



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.S.
AICAC File No.: AC-98-107**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Deborah Stewart
Mr. Paul Johnston

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

HEARING DATE: November 30, 2004

ISSUE(S): 1. Entitlement to chiropractic treatment benefits from
February 2, 1998 to March 22, 2000
2. Entitlement to rehabilitation treatment plan 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, L.S., was injured in a motor vehicle accident on November 26, 1995. As a result of her injuries, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the decision of MPIC's Internal Review Officer dated June 22, 1998 in regards to her entitlement to chiropractic treatment benefits from February 2, 1998 to March 22, 2000. She is also appealing a decision of MPIC's Internal

Review Officer, dated August 23, 2000 regarding her entitlement to rehabilitation treatment plan benefits.

Preliminary Issues

A Pre-Hearing Meeting in this matter was held with the parties on February 25, 2004. At that time, Ms. Yvonne Tavares, Deputy Chief Commissioner for the Commission, set the hearing for L.S.'s appeal for July 13, 2004. By letter dated February 26, 2004, the Deputy Chief Commissioner set out the conditions to which the parties would adhere and appropriate timelines for doing so, in order to prepare for the hearing of July 13, 2004.

Following the Pre-Hearing Meeting, the Appellant was in contact with the Commission to discuss concerns and questions regarding the medical documentation for the hearing. However, the Appellant requested an adjournment of the hearing scheduled for July 13, 2004, as her husband had been hospitalized. Counsel for MPIC did not oppose this adjournment.

The hearing was rescheduled and the parties provided with a Notice of Hearing dated September 9, 2004 setting the matter down for hearing on November 30, 2004.

However, several days before the hearing was scheduled to take place, the Appellant requested an adjournment. Counsel for MPIC indicated that MPIC was not prepared to consent to such an adjournment.

The hearing was convened on November 30, 2004 at 9:30 a.m. At the commencement of the hearing, the Commission heard submissions from both parties respecting the Appellant's request for an adjournment. Following deliberation regarding the parties' submissions on the issue of

the adjournment, the Commission declined to grant the adjournment and the hearing proceeded as scheduled.

1. Entitlement to chiropractic treatment benefits from February 2, 1998 to March 22, 2000

In the years following the accident the Appellant received approximately 277 chiropractic treatments, in less than two years. Treatment was provided by a number of different chiropractors. Chiropractic care was provided by Dr. Gilbert Bohemier, Dr. Roland Bohemier, Dr. Steven Gall and Dr. Gerald Desmarais. As well, on October 9, 1997, the Appellant was examined by an independent chiropractic examiner, Dr. D. Chester.

On October 27, 1997, Dr. Chester pointed out that objectively on examination, the Appellant had very few positive findings. He recommended that the Appellant be assessed by a health care professional with regard to chronic pain and pain magnification issues.

On December 18, 1997 the Appellant's most recent chiropractor, Dr. Gerald Desmarais, reported that the Appellant was not capable of performing her daily activities. He recommended continued chiropractic treatment for an unknown duration, on January 26, 1998.

The Appellant's file was reviewed by Dr. Timothy Pethrick, chiropractic consultant to MPIC Claims Services Department, on January 20, 1998. He noted the number of chiropractic treatments the Appellant had received and that the Appellant had received primarily or exclusively passive care with no exercise activity. He also noted Dr. Chester's identification of possible chronic pain issues and possible symptoms of depressive illness. Accordingly, he requested that the Appellant be assessed by her physician so that any issues which may be connected with depression could be addressed, and recommended an assessment by a

psychologist familiar with the management of chronic pain.

Andrew Hawryluk, claims examiner for the MPIC Medical Expense Unit, wrote to the Appellant on February 2, 1998 advising that no further chiropractic billings would be considered for payment by the Corporation.

The Appellant was also referred to Dr. Stambrook, a clinical psychologist and neuropsychologist, who provided a report dated March 11, 1998. Dr. Stambrook stated:

In my opinion, based on my practice in rehabilitation, the care that she has been receiving is inappropriate as it fails to consider the multitude of other factors that are relevant in any patient's functioning and symptomatology particularly given the time that has elapsed and the fact that she has had multiple treatments without substantive treatment. The fact that she has seen multiple practitioners is also a concern here and in situations like this, there are multiple red flags here that this woman requires a broader biopsychosocial approach with a heavy emphasis on psychological review of issues. A singular modality treatment that does not attend to these issues is not going to be unsuccessful.

Internal Review Decision regarding chiropractic benefits

The Appellant applied for an Internal Review of the case manager's decision to discontinue payment for chiropractic treatments. On June 22, 1998, MPIC's Internal Review Officer issued an Internal Review decision following a review of reports by Dr. Desmarais, Dr. Stambrook, Dr. Chester and MPIC's medical consultant. The Internal Review Officer concluded that, based on the clinical guidelines for chiropractic practice in Canada, the Appellant's 277 chiropractic treatments in less than two years was an exceedingly high frequency of care and that further chiropractic care would not be of significant benefit to the Appellant, as the excessive treatment to date had not been successful for her. It was the Internal Review Officer's decision that MPIC would no longer pay for any chiropractic treatments, as they would be of no significant benefit to the Appellant.

Submissions

The Appellant had a history of injuries stemming from car accidents prior to November 26, 1995 and was also involved in two subsequent car accidents, on March 23, 2000 and June 27, 2004. The Appellant submitted that because of the excessive injuries she has suffered in numerous car accidents it has taken longer for her to heal. Accordingly, she requires more chiropractic care than might be the average. She pointed to the opinion of her chiropractor, Dr. Gerald Desmarais, dated April 23, 1998, which stated that there was insufficient evidence to suggest that the Appellant had reached maximum medical improvement, and that definitive discharge dates were not realistically predictable at that time, given the chronicity of her condition.

Counsel for MPIC submitted that under the relevant legislation, the test was whether or not chiropractic treatments were medically required. While he recognized that the Appellant was of the firm belief that the chiropractic treatments were responsible for improvement in her symptoms and made her feel better, this factor, while it might be taken into account, was not conclusive.

He noted that the medical evidence showed that the injuries sustained by the Appellant in the November 26, 1995 accident were of a minor nature and that only approximately \$770 damage had been sustained to the vehicle. Subsequent medical reports showed that she had good range of motion, with subluxation of a minor nature. He pointed to earlier reports of her caregivers, including a report from Dr. Bohemier, dated September 17, 1996, which indicated that the Appellant was capable of returning to work at full duties, with a status of full function with symptoms.

Counsel for MPIC submitted that the Appellant had been treated by approximately 14 chiropractors in total, with three years of passive treatments.

He noted the findings of Dr. Chester, which showed mild cervical and lumbar strain with pain magnification, inconsistent responses, and a possibility of depression. As well, he noted Dr. Stambrook's conclusion that given the multitude of factors present in the Appellant's case, no one kind of treatment was going to help her, without consideration being given to a "broader biopsychosocial approach with heavy emphasis on psychological review of issues."

Accordingly, he argued that it was reasonable for the Internal Review Officer to rely on the opinion of Dr. Pethrick, dated May 28, 1998, that further chiropractic intervention would not be of benefit.

Discussion

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded chiropractic 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.

Having regard to the opinions of the medical practitioners reviewed above, we find that the Appellant has not established, on a balance of probabilities, that continued chiropractic treatment was medically required between February 2, 1998 and March 22, 2000. 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 likely reached maximum therapeutic benefit from chiropractic care as regards injuries sustained in the accident of November 26, 1995, as of February 2, 1998. Accordingly, ongoing chiropractic treatments beyond February 2, 1998 cannot 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 on February 2, 1998, as it did.

2. Entitlement to rehabilitation treatment plan benefits

In 1999, the Appellant's general practitioner, Dr. Ross, referred her to a neurologist, Dr. Fast, who, on December 15, 1999 made a diagnosis of fibromyalgia. This followed Dr. Ross's diagnosis, in 1995, of myofascial pain. Dr. Ross indicated he would support a trial of

physiotherapy and the Appellant advised her case manager that he had referred her for a fibromyalgia treatment program at the Wellness Institute.

The case manager referred the question of treatment in a fibromyalgia program to Dr. Garnet Fougere, medical consultant to MPIC's Claim Services Department. Dr. Fougere reviewed the medical reports on file and noted:

The cause of the claimant's current level of dysfunction is likely multifactorial based on inadequate pain coping skills, as yet unidentified psychological factors (alluded to by Dr. Stambrook), increased deconditioned state due to reliance on passive treatment and multiple insults to the soft tissues as a result of the several motor vehicle collisions. It is likely that the motor vehicle collisions are a significant factor resulting in her current status.

Dr. Fougere concluded that based on the medical information on file, the diagnosis of fibromyalgia was not justified. She recommended that the Appellant receive a thorough psychological assessment of her pain symptoms and that at some point, an improvement in her general level of aerobic fitness, strength and flexibility would be in order.

Internal Review Decision of July 18, 2000

The case manager's decision to decline funding of the treatment at the Wellness Institute and to instead set up a program to improve the Appellant's general level of aerobic fitness strength and flexibility (once she had completed a psychological assessment and possible treatment), was reviewed by an Internal Review Officer of MPIC on July 18, 2000. Based on the opinion of Dr. Fougere, the Internal Review Officer concluded that there was no substantiation for a diagnosis of fibromyalgia and that MPIC would not fund the Wellness Institute program. However, the Internal Review Officer found that a treatment plan should be put in place to improve the Appellant's aerobic fitness, strength and flexibility and that active treatment of the psychological

aspect of the Appellant's case should also be looked at.

Psychological Assessment

The Appellant also saw Dr. John Arnett for a psychological assessment. Dr. Arnett provided a report dated June 19, 2000. Dr. Arnett concluded:

Overall, it is my impression that the pain which [L.S.] experiences is largely psychological in origin and a reflection of her past experiences as a child which have been exacerbated by a husband who himself has admitted difficulties with anger management. Although her mood was extremely flat I saw very little evidence suggestive of physical pain during the more than two hours I spent with her. I believe that the majority of the pain which she experiences is more likely to be related to psychological than physiological variables.

I believe that [L.S.] may benefit from a course of psychotherapy in spite of her likely initial resistance (sic) to such an approach. . . . While she attributes her lack of progress in obtaining a more satisfactory life to a variety of somatic complaints, I believe that the largest impediment for her is psychological in nature. . . .

Following receipt of Dr. Arnett's report, Dr. Fougere reviewed the Appellant's file again on August 8, 2000. She recommended that the primary focus should be on establishing whether there was a psychological component to the Appellant's chronic pain.

. . . The report from Dr. Arnett indicates that in his opinion, there is a significant psychological component to her chronic pain symptoms. Her past history of avoiding active rehabilitative exercise indicates that pursuing this avenue of treatment would likely result in failure. Pursuance of an active rehabilitation program would have more chance of succeeding once the psychological component to her pain is addressed. . . .

My impression as a result of Dr. Arnett's report is that pursuing an active rehabilitation program at this time would likely be unsuccessful. . . .

Dr. Fougere recommended that a reassessment of the decision to offer a rehabilitative program of exercise be undertaken.

Internal Review Decision of August 23, 2000

Following receipt and review of Dr. Arnett's opinion and Dr. Fougere's opinion of August 8, 2000, the Internal Review Officer reconsidered her decision to put a treatment plan in place which focused upon aerobic fitness, strength and flexibility.

In an Internal Review decision dated August 23, 2000, the Internal Review Officer changed her previous decision of July 18, 2000 and found that a treatment plan should not be created for the Appellant at that time.

. . .It is the opinion of Dr. Fougere and Dr. Arnett that such aerobic treatment would not be successful without first treating the psychological component of your chronic pain experience. As the psychological causes of your chronic pain are not related to the motor vehicle accident, that treatment will not be provided by the Manitoba Public Insurance Corporation. If, at a future date, you become a candidate for a successful rehabilitation treatment plan, the Manitoba Public Insurance Corporation will pay for that course of treatment.

It is from this decision of the Internal Review Officer, dated August 23, 2000, which the Appellant has now appealed.

Submissions

The Appellant submits that the Internal Review Officer erred in concluding that psychological factors would prevent the success of an aerobic treatment plan. The Appellant submits that it was not the psychological component of chronic pain which impeded her previous attempts at rehabilitation. Rather, it was the severity of her injuries that had in the past interfered with her ability to successfully participate in rehabilitation programs. She submitted that psychologically, she had continued to be fully functional and to raise her family.

However, the Appellant was of the view that after suffering three accidents in the span of three months, and suffering the effects of a brain stem injury, her rehabilitation needs were more complex. She needed and wanted to be carefully assessed and monitored, and felt that she had not received this kind of care in the past.

Counsel for MPIC submitted that the issue was whether or not in August of 2000 there would be any value in the Appellant receiving physical rehabilitation treatment. Counsel for MPIC referred to Dr. Chester's impression of the Appellant's issues with pain magnification and inconsistent reporting of symptoms which were picked-up by Dr. Pethrick when looking at the Appellant's excessive chiropractic treatment. Both Dr. Stambrook and Dr. Arnett noted psychological components which were playing a role and interfering with the Appellant's recovery.

Counsel for MPIC also pointed out that the clinical tests performed on the Appellant did not show any evidence of the brain stem injury referred to by the Appellant.

He referred to Dr. Fougere's review of the file, in an Inter-Departmental Memorandum dated June 2, 2004 where she stated:

As a medical practitioner, it is disturbing to read clinical notes reflecting that the claimant perceived herself as suffering a brain stem injury, apparently based on a belief that a brain MRI had demonstrated this abnormality. There is only one MRI report of the brain on file (and MRI and angiogram of the brain) for imaging on February 7, 2000. Both investigations were reported to reflect no abnormal findings.

Counsel for MPIC submitted that at the time of the Internal Review Officer's decision, the psychological factors referred to above would prevent treatment from having any benefit to the Appellant, in terms of the physical symptoms that continue to plague her. Until psychological

factors, which were not caused by the accident, were addressed, no benefit could be derived from such a treatment plan. He submitted that at that point in time, for this Appellant, a rehabilitation treatment plan would not have had any benefit, was not warranted and was not medically required.

Discussion

Pursuant to Section 136(1) of the MPIC Act and Manitoba Regulation 40/94, treatment must be medically required. The Commission, after a careful review of the documentary evidence and the testimony of the Appellant, determines that the Appellant has failed to establish, on a balance of probabilities, that either the proposed Wellness Institute program or a treatment plan for aerobic fitness, strength and flexibility would have assisted the Appellant at the time of the Internal Review decision in August of 2000. Based upon the evidence of the medical practitioners referred to above, the Commission finds there is no evidence to show that it is likely that such treatment would be successful, without first treating the psychological component of the Appellant's chronic pain. The Appellant has therefore failed to establish, on a balance of probabilities, that the treatment plan would alter her status and was medically required pursuant to Section 5(a) of Manitoba Regulation 40/94.

Accordingly, the Commission finds that the Appellant has failed to show, on a balance of probabilities, that the Internal Review Officer erred in her finding that a rehabilitation treatment plan was not medically required on August 23, 2000.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decisions of MPIC's Internal Review Officer bearing dates June 22, 1998 and August 23, 2000.

Dated at Winnipeg this 16th day of December, 2004.

LAURA DIAMOND

DEBORAH STEWART

PAUL JOHNSTON