly, the Appellant's appeal with respect to this issue is dismissed, and the Internal Review decision of December 4, 2002 is confirmed.

With respect to the Appellant's claim for personal care assistance benefits from April 1998 to May 27, 2002, we find that the Appellant is entitled to reimbursement of her expenses for personal care assistance from April 1998 to the end of June 1998, to a maximum amount of \$[text deleted] per month.

In a letter dated April 24, 1998, MPIC's case manager advised the Appellant that:

Based on your Personal Assistance Grid score, your entitlement for personal care expenses amounted to a maximum amount of \$[text deleted] per month based on your percentage of index maximum of \$[text deleted].

It is our understanding that your son [text deleted] has provided personal care services and, as such, in order to give consideration towards same, we require that the enclosed Personal Care Performed document be completed and subsequent return to our office.

We find that the Appellant inadvertently forgot to submit the Personal Care Performed documents to her case manager for consideration of payment in accordance with the letter of April 24, 1998. Thereafter, this matter also apparently fell through the cracks at MPIC. The Appellant did not submit any claim forms to MPIC (until 2002) and MPIC's case manager did not follow up with her to check on her ongoing status.

It is apparent from the grids completed at that time and the case manager's letter of April 24, 1998, however, that the Appellant did qualify for personal care assistance benefits. In accordance with the discharge assessment from the reconditioning program at the Wellness Institute, we find that these benefits should be continued until the end of June 1998. The discharge assessment indicated that D.W. made steady, but slow progress throughout the course of the program with gains made in her walking tolerance, lumbar stability and overall functional level.

We find that, by the end of June 1998, D.W. should have been functionally capable of taking care of her personal care needs. Although she may not have been capable of performing the heavier duties associated with housecleaning, laundry and purchase of supplies, she would not score enough on the personal care assistance grids to reach an entitlement, based solely on a requirement for assistance with those activities of daily living.

Accordingly, the Appellant shall be entitled to reimbursement of expenses for personal care assistance from April 1998 to the end of June 1998, to a maximum amount of \$[text deleted] per month. Interest in accordance with Section 163 of the MPIC Act shall be added to that amount.

Dated at Winnipeg this 26th day of August, 2004.

YVONNE TAVARES

DEBORAH STEWART

WILSON MACLENNAN