



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.G.
AICAC File No.: AC-02-22**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Barbara Miller
Mr. Wilson Maclellan

APPEARANCES: The Appellant, L.G., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms. Dianne Pemkowski .

HEARING DATE: October 13, 2004

ISSUE(S):

1. Entitlement to chiropractic treatment benefits beyond October 5, 2001
2. Entitlement to compensation for pain and suffering
3. Entitlement to coverage for medications
4. Entitlement to funding for a replacement back brace
5. Entitlement to funding for replacement corrective boots and shoes
6. Entitlement to funding for a new box spring and mattress
7. Entitlement to funding for retraining

RELEVANT SECTIONS: Sections 72, 136(1)(a) and (b) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 5 and 10(1)(d)(iii) 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, L.G., was involved in a motor vehicle accident on April 9, 2001. As a result of the injuries which the Appellant sustained in that accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing

two separate internal review decisions, dated December 28, 2001 and January 29, 2004, respectively, with regard to the following issues:

1. Entitlement to chiropractic treatment benefits beyond October 5, 2001
2. Entitlement to compensation for pain and suffering
3. Entitlement to coverage for medications
4. Entitlement to funding for a replacement back brace
5. Entitlement to funding for replacement corrective boots and shoes
6. Entitlement to funding for a new box spring and mattress
7. Entitlement to funding for retraining

1. Entitlement to chiropractic treatment benefits beyond October 5, 2001

The Appellant seeks reimbursement and continuing funding for chiropractic treatments after October 5, 2001, the date coverage was terminated by MPIC. The Appellant submits that, as a result of back and shoulder pain and a decline in motor skills, mobility and function, he requires chiropractic care to improve his overall condition and relieve pain. He submits that there has been a decrease in his motor skills and increase in his pain as a result of his chiropractic benefits being terminated.

The Appellant argued that his work as a Class 2 Cafeteria Worker/Chef's Assistant was physically demanding and that he requires chiropractic care to enable him to deal with his back and shoulder pain.

Counsel for MPIC submits that chiropractic treatments beyond October 5, 2001 were not medically required, and that this is supported by medical evidence showing that the Appellant's condition ceased to improve under chiropractic treatment by that date.

In order to qualify for funding under the PIPP, expenses must be incurred by a victim because of the accident and must be medically required. 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;

The Appellant received approximately 55 chiropractic treatments between April and October 2001. These treatments were provided primarily by Dr. Herbert Rosenberg, chiropractor.

Dr. Rosenberg submitted treatment plans regarding the Appellant's care on May 16, 2001, July 12, 2001 and September 5, 2001. His report of September 5, 2001 recommended that the Appellant continue to visit Dr. Rosenberg two times per week until November 30, 2001, at which time he would re-evaluate the condition of the Appellant.

In an Inter-Departmental Memorandum dated September 20, 2001, Dr. Timothy Pethrick, Chiropractic Consultant to MPIC's Health Care Services team, noted the number of treatments received by the Appellant and expressed the following opinion:

A hallmark of successful care is reducing frequency with progress. [L.G.] continues to attend at undiminished frequency despite the passage of over five months since his

accident. Dr. Rosenberg reports disturbing symptoms such as recurrent severe low back pain and numbness from the left arm to the fingers. In my opinion, chiropractic care has not demonstrated sufficient benefit to warrant continuation. Should [L.G.] continue to report significant symptoms, then he should be assessed by his physician, Dr. Luk, who has already seen him in relation to this accident. Dr. Luk may then be able to offer suggestions as to care that may be needed, if any. In my opinion, any further care should fall further along the treatment spectrum towards active care since [L.G.] has received primarily, or exclusively, passive care to date.

On October 2, 2001 the Appellant was advised by his case manager that MPIC would no longer fund chiropractic treatments after October 5, 2001.

On December 3, 2001, the Appellant's family physician, Dr. Luk, provided a progress report indicating that while the Appellant still felt numbness in his hands, arms, legs and feet, his residual pain might be psychosomatic and there was no necessity for any treatments. Dr. Luk described full function without symptoms.

Dr. Rosenberg provided a report dated October 24, 2001 stating that the Appellant had made a partial recovery from his injuries:

The patient self reports a big improvement in his symptoms and credits chiropractic care with keeping him in the work force at all, at present.

The recurring episodes of back pain and parasthesia does not mean that the present course of care is effective. In this case he has increased functional capacity and is demonstrating further clinical improvement in loss of motion, muscle tone and integrity and structural stability. The symptomatology and physical findings do however indicate that the patient has not yet made an adequate recovery from his injuries.

Further conservative chiropractic care is warranted and based on my clinical experience with this patient, could be required for six months to reach maximum improvement.

Dr. Rosenberg provided another report dated November 27, 2003. He stated that he believed the patient had made an incomplete recovery from the injuries incurred in the accident.

. . . His condition appears to regress when he does not receive spinal care. Even though

he has reached a plateau in his recovery, he would benefit from receiving ongoing treatment to prevent further regression and to limit the degree of his day-to-day symptoms.

By Inter-Departmental Memorandum dated July 8, 2004, Dr. Pethrick reviewed Dr. Rosenberg's November 27, 2003 report. He noted the absence of sustained and progressive benefit with chiropractic care as well as Dr. Luk's earlier opinion that there was no necessity for any treatment.

Having regard to the opinions of the foregoing medical practitioners, we find that the Appellant has not established, on a balance of probabilities, that continued chiropractic treatment was medically required beyond October 5, 2001. The facts of the case at hand, including the rather extensive amount of chiropractic treatment undertaken by the Appellant, coupled with the lack of improvement in his condition, lead us to the conclusion that the Appellant had likely reached maximum therapeutic benefit from chiropractic care as of October 5, 2001. Accordingly, ongoing chiropractic treatments beyond October 5, 2001 cannot be deemed medically required within the meaning of Section 5(a) of Manitoba Regulation 40/94 and we are of the opinion that MPIC was justified in terminating payments for further chiropractic treatments for the Appellant on October 5, 2001, as it did.

2. Entitlement to compensation for pain and suffering

The Appellant submits that as a result of the back and shoulder pain he has suffered 24 hours a day, 7 days a week, since the accident, he should be entitled to compensation for his pain and suffering.

Counsel for MPIC argued that the PIPP does not provide compensation for pain and suffering under this legislation.

Section 72 of the MPIC Act provides that:

No tort actions

72 Notwithstanding the provisions of any other Act, compensation under this Part stands in lieu of all rights and remedies arising out of bodily injuries to which this Part applies and no action in that respect may be admitted before any court.

Accordingly, the PIPP does not contemplate tort action or provide compensation for pain and suffering.

As the Internal Review Officer noted in his decision of January 29, 2004, there are Permanent Impairment benefits available under the PIPP. It appears that the Appellant has not made any application for such benefits and there was no evidence of a rateable impairment on the claim file at that time. In the event the Appellant is able to medically substantiate one or more of the impairments listed in the MPIC Permanent Impairment Schedules, the appropriate course would be to submit a claim to the case manager.

The Commission dismisses the Appellant's appeal with respect to compensation for pain and suffering and confirms the decision of the Internal Review Officer dated January 29, 2004.

3. Entitlement to coverage for medications

The Appellant submits that he should be reimbursed for amounts spent by him on prescription and over the counter medications.

Counsel for MPIC pointed out that the Internal Review Officer, in his decision of January 29,

2004, did not deny all entitlement to the Appellant for compensation for medication. Rather, the Internal Review Officer noted that the Appellant must submit documentation, and particularly, receipts and a report from the prescribing physicians to support this aspect of his claim.

The Appellant argued that he had not submitted any medication receipts because he thought he had already been cut off.

As a result, the Commission dismisses the Appellant's appeal with respect to reimbursement for medication and confirms the decision of MPIC's Internal Review Officer dated January 29, 2004. The Appellant, if he wishes to receive reimbursement for medication expenses, must submit the appropriate documentation and receipts to the case manager.

4. Entitlement to funding for a replacement back brace

Shortly after his accident, the Appellant was provided with a back brace which MPIC paid for. He submits that he continues to require a back brace in order to perform the duties of his employment as an Assistant Chef, which require a good deal of lifting, etc.

In an Inter-Departmental Memorandum dated July 31, 2002, Dr. Timothy Pethrick provided his comments on the advisability and medical necessity for a new body brace for the Appellant.

A back brace is usually considered a short term solution to support injured structures while they heal and strengthen. It is appropriate to wean an individual from the use of these devices as strength returns in order to reduce the potential reliance on this external support, to the detriment of muscular and other supporting structures. Provision of this type of device at this late date should not be considered medically required and may not be advisable.

The Appellant did not provide any medical evidence to contradict this view.

Section 136(1)(d) of the MPIC Act 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:

(d) such other expenses as may be prescribed by regulation.

Section 10(1) of Manitoba Regulation 40/94 provides:

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
 - (ii) mobility aides and accessories,
 - ...
 - (iv) specialized medical supplies,

Having regard to the medical opinion referred to above, we find that the Appellant has not established, on a balance of probabilities, that he requires a back brace funded by MPIC as necessary or advisable for his rehabilitation. The Commission confirms the decision of the Internal Review Officer dated January 29, 2004 on this issue.

5. Entitlement to funding for replacement corrective boots and shoes

Following the accident, MPIC replaced the Appellant's boots, which had been damaged in the motor vehicle accident.

The Appellant submits that MPIC should also provide him with corrective medical shoes and boots (orthotics).

In an Inter-Departmental Memorandum dated November 1, 2001, Dr. Timothy Pethrick advised that there was no evidence in the Appellant's case that specialized footwear were necessitated by

the effects of the motor vehicle accident.

On May 28, 2002 the Appellant reported at the office of Dr. Ernie Miron, chiropractor, for x-rays and chiropractic examination. The Appellant indicated that he also saw Dr. Miron a few times following this initial assessment. In a report dated May 30, 2002 Dr. Miron concluded that the Appellant's feet pronate excessively and his arches have dropped. This has resulted in a biomechanical gait dysfunction. Dr. Miron states:

. . . Correction of the biomechanical gait issues with custom fitted orthotics will not only help his feet and lower extremities, but will have a significant impact on his entire nervous system as demonstrated by the muscle testing procedures.

Again on July 31, 2002 Dr. Pethrick, in an Inter-Departmental Memorandum, stated:

My opinion on the provision of orthotics has not changed. Provision of a corrective foot bed, while it may be an effective intervention for [L.G.'s] pronated feet, is not related to the motor vehicle accident. There is no report of specific foot trauma in the motor vehicle accident. In addition, there is little literature supporting corrective foot bed orthoses as a medical necessity in recovery from spinal injuries.

Section 136(1)(b) of the MPIC Act provides:

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:

(b) the purchase of prostheses or orthopedic devices;

Although the Appellant may suffer from pronated feet, having regard to the reports of the foregoing medical practitioners, we find that the Appellant has not established, on a balance of probabilities that his gait dysfunction or any need he may have for orthotics are related to the motor vehicle accident. Therefore, we are of the opinion that the Internal Review Officer's decision of January 29, 2004 should be confirmed on this point.

6. Entitlement to funding for a new box spring and mattress

The Appellant submits that MPIC should provide him with a new box spring and mattress. He indicated that he has difficulty sleeping due to pain, and that he has been sleeping on his couch, as it is more firm than his bed, which does not provide him with sufficient support.

On May 30, 2002 Dr. Miron wrote:

In addition, I noticed in the correspondence that he provided to me, there is question of a new box spring and mattress. Proper support for his spinal structures while resting is crucial to the overall recovery from his motor vehicle accident injuries. If one is unable to have restful sleep this healing phase is significantly impeded.

. . . .

[L.G.] requires proper support while sleeping. Adequate rest contributes greatly to the healing process following this type of an injury. . . .

On July 31, 2002, Dr. Pethrick wrote:

A box spring and mattress is an appliance of daily living. Proper sleeping arrangements are beneficial to all, not only those who have been involved in motor vehicle accidents. The need for a proper bed, while undoubtedly comfortable for any individual, cannot be considered a medical necessity related to the recovery from this motor vehicle accident. There is no evidence in the medical literature, to my knowledge, supporting the provision of specialized sleeping surfaces in the treatment of spinal sprain/strain spinal injuries.

Section 136(1) of the MPIC Act, as set out above, provides for reimbursement of expenses subject to the regulations.

Section 10(1) of Manitoba Regulation 40/94 provides:

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
 - (iii) medically required beds, equipment and accessories,

Counsel for MPIC submits that the Appellant has not shown that the mattress and box spring are a “medical necessity” within the meaning of the MPIC Act and Regulations. She notes that while the mattress and box spring may be beneficial for the Appellant, they are not medically required.

We are of the opinion that Dr. Miron’s opinion falls short of establishing that the mattress and box spring will materially improve his recovery from his accident. We find that the Appellant has failed to show, on a balance of probabilities, that the mattress and box spring are medically required within the meaning of the MPIC Act and Regulations, and confirm the decision of the Internal Review Officer, dated January 29, 2004, on this point.

7. Entitlement to funding for retraining

The Appellant was employed as a Cafeteria Worker/Class 2 – Chef’s Assistant. He indicated that he returned to work on April 30, 2001, three weeks after the accident. He worked on light duties for a short period, and then returned to full duty. Although the Appellant submitted that he is losing capacity for many of the physical demands of his job, he has continued in full employment in this position until the present time.

Counsel for MPIC submits that there is no medical evidence that the Appellant could not perform his job, and in fact, that none of his caregivers has ever suggested otherwise. The Appellant is at his pre-motor vehicle accident employment and has been for quite some time. Whether he may have difficulty in the future is not an issue which MPIC, or the Commission, can deal with at this time.

We find that as the Appellant is able to perform his pre-motor vehicle accident employment, the

Internal Review Officer was correct in deciding that the Appellant is not entitled to any retraining expenses. If difficulties arise in the future, the Appellant would be entitled to go back to his case manager to deal with the issue, but this is not before the Commission at the present time.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decisions of MPIC's Internal Review Officers bearing the dates of December 28, 2001 and January 29, 2004.

Dated at Winnipeg this 21st day of October, 2004.

LAURA DIAMOND

BARBARA MILLER

WILSON MACLENNAN