



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B.S.
AICAC File No.: AC-04-18**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Diane Beresford
Dr. Patrick Doyle

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

HEARING DATE: October 19, 2004

ISSUE(S): Entitlement to physiotherapy treatment benefits

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5 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, B.S., was injured in a motor vehicle accident on December 5, 2002. In her evidence, the Appellant described being in the front passenger seat of the vehicle and striking her right side against the door of the vehicle when it was first hit. She then described the vehicle being hit a second time, when her left arm, which was on the car's arm rest, was jammed forward in a twisting motion, before she was restrained by her seat belt.

Following the accident, the Appellant initially complained of pain in her upper right arm and shoulder. She saw her family physician, Dr. Sandra Lee, on December 11, 2002. Dr. Lee

referred her to Barry Mitchell for physiotherapy, suggesting that she wait a couple of weeks before beginning treatment.

The Appellant gave evidence that on or about December 25, 2002, she began experiencing left shoulder and arm problems. She testified that she recalls this date because she had difficulty keeping up with the demands of the Christmas season.

The Appellant began treatment with physiotherapist Barry Mitchell on January 9, 2003. Mr. Mitchell's initial intake refers to left sided complaints on her neck and shoulder. She had 9 physiotherapy treatments which were funded by MPIC and which she ended on March 11, 2003, complaining that they were too painful.

Due to her persistent left arm and shoulder pain, the Appellant was referred, by Dr. Lee, to Dr. Brian Lukie, at the Pan Am Clinic. In the intervening months, the Appellant suffered from a cold and ear infection and waited for an appointment, but finally saw Dr. Lukie on December 28, 2003. Following examination and x-ray, Dr. Lukie diagnosed adhesive capsulitis in her left shoulder ("frozen shoulder") and prescribed two cortisone needles and special therapy. The needles were injected by Dr. Lukie on May 30, 2003. Following this treatment, it was recommended that she receive physiotherapy treatments, every 2 weeks, with Shannon Larkins at the Pan Am Clinic. The Appellant continued to receive physiotherapy treatments from Shannon Larkins, in addition to doing special exercises at home, until September 9, 2003.

However, on August 26, 2003 the Appellant's case manager advised her that it was the opinion of MPIC that it was not medically probable that the left shoulder adhesive capsulitis was causally

related to the motor vehicle accident of December 5, 2002 and that no further funding for physiotherapy treatments would be provided beyond August 8, 2003.

Internal Review Decision

The decision of the case manager was confirmed by an Internal Review Officer on December 23, 2003. She reviewed the medical reports of the Appellant's caregivers and of Dr. MacKay, Medical Consultant to the MPIC Health Care Services Team, and concluded that the Appellant's adhesive capsulitis was not related to the motor vehicle accident and that her physiotherapy treatments should no longer be funded by MPIC.

It is from this Internal Review decision that the Appellant now appeals.

Submissions

The Appellant submits that the condition in her left shoulder was caused by the motor vehicle accident in question and that MPIC should be responsible for reimbursing her for the physiotherapy treatment (and related expenses) she had on September 9, 2003. She also felt MPIC should be responsible for any further treatments which may be required in connection with the left shoulder adhesive capsulitis, and seeks reimbursement for some related expenses incurred in connection with attending physiotherapy treatments prior to August 8, 2003.

Counsel for MPIC submits that the Appellant's left shoulder adhesive capsulitis was not causally related to the motor vehicle accident of December 5, 2002. MPIC takes the position that adhesive capsulitis can develop in the absence of any traumatic event and this was in all probability what occurred in this case.

With regards to the expenses incurred in connection with physiotherapy treatments up to August 8, 2003, Mr. Kumka agreed that based upon previous decisions of the case manager in her case, the Appellant should be entitled to reimbursement. He agreed to submit the Appellant's Record of Travel Expenses to the case manager for payment of related expenses up until that date, and to advise the Commission if any difficulties arose in that regard.

With regard to physiotherapy treatments which occurred after August 8, 2003, counsel for MPIC pointed to the opinion of Dr. Michael MacKay, Medical Consultant to the MPIC Health Care Services Team.

Dr. MacKay reviewed the file and provided reports by Inter-departmental Memoranda dated October 31, 2003, November 10, 2003, November 15, 2003 and August 19, 2004.

Dr. MacKay pointed out that the Appellant had not complained of any left arm pain immediately following the accident and that she did not sustain a traumatic injury to her left shoulder. He noted that in the majority of cases, adhesive capsulitis develops in the absence of a traumatic event and occurs commonly in patients in the Appellant's age group. In his view, the diagnosed adhesive capsulitis is not causally related to the incident in question.

Dr. Sandra Lee provided a report dated October 6, 2003. She stated that she had examined the Appellant in November of 2002 and found her to be in good health without any shoulder pain. She described the right arm and shoulder pain which the Appellant experienced initially after the motor vehicle accident and added:

...She developed left arm and shoulder pain on 25/12/02. She was referred to Dr. Lukie, who diagnosed left post-injury adhesive capsulitis, which he felt was related to the motor vehicle accident of 5/12/02. She was treated with

joint injections and physiotherapy, with improvement of the left shoulder pain. As [B.S.] did not have any pre-existing condition relating to her left shoulder and she developed left shoulder pain after the motor vehicle accident, confirmed with Dr. Lukie's assessment, it is evident that the left shoulder pain is a result of the motor vehicle accident.

Dr. Lukie provided reports dated October 19, 2003 and June 16, 2004. He reviewed Dr. MacKay's submission that adhesive capsulitis can develop in the absence of a traumatic event but noted that it can also result from injury. He also recognized that although frozen shoulder tends to more commonly occur in the 40 – 60 year age group, this condition is not in fact prevalent in the general population.

He stated:

....The appropriate diagnosis was adhesive capsulitis. Apparently this patient had no prior injuries or limitations of function of the shoulder before the motor vehicle accident of December 2002. Therefore the balance of probabilities supports my opinion that the frozen shoulder was a consequence to her motor vehicle accident and the injuries sustained at that time. She also has no thyroid nor diabetes condition that can predispose to spontaneous frozen shoulder therefore my opinion is that this is specifically trauma and injury related...

Discussion

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded physiotherapy treatment if that medical treatment is required because of the accident.

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;

Section 5(a) of Manitoba Regulation 40/94

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;

Counsel for MPIC submits that if the left shoulder pain was caused by the accident, the Appellant would have complained about this earlier. Since she described her symptoms as arising around Christmas time, he argued that the evidence showed that they had developed suddenly around this time and suggests that the cause was not the traumatic accident, but rather her activities around the Christmas season. He submitted that her caregivers did not have all the documentation that Dr. MacKay had available and which showed the sudden development of her symptoms, and the lack of bruising or complaints regarding the left shoulder area, immediately following the accident. He submitted that as a result, Dr. MacKay had done a more thorough analysis of all the material in the file.

On the other hand, Dr. Lee had the benefit of examining the Appellant both before and after the motor vehicle accident. Dr. Lukie and Barry Mitchell also had the benefit of examining her. It was the view of these three practitioners that the need for physiotherapy treatments was directly attributable to the motor vehicle accident of December 5, 2002, and medically necessary.

Dr. MacKay did not have the benefit of examining the Appellant or assessing her demeanor and credibility.

The Appellant testified at the hearing into this appeal, and the Commission found her to be a credible witness. Her position that her condition was caused by the accident is corroborated by the opinions of the three practitioners who examined and assessed her.

Therefore, on the balance of probabilities, we find that the Appellant has established a connection between this condition and the accident.

A review of the Appellant's testimony and of the medical documentation on her file shows a delayed onset of left side symptoms and a corresponding reporting of these symptoms by the Appellant to her caregivers, as they arose. Barry Mitchell, in his report dated March 22, 2004 states:

The pain and limitation that [B.S.] experienced may have been in conjunction with injury to her neck. Problems with the shoulder can result from other than just direct trauma. Dr. David Reid, in his book *Sports Injury Assessment and Rehabilitation* states "the term 'frozen shoulder' describes a syndrome rather than a diagnosis. It is the adverse outcome of several clinical entities, usually within the shoulder complex although sometimes remote." The shoulder receives innervation from the nerves coming from the cervical spine and trauma to this area could have affects more distally, by way of referred pain or the possibility of adverse reaction in the shoulder.

[B.S.] had no neck or shoulder pain before the accident and the adverse affects of the accident was the development of neck and shoulder pain and impairment.

Decision

The Commission therefore determines, on the basis of the Appellant's evidence and submissions and the medical opinions and reports of Dr. Lee, Dr. Lukie and Barry Mitchell that, on the balance of probabilities, the Appellant's left shoulder adhesive capsulitis was caused by injuries sustained in the motor vehicle accident of December 5, 2002.

It is our understanding that the Appellant will be reimbursed by MPIC for allowable expenses incurred in connection with physiotherapy treatments prior to August 8, 2003.

The Commission therefore orders that the Appellant be reimbursed for the cost of all physiotherapy treatments and associated allowable expenses incurred on September 9, 2003.

The Appellant has expressed concerns regarding the need for future treatment, indicating that she intends to see Dr. Lukie again regarding any pain she experiences in her left shoulder.

To date however, no further treatment has been prescribed or recommended by any of the Appellant's treating physicians. If the need for such future treatment arises in this regard, the Appellant will be free to submit such claims to her case manager for determination at that time.

The decision of MPIC's Internal Review Officer dated November 23, 2003, is therefore rescinded. The Appellant shall be entitled to reimbursement for physiotherapy treatment and related expenses as of September 9, 2003. Interest in accordance with Section 167 of the MPIC Act shall be added to that amount.

Dated at Winnipeg this 9th day of November, 2004.

LAURA DIAMOND.

DIANE BERESFORD

DR. PATRICK DOYLE