



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.B.
AICAC File No.: AC-04-83**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Diane Beresford
Mr. Robert Malazdrewich

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

HEARING DATE: November 15, 2004

ISSUE(S): Entitlement to further physiotherapy treatments

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5(a) 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.B., was involved in a motor vehicle accident on August 13, 1999. 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. She suffered from shoulder, neck and back pain, and sought treatment.

Chiropractic Treatment

According to a Memorandum from case manager, Richard Beaumont, dated May 14, 2003, the Appellant had 114 chiropractic treatments between August 1999 and November 2000.

Physiotherapy Treatment

In October 2000, the Appellant began attending for physiotherapy treatment. She had five physiotherapy treatments in 2000, 26 treatments in 2001, 10 treatments in 2002 and 24 treatments in 2003, ending on July 8, 2003.

Throughout this period, the Appellant continued to be employed as a financial officer at a bank. She lived in [text deleted], and was employed in Winnipeg, and the Appellant found that the combination of the time spent sitting while driving to work and at her desk performing her duties, increased her pain. She changed positions, finding employment in the [text deleted], a 15 minute drive from her home, in an attempt to improve the situation.

She continued to attend physiotherapy one or two times per month in the fall of 2000 and then three to four times per month in 2001.

In December 2002, the Appellant's physiotherapist recommended to her family physician, Dr. Judy Komosky, that the Appellant's office be assessed and corrected according to her ergonomic needs. The Appellant also complained to Dr. Komosky about her ongoing pain, and that she felt that hunching over her desk caused worsening of her neck and upper back pain.

Dr. Komosky prescribed Celebrex and requested that the Appellant's office station be assessed and corrected to prevent ongoing strain to her upper back.

The Appellant worked with her physiotherapist, Anita Sen-Dolyniuk, and an occupational therapist, Debra Acton, to assess her work station and make ergonomic changes, including the purchase of a new chair.

The Appellant testified that these modifications helped a good deal to reduce her pain.

In May of 2003, the Appellant moved to [text deleted]. Although she continued to work in [text deleted] for approximately 3 weeks, she testified that she found the commute too difficult for her back, and resigned, to seek employment closer to her home.

On July 2, 2003, the Appellant was advised by her case manager that she had reached maximum therapeutic benefit and that further physiotherapy was not a medical necessity. Accordingly, MPIC recommended that discontinuation of physiotherapy treatment should be done on a tapered basis, with six further physiotherapy sessions to be used at the Appellant's discretion, and completed by December 31, 2003.

Throughout this time the Appellant continued to attend, on a sporadic basis, for physiotherapy treatment and to perform home exercises. She was not sure how many physiotherapy treatments she had during this period, but believed them to be in excess of the six allowed for the purpose of tapering off treatment.

Internal Review Decision

On April 16, 2004, the decision of the case manager was upheld by an Internal Review Officer. The Internal Review Officer relied upon the opinion of Dr. Garnet Fougere, Medical Consultant to MPIC's Health Care Services Team, that the Appellant had reached maximum therapeutic

benefit from physiotherapy treatment and that further physiotherapy would not be a medical necessity.

It is from this decision of the Internal Review Officer which the Appellant has now appealed.

Alternative Treatments

The Internal Review Officer noted that Dr. Fougere had reviewed recommendations for alternatives to physiotherapy treatment made by Dr. Hoy.

The Appellant had been referred to Dr. Hoy by Dr. Komosky. On September 19, 2003, Dr. Hoy wrote to Dr. Komosky describing examination findings consistent with chronic myofascial pain syndrome involving the neck, shoulder and lumbosacral regions and suggested that the Appellant be prescribed more potent analgesics. He advised improving her exercise regime and supplementing it with trigger point injections to address her symptoms.

Dr. Fougere, in a report dated March 31, 2004, noted that it would be reasonable to support the Appellant with a course of treatment under Dr. Hoy. She noted that there had not been a detailed treatment plan or summary of proposed treatment submitted by Dr. Hoy and recommended that one be obtained. While she noted that the medical documentation did not support further physiotherapy treatments, she suggested that the focus be on implementing Dr. Hoy's treatment plan.

The Appellant testified that she saw Dr. Hoy twice; on September 15, 2003 and on March 4, 2004. She indicated that he did not examine her but rather suggested that she watch a videotape depicting exercises she should do. He did not discuss any recommendation regarding trigger

point injections with her, and although this was also recommended in his letter of September 19, 2003 to Dr. Komosky, the Appellant does not recall Dr. Komosky discussing it with her either. The Appellant was not impressed with Dr. Hoy and stated that she did not wish to pursue further treatment with him.

Submissions

The Appellant took the position that she required physiotherapy treatments, on an as needed basis, from July 2003 to the present. She submitted that, with treatment, there has been a great deal of improvement in her condition, and that she required continued physiotherapy treatments to relieve pain she suffers in her neck, shoulders and lower back, when muscles in these areas periodically fall out of alignment. She stated that she is now feeling about 50% better, estimating that when the pain was at its worst, she had rated it at 8 out of 10. Now, she rated her pain at about 4 or 5 out of 10.

The Appellant stated that some of the improvement she feels is due to her stopping work in May of 2004 resulting in reduction of commuting time. This resulted in less sitting for long periods. She felt that the ergonomic improvements made to her work station and modified exercise program have also contributed to the improvement. However, she maintains that when her back “goes out”, it is the physiotherapy which relieves it.

Counsel for MPIC submitted that in order for a treatment to qualify for funding under the MPIC Act, it must meet the test of being a medically required treatment. If the treatment in question no longer produces discernable or lasting improvement and no longer makes a fundamental

difference to the Appellant's condition, treatment can no longer be considered medically required.

In the Appellant's case, counsel for MPIC submitted that the Appellant had reached maximum therapeutic benefit from physiotherapy treatments. He confirmed at the hearing that MPIC continued to support the recommendation that the Appellant pursue some alternate treatment, perhaps along the lines suggested by Dr. Hoy, should the Appellant require it and should she choose to explore this option. However, he submitted that it was clear from a review of the evidence, both on the file, and through the Appellant's testimony, that the Appellant's condition had ceased to change or improve with continued physiotherapy treatments. As of July 2003, the physiotherapy was not having any fundamental effect on her condition and in fact, the Appellant's testimony revealed that she is in much the same condition now as she was then, even though there was a marked decrease in the number of physiotherapy treatments she had in 2004.

Discussion

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, 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) which states:

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;

Dr. Fougere, in an Inter-Departmental Memorandum dated June 13, 2003, reviewed the Appellant's history and stated:

It is evident that the claimant made some gains with chiropractic care initially and continued to make gains with physiotherapy treatment over 2001/2002. Her presentation over the last approximately nine months indicates that she has plateaued in terms of therapeutic gains. Both her chiropractor and her current physiotherapist have suggested that the claimant's static postural positions and/or workstation ergonomics have contributed to her delayed recovery in terms of symptom perception. MPI subsequently supported the claimant with optimizing the ergonomics of her workstation and it is evident from the several reports on file that the claimant has been strongly encouraged to be compliant with postural corrective exercises and to be attentive to postural positioning while at work.

It is this writer's opinion that maximal therapeutic gains have been made from the claimant's treatment under physiotherapy care. The reported periods of time of several weeks to months described in 2002 where the claimant has apparently managed her pain symptoms suggest that she has attempted to incorporate pain-coping strategies into her daily routine. Continued compliance with postural corrective exercises at home and diligence with applying pain-coping strategies to minimize exacerbation of symptoms is recommended. This writer does not see that lasting benefit would accrue from attendance for further physiotherapy care.

On September 19, 2003, Dr. Hoy opined:

This lady appears to have a myofascial pain syndrome in the neck and shoulder, as well as lumbosacral regions secondary to a motor vehicle accident. It may be appropriate to have this lady start on some more potent analgesics, . . . Her exercises really should be optimized . . . She may also benefit from trigger point injection treatments, and I have booked several appointments, approximately 2 weeks apart to undertake these various forms of treatment. I think her overall prognosis is fairly good from a pathological point of view, but the chronicity of this pain situation prognosticates negatively with respect to symptom resolution and fully successful return to maximal function.

Dr. Komosky, on March 4, 2004, stated:

In conclusion, I do agree [L.B.]s suffering from chronic Myofascial Pain Syndrome to her neck and back as a result of the MVA. I do believe physiotherapy as needed should be provided. I'm not sure what Dr. Hoy will offer her on March 4, (e.g. trigger point injections). My experience with these types of injuries is that they can be chronic for years and difficult to treat.

In an Inter-Departmental Memorandum dated March 31, 2004, Dr. Fougere reviewed the reports of Dr. Hoy and Dr. Komosky. She noted in Dr. Komosky's report that the Appellant perceived herself as "*only slightly better since two years ago*" and that Dr. Komosky, unsure of Dr. Hoy's treatment plan, had recommended further physiotherapy attendance.

Dr. Fougere opined that it would be reasonable to support the Appellant with a course of treatment under Dr. Hoy's guidance with the primary focus being on progressing her in the appropriate exercises as recommended by the physiatrist. If progress would be made by supplementing that with trigger point treatment, it was Dr. Fougere's opinion that a trial of same should be attempted. She requested that a summary of a proposed treatment plan be obtained from Dr. Hoy.

She concluded "*. . . With regards to further physiotherapy as proposed by the claimant's family physician, I suggest that the focus be on implementing Dr. Hoy's treatment plan as the medical documentation reviewed to date does not support further physiotherapy treatment.*"

Accordingly, the Commission finds that while the Appellant may have subjectively felt that physiotherapy was providing her with relief of her symptoms, there is not sufficient objective evidence of improvement in her condition to support a need for physiotherapy treatment between July 2, 2003 and the present (with the exception of the six treatments to be tapered off at her

discretion before December 31, 2003). Nor does the evidence disclose deterioration in the Appellant's condition after the physiotherapy treatments were limited.

Therefore, having regard to the opinions of the medical practitioners referred to above, we find that the Appellant has not established, on a balance of probabilities, that further physiotherapy treatment was medically required. 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 her condition, lead us to the conclusion that the Appellant had reached maximum therapeutic benefit from physiotherapy care. Accordingly, ongoing physiotherapy treatments could not be deemed medically required within the meaning of Section 5(a) of Manitoba Regulation 40/94.

Therefore, we are of the opinion that MPIC was justified in terminating payments for further chiropractic treatments for the Appellant, as it did. As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date April 16, 2004.

Dated at Winnipeg this 25th day of November, 2004.

LAURA DIAMOND

DIANE BERESFORD

ROBERT MALAZDREWICH