



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.K.
AICAC File No.: AC-03-35

PANEL: Ms. Laura Diamond, Chairperson
Ms. Barbara Miller
Mr. Paul Johnston

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

HEARING DATE: March 8, 2005

ISSUE(S):

1. Entitlement to coverage for further supervised exercise program and further in-clinic therapy and other treatment interventions
2. Entitlement to Income Replacement Indemnity benefits beyond May 13, 2002
3. Entitlement to reimbursement for the costs of chiropractic treatment benefits beyond June 15, 2002

RELEVANT SECTIONS: Sections 110(1)(a) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act), Section 8 of Manitoba Regulation 37/94 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, J.K., was injured in a motor vehicle accident on March 4, 2002. She was also injured in another motor vehicle accident a few weeks later, on March 28, 2002. As a result of

her injuries following these motor vehicle accidents, the Appellant was in receipt of Personal Injury Protection Plan benefits under Part 2 of the MPIC Act.

Although the Appellant was unemployed at the time of the accident, MPIC determined that she was a non-earner with promised employment, as she had been offered a full-time job as a sales consultant with [text deleted], to commence on May 6, 2002. Her training at [text deleted] was postponed as a result of the accident and she was in receipt of Income Replacement Indemnity ('IRI') benefits.

The Appellant also received chiropractic treatment benefits, as well as physiotherapy and athletic therapy.

The Appellant began training at [text deleted] on May 21, 2002 but left employment after three and one-half (3 ½) hours of work and did not return to that workplace.

She also worked at another job at [text deleted], as a merchandising assistant from June 21, 2002 until July 15th, when she left that job and did not return, due to pain.

The Appellant also underwent forty-three (43) chiropractic treatments, physiotherapy, acupuncture and athletic therapy treatments.

The Appellant's case manager decided, on June 13, 2002, that the Appellant ceased to be entitled to be in receipt of IRI benefits as of May 13, 2002. As well, chiropractic treatments were terminated effective June 15, 2002, while on December 20, 2002 supervised in-clinic therapy

with an athletic therapist was discontinued, aside from four (4) acupuncture treatments which were allowed.

Internal Review Decisions

On February 14, 2003, an Internal Review Officer for MPIC upheld the case manager's decision terminating chiropractic coverage and IRI benefits. The Internal Review Officer noted the Appellant's pre-accident medical history as well as medical reports which indicated that there were no injuries from the accident which were preventing the Appellant from returning to the workplace in a sales or merchandising position.

The Internal Review Officer also found that as the Appellant had already received forty-three (43) chiropractic adjustments and was not reporting any improvement, she had reached maximum therapeutic benefit and further chiropractic treatment was not medically required, due to injuries from the accidents, beyond June 15, 2002.

On June 5, 2003, an Internal Review Officer for MPIC considered the Appellant's application to review the case manager's decision to discontinue supervised in-clinic therapy with an athletic therapist. The Internal Review Officer concluded, based upon the medical evidence, that further supervised in-clinic treatment such as physiotherapy and/or athletic therapy treatments was not medically required on account of specific injuries resulting from her accidents.

It is from these decisions of the Internal Review Officer that the Appellant now appeals.

Submissions

The Appellant testified that, as a result of the accidents, she suffered from fatigue, memory loss, hip, lower back and shoulder pain. The quality of her life has been diminished. She cannot meet the office work requirements of sitting at a desk all day, reaching for manuals and doing computer work. She does not sleep at night, is tired and has trouble concentrating.

She submitted that before the accident she was active and happy and that although she had tried to work at positions after the accident, she could not perform.

She attempted to do the training program at [text deleted], but was on her feet and walking all day. There was no way to alternate sitting and standing, and there was a lot of walking on a carpeted concrete floor, which caused excruciating pain in her lower back.

The Appellant indicated that the chiropractic treatments provided some relief from her headaches and her pain.

Other positions which she attempted, involving office work, or at [text deleted], exceeded her physical abilities.

The Appellant pointed to a report provided by Dr. Fast, dated April 15, 2003, who reported on neurological testing he had performed upon the Appellant on November 28, 2002. Dr. Fast noted that he had seen the Appellant in the past for some fluctuating numbness and mild chronic low back pain with scoliosis and a small syrinx at the T5-T6 level, prior to the motor vehicle accident. However, he noted that none of the symptoms had ever affected her work in the past.

Dr. Fast found no evidence of a lesion and concluded that her pain was more likely mechanical

in nature. He stated that it appeared that her symptoms were related to the motor vehicle accidents.

The Appellant submitted that she had never had any problems, prior to the accident, with her shoulders or her hips. Although she had some minor scoliosis, this had never prevented her from holding employment in the past.

She submitted that she could not, due to the injuries from the accidents, perform the kind of work she had done before and was going to need retraining.

Counsel for MPIC noted that the Appellant did not require hospitalization as a result of the accidents in question, and did not qualify for personal care assistance as a result of a nursing assessment conducted on March 16, 2002. She also noted the Appellant's pre-accident medical history which encompassed back problems, scoliosis, prior car accidents, and a history of regular chiropractic treatment.

Counsel for MPIC pointed to the medical evidence, including the opinions of Dr. Pethrick, Chiropractic Consultant to MPIC's Health Care Services Team, Dr. MacKay, Medical Consultant to MPIC's Health Care Services Team, and Dr. Chester, who performed an independent examination and assessment of the Appellant. All of these medical professionals concluded that the Appellant had suffered soft tissue injuries in her accidents from which she had recovered. There were no impairments or physical limitations as a result of the accidents which precluded her from returning to work in a merchandising position. As well, these health care professionals were of the opinion that, after forty-three (43) chiropractic treatments, the

Appellant had ceased to derive any benefit from chiropractic treatment, beyond temporary relief, and further chiropractic treatment was not medically required.

As regards the supervised athletic therapy, these health care professionals were of the view that the Appellant had received a full course of supervised in-clinic therapy and had been discharged to a home exercise based program. As such, there was no longer any medical requirement for further in-clinic supervised therapy.

Discussion

Section 110(1)(a) of the MPIC Act states:

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

Section 8 of Manitoba Regulation 37/94 defines “unable to hold employment” as:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

With respect to the chiropractic issue, Section 136(1) of the MPIC Act provides that, subject to the regulations, a victim is entitled to be reimbursed for expenses incurred by them because of an accident. Section 5(a) of Manitoba Regulation 40/94 states:

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 that injuries resulting from the motor vehicle accidents prevented her from performing the duties of the employment which she would have held had the motor vehicle accidents not occurred. The onus is also on the Appellant to show that further chiropractic treatments and a supervised exercise program and in-clinic therapy were medically required as a result of the accident.

1. IRI benefits

Following a review of the Appellant's testimony and submissions, the submissions of counsel for MPIC and the evidence on the file, the Commission finds that the evidence does not establish, on the balance of probabilities, that the Appellant continued to suffer from injuries resulting from the accident, and preventing the Appellant from performing the duties of employment which she would have held had the accident not occurred, i.e. salesperson at [text deleted].

The medical evidence indicates that the Appellant suffered from soft tissue injuries. She received a good deal of, and a great variety of, therapeutic treatments to address these injuries, including 43 chiropractic treatments, physiotherapy, athletic therapy, massage and acupuncture.

The findings of the MRI and neurological testing by Dr. Fast did not disclose any lesions or abnormalities resulting from the accident.

Although Dr. Fast's letter of April 15, 2003 indicated that none of the Appellant's symptoms had ever affected her work in the past, and that it appeared that her symptoms were related to the motor vehicle accidents, Dr. Fast had only seen the Appellant once, a couple of years prior to the motor vehicle accident, regarding her scoliosis. Following the motor vehicle accident, he did not see her until November 28, 2002, and at that time found no evidence of lesions, leading him to conclude that her pains were more likely mechanical in nature.

Dr. Fast referred the Appellant to Dr. Stitz who found some non-specific complaints, but did not provide a definitive diagnosis or connect these complaints to the motor vehicle accident.

Dr. MacKay reviewed the reports of Drs. Stitz and Fast on April 6, 2004 and concluded

COMMENTS

Information obtained from the above-noted reports indicates [J.K.] continued to report symptoms involving various regions of her body. Information obtained from Drs. Stitz and Fast indicates [J.K.'s] neck and back symptoms might be mechanical in origin. Information that relates to the shoulder indicates that her condition might be in keeping with a subacromial impingement.

From a diagnostic standpoint the MRI did not identify a specific condition that might account for the vast majority of [J.K.'s] symptoms. From a neurological standpoint [J.K.] was not identified as having a specific lesion that would account for her various symptoms. It is possible [J.K.'s] left arm symptoms are in some way related to C7 radiculopathy but in the absence of documented C7 spinal nerve compression, documentation of normal nerve function based on electrophysiological testing and non-specific examination findings noted by Dr. Stitz, (i.e. left triceps weakness) it is my opinion C7 radiculopathy is not medically probable.

Dr. MacKay concludes:

It is my opinion that the medical evidence does not identify [J.K.] as having objective evidence of a physical impairment of function that would preclude her from performing her occupational duties beyond May 13, 2002.

Dr. MacKay's opinion was consistent with an earlier view expressed by Dr. Pethrick, Chiropractic Consultant to the MPIC Health Care Services Team, who indicated, on July 25, 2002 that:

In my opinion there has been no demonstration of physical limitations that would preclude [J.K.] from returning to the workplace in a sales and merchandising position.

These opinions are also consistent with the views expressed by Dr. Chester, who performed an independent medical examination of the Appellant on May 13, 2002. Dr. Chester concluded

In my opinion [J.K.] would be able to start working at the proposed employment at the furniture store on May 20, 2002. Activities of employment will include walking, standing and sitting activities. It is my opinion that the variety of activities involved in her position as a sales woman would be to her advantage. It is my opinion that [J.K.] should be able to fulfill these activities.

There are no findings on this exam that would limit [J.K.] from traveling to and or from her workplace. There is no indication that she would be a danger or a liability to her coworkers.

[J.K.] has been informed that she would be able to have modified time frames for work activities. It may be advantageous to have her start at a ½ or ¾ time and move up to full hours over a 10-14 day time frame.

There are no significant findings on this examination that would preclude [J.K.] from a return to work. In all probability her return to work will be therapeutic for overall situation.

Accordingly, based upon the weight of medical evidence, the Commission finds that the Appellant has failed to establish that after May 13, 2002 she suffered from injuries resulting from the motor vehicle accident which prevented her from performing the duties of the employment which she would have held had the motor vehicle accident not occurred.

2. Chiropractic treatments

The evidence before the Commission was that the Appellant had an ongoing relationship with her chiropractor, Dr. Lambos, and was receiving chiropractic treatment from him on a regular

basis prior to the motor vehicle accident. She testified that she had attended at his office for a chiropractic treatment on March 2, 2002, two days before the motor vehicle accidents.

Following the motor vehicle accidents she had approximately 43 chiropractic adjustments. The evidence was that although she had received a great number of chiropractic treatments, she had not experienced a significant improvement. At best she derived only temporary relief from these treatments.

Dr. Chester, following his independent examination of the Appellant, noted that:

To date [J.K.] has had approximately 43 chiropractic adjustments. At this time she is reporting no change in her symptoms over the last three-four weeks. Because of a lack of improvement with chiropractic therapy in my opinion it is not reasonable to continue the therapy.

Dr. Pethrick reviewed Dr. Chester's opinion and the Appellant's file on July 25, 2002 and stated:

1) Dr. Lambos has supplied a series of reports that demonstrate little or no improvement. It does not appear that [J.K.] is making significant gains with Dr. Lambos' care. Indeed, when she was assessed by Dr. Chester over two months post-accident, she reported high pain levels at 8/10 and significant self-reported functional limitations as evidenced by high status inventory scores, although the scores appear to be enhanced compared to her subsequent physical presentation on examination. She has had a sufficient trial of chiropractic care. In my opinion, further care with Dr. Lambos is unlikely to change her residual symptom expression or functional outcome.

2) I am in agreement that a more active course of treatment would be appropriate. . . .

Dr. Smil, the Appellant's general practitioner, recommended further therapy for the Appellant in an undated note received January 20, 2003. In a report dated September 8, 2003, her only comment regarding chiropractic therapy was that

. . . She continued chiropractic therapy on her own and she is still owing money for it, but it was helpful in relieving some of the pain. . . .

Dr. MacKay addressed the issue of further chiropractic treatment in his reports, concluding on April 6, 2004 that:

The information obtained from the above-noted reports does not lead me to question the conclusion Dr. Pethrick documented as it relates to the need for chiropractic treatment.

It is the conclusion of the Commission that, based upon the weight of medical evidence, the Appellant received sufficient chiropractic treatment as a result of the motor vehicle accidents and had ceased to derive therapeutic benefit by June 15, 2002. Accordingly, it is the finding of the Commission that the Appellant has failed to establish that further chiropractic treatments beyond June 15, 2002 were medically required by the Appellant as a result of the motor vehicle accidents.

3. Supervised exercise program and further in-clinic therapy

The Appellant received a course of ten athletic therapy sessions with John Hayward. His reports indicate that she then progressed to a home exercise based program which he prescribed for her.

Dr. Fast indicated, on April 15, 2003, that the Appellant

Had tried chiropractic treatment, an athletic therapist, and acupuncture. These all seemed to give temporary relief. She thought acupuncture helps the most but she had only four treatments. . .

Recommendations made by another therapist, Cynthia Grant, appeared, with the exception of the acupuncture treatments allowed by MPIC, to be a duplication of the program which had already been implemented by Mr. Hayward.

Dr. MacKay, in his opinion of April 6, 2004 indicated that

Based on my review of the above-noted documents in conjunction with the documents previously reviewed, it is once again my opinion supervised in-clinic therapy programs are not medically required to address a condition [J.K.] developed secondary to the incident in question.

Accordingly, the Commission finds that the Appellant had reached maximum therapeutic benefit from her course of athletic therapy treatment and had progressed to a home-based medical program. There is no medical evidence to show that further such therapy was medically required by the Appellant as a result of the motor vehicle accidents.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decisions of MPIC's Internal Review Officers dated February 14, 2003 and June 5, 2003.

Dated at Winnipeg this 1st day of April, 2005.

LAURA DIAMOND

BARBARA MILLER

PAUL JOHNSTON