



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.M.
AICAC File No.: AC-04-79**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Mary Lynn Brooks
Ms. Deborah Stewart

APPEARANCES: The Appellant, D.M., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms. Kathy Kalinowsky.

HEARING DATE: November 22, 2004

ISSUE(S): Entitlement to continued funding for ongoing
physiotherapy/acupuncture treatments

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, D.M., was injured in a motor vehicle accident on July 14, 2002. She testified that she was hit from behind and suffered initially from 'whiplash' symptoms. She also testified that she began to develop headaches from the base of her skull, with pain radiating down the right side of her neck.

As a result of the injuries which the Appellant sustained in the accident, she became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. She sought

treatment from an athletic therapist, Jeff Billeck at the U of M Athletic Therapy Centre. The Appellant described this treatment as physiotherapy. The therapist treated her with heat, ice, and exercises. She often felt better after these treatments, which at first she received three times a week, and then twice a week.

The evidence indicates that the Appellant began therapy with Mr. Billeck on July 22, 2002. By November 8, 2002 she had had twenty-four sessions, with another two sessions on November 19, 2002. In December, the therapist recommended more sessions and on December 17, 2002 Dr. Fougere, a member of the MPIC Health Care Services Team, indicated that an additional four sessions would be reasonable to deal with the exacerbation of her symptoms and to provide her with pain coping strategies for the future.

An x-ray with respect to the Appellant's cervical spine was taken on December 18, 2002. It showed normal alignment and no bone, soft tissue, disk or articular abnormalities. Wide ranges of flexion and extension, with no instability were also noted.

The Appellant had four more treatments, ending on February 18, 2003. There was then a break in her physiotherapy treatment for several months.

In June of 2003, the Appellant attended at her doctor, Dr. J. Scarth, with complaints of pain and trigger points in the neck and upper back. Dr. Scarth, in a report dated June 3, 2003, recommended physiotherapy or, failing that, possible trigger point injections.

The Appellant attended at Ms. K. Dyck, a physiotherapist, who submitted a report dated July 29, 2003. The report describes severe, migraine like headaches which were triggered by neck

stiffness from working and studying. A station evaluation by an occupational therapist was suggested, as were six trial sessions of acupuncture.

Dr. Fougere, Medical Consultant to MPI Health Care Services, provided a memo to file dated August 5, 2003. Questioning the causality of the relationship between the Appellant's current symptoms and the motor vehicle accident, she recommended obtaining clinical records for review.

Dr. Fougere provided another memorandum on August 6, 2003 reviewing the recommendations of Ms. Dyck, the physiotherapist, and stating that it would be premature to consider these recommendations until causality between the symptoms and the motor vehicle collision was established.

A package of clinical notes was received from Mr. Billeck and reviewed by Dr. Fougere. Dr. Fougere noted that the Appellant had a history of TMJ problems (temporomandibular joint syndrome) and that this might be a factor contributing to symptoms, unrelated to the accident. However, she concluded that causality aside, it was evident that maximum benefit had been attained from physiotherapy treatment and continuing with that treatment did not appear warranted.

However, on September 30, 2003, Dr. Fougere authorized a trial of acupuncture treatment indicating that if the acupuncture treatment was for occipito-cervical symptoms, a trial of acupuncture would be reasonable.

The Appellant was a student at the University of Manitoba and also had a part-time job working at the University.

The Appellant testified that she also used Robaxacet and Advil to relieve her symptoms and pursued a course of exercises both at home, and using her gym membership.

The Appellant moved to [text deleted]. Mr. B. Lacaria, a physiotherapist in [text deleted], submitted reports dated October 24, 2003 and October 31, 2003. He described the Appellant's complaints as an intermittent upper cervical pain and headaches and of increased pain with bending, prolonged sitting, overhead work and lifting. He advised that he had performed six acupuncture treatments and that the Appellant had reported a significant reduction in symptoms. Mr. Lacaria noted that the Appellant had full function with symptoms and was capable of working full duties, and recommended a further four weeks of treatment, three times a week, for pain control exercise and stabilization exercises.

The Appellant testified that the acupuncture treatments did help with her headaches.

Dr. Fougere reviewed the documents on the Appellant's file on November 18, 2003 and concluded that another round of treatment would not alter the Appellant's status in a lasting manner. In her view, the further therapy proposed by Mr. Lacaria was not supported based on a file review. Her opinion regarding the causality of the headaches remained unchanged.

Aside from her attendance at Dr. Scarth in June of 2003, the Appellant testified that she did not see or consult further with her doctor in connection with her symptoms. Although she testified that she has a general practitioner in [text deleted], she indicated that she had not consulted this

doctor in connection with her headaches either. She is currently employed full-time in the accounting department at a newspaper. She indicated that she still experiences flare-up symptoms, headaches at the base of the skull and pain down the right side of her neck.

On November 20, 2003, the Appellant's case manager indicated that MPIC would not fund the cost of further physiotherapy treatment.

Internal Review Decision

On February 17, 2004, the decision of the case manager was upheld by an Internal Review Officer. The Internal Review Officer relied upon the opinions of Dr. Fougere stating:

I am not convinced that the treatments being recommended by Mr. Lalaria are "medically required" within the meaning of the PIPP legislation and or that MPI has any obligation to provide funding for those treatments.

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

Submissions

The Appellant submitted that she has not been "fixed" and has not recovered from the effects of the accident. She indicated that she still has a lot of the pain, although she tries to employ pain coping strategies. She has headaches which begin at the base of the skull and pain radiates down the right side of her neck. She still cannot do many of the things that she did previous to the accident, like lifting weights or boxes above her head, and sometimes lifting her children gives her difficulties. These problems did not exist prior to the accident.

Counsel for MPIC submitted that the evidence on the file gave rise to issues of causation. She referred to several different factors from the evidence on the file and the Appellant's testimony

as being potential contributors to the Appellant's headaches and neck pain. These factors included the Appellant's prior history of TMJ problems, the stress of her studies and poor posture and poor computer placement in terms of the ergonomics of her work station.

Counsel for MPIC submitted that the accident was not the cause of the Appellant's continuing problems, but rather that the cause was one of or a combination of these other factors.

In regard to this issue of causation, the Appellant in response, submitted that her TMJ problems occurred ten years ago and have since been resolved. She indicated that she wears a mouth guard and that those problems had been rectified.

The Appellant also submitted that use of her computer work station did not contribute to her headaches, as she had been using a computer, without problems, before the accident. As well, when working part-time at the University, she worked only four hours a day, and was not required to assume a constant position in front of a computer screen. She indicated that she was used to studying and that this did not cause her undue stress in the time period following the accident.

Counsel for MPIC also reviewed the opinions of Dr. Fougere which indicated that another course of physiotherapy treatment would not alter the Appellant's status in a lasting manner. As a result, counsel for MPIC submitted that all the evidence did not show that such treatment was medically required at the time, more than a year and a half after the accident, or today.

Discussion

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded treatment if it is medically required because of the accident. The relevant sections of the MPIC Act 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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

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;

The onus is on the Appellant to show, on the balance of probabilities, that treatment is medically required as a result of the accident.

Although counsel for MPIC and the Appellant do not agree on the cause of the Appellant's continuing symptoms, the Commission after a careful review of the evidence, does not find it necessary to decide the question of causation.

The Commission, after a careful review of the documentary evidence it has received, the testimony of the Appellant, and the submissions of both the Appellant and MPIC's legal counsel, determines that the Appellant has failed to establish, on a balance of probabilities, that continued

physiotherapy/acupuncture treatments were medically required pursuant to Section 5(a) of Manitoba Regulation 40/94. The Appellant did not provide any medical evidence, apart from the report of the treating practitioner, Mr. Lacaria, that supports the need for the proposed treatment. The Appellant's x-rays showed no abnormalities and the medical evidence on file indicates that she had returned to full function and was capable of working full duties. No report from a treating or independent physician was provided to support or recommend the need for further treatment after the six acupuncture treatments in the fall of 2003. It is for these reasons that the Commission accepts the medical opinion of Dr. Fougere. After several reviews of the reports on the Appellant's file Dr. Fougere concluded that additional physiotherapy/acupuncture treatments would not improve the Appellant's medical condition, noting:

“. . . An extensive course of physical/athletic therapy has been provided and in this writer's opinion another round of tx (treatment) would not alter the claimant's status in a lasting manner . . .“

Decision

Accordingly, the Commission finds that the Appellant has failed to show, on a balance of probabilities, that the Internal Review Officer erred in his findings that further physiotherapy/acupuncture treatments were not medically required as a result of the accident.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 17, 2004.

Dated at Winnipeg this 10th day of December, 2004.

LAURA DIAMOND

MARY LYNN BROOKS

DEBORAH STEWART