



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by C.K.
AICAC File No.: AC-02-56

PANEL: Ms Laura Diamond, Chairperson
Ms Deborah Stewart
The Honourable Mr. Armand Dureault

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

HEARING DATE: March 21, 2005

ISSUE(S): 1. Entitlement to chiropractic care coverage after February 14, 2001.
2. Entitlement to coverage for massage therapy administered by a "registered massage therapist".

RELEVANT SECTIONS: Section 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 5 and 8 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, C.K., was injured in a motor vehicle accident on July 15, 1999. As a result of injuries sustained in the accident, she was in receipt of chiropractic treatment benefits from MPIC.

The Appellant was in receipt of approximately fifty-six (56) chiropractic treatments, and also sought massage treatments from a registered massage therapist.

On March 6, 2001, the Appellant's case manager advised her that, in MPIC's view, she had reached maximum therapeutic benefit from her chiropractic treatment and was not entitled to further chiropractic benefits after February 14, 2001.

The Appellant had previously been advised, as early as October 1999, that massage treatments were only covered under the Personal Injury Protection Plan if administered by a chiropractor, physiotherapist, athletic therapist or medical doctor.

Internal Review Decision

The Appellant's claim for further chiropractic treatment benefits and massage therapy treatments were considered by an Internal Review Officer on January 4, 2002.

The Internal Review Officer for MPIC found that coverage for massage therapy administered by a registered massage therapist was clearly not covered by the MPIC Act and Regulations.

The Internal Review Officer also reviewed an opinion of Dr. Russell Baron, Chiropractic Consultant for MPIC's Health Care Services Team, which concluded that the Appellant had reached maximum medical improvement with chiropractic care and that there was no evidence to support the need for ongoing chiropractic care beyond February 2001. Dr. Baron suggested a short trial of physiotherapy treatments and the Internal Review Officer considered this to be a reasonable suggestion, referring the issue back to the case manager for further handling.

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

Submissions

The Appellant submitted that she required chiropractic care to help with the pain she was experiencing as a result of a torn rhomboid muscle, which she suffered in the motor vehicle accident. Although the tear occurred as a result of the July 15, 1999 motor vehicle accident, it was not discovered until her family doctor, Dr. Narang, requested an MRI of the shoulder blade area in May of 2001. The Appellant then underwent surgery to repair the tear on March 18, 2002.

It was the position of the Appellant that she required chiropractic care and massage therapy to keep the muscles in alignment, and ease her pain for a couple of days at a time, prior to the surgical repair being performed.

She indicated that she also went for physiotherapy before and after the surgery.

It was the submission of the Appellant that Dr. Narang had recommended both massage therapy and chiropractic treatment in his letter of May 17, 2001. Dr. Narang stated:

In my opinion she should continue treatment including massage therapy, physiotherapy, chiropractic therapy & home exercize (sic) plan. It is recommended that she have an MRI of shoulder blade area.

The Appellant argued that she was merely following her doctor's recommendation. She also argued that although she was aware that the Act and Regulations did not cover massage therapy by a registered massage therapist, she noted that in [text deleted], where she was living, massage therapists are regulated.

Counsel for MPIC submitted that the Regulations under the Act do not allow coverage for registered massage therapists. She also argued that there is no written evidence that the Appellant's surgeon, Dr. Hiemstra, recommended massage therapy treatment.

Counsel for MPIC referred to the lengthy history of chiropractic treatment which the Appellant had received, with little or no improvement, for a year and a half (1 ½). Although she noted it was unfortunate that the muscle tear in the rhomboid had not been discovered earlier, this finding did indicate that no amount of chiropractic care would have assisted the Appellant in improving her condition, as surgery was necessary.

Counsel for MPIC also noted that the early estimates for the Appellant's chiropractic care, by Dr. Scarborough, indicated on October 14, 2000, that the Appellant would only require four (4) more months of chiropractic care to maximum medical improvement.

She pointed to Dr. Baron's comments of December 20, 2001 which indicated that ongoing chiropractic care beyond February was not supported by the file contents and that a trial of physiotherapy treatments was recommended.

Dr. Hiemstra, after the surgery, in a report dated April 8, 2002 also recommended physiotherapy.

Therefore, given the Appellant's lengthy history of chiropractic treatment, without sustained benefit or improvement, and the recommendation for a trial of physiotherapy by Dr. Baron and the Appellant's surgeon, it was the submission of counsel for MPIC that chiropractic care beyond February 14, 2001 was not medically required.

Discussion

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;

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;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

Massage Therapy

8 The corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.

The onus is on the Appellant to establish that chiropractic treatment was medically required under the Act and that she is entitled to coverage for massage therapy by a registered massage therapist.

The Appellant submitted that her family physician, Dr. Narang, had recommended chiropractic treatment and massage therapy, as contained in his letter dated May 17, 2001. She argues that she was simply following the orders of her doctor.

However, at that time, Dr. Narang also recommended an MRI of her shoulder blade area. The results of the MRI indicated that there was a shoulder tear which required surgery. As a result, it became apparent that chiropractic treatment would not have improved her condition.

Chiropractic Treatments

The medical evidence establishes that chiropractic treatment did not change the outcome of the Appellant's condition and would not likely have done so. A review of the medical evidence shows that only surgery, in combination with physiotherapy, could have helped to repair the shoulder tear and improve the Appellant's condition. It is unfortunate that it took so long, over a year after the accident, for this to be discovered.

While the panel finds that the Appellant may have derived some temporary subjective relief from chiropractic treatment prior to her surgery, the panel agrees with the opinion of Dr. Baron that it did not and could not lead to improvement in her condition and was therefore of no therapeutic medical benefit to her.

Although the medical evidence indicates that physiotherapy did provide therapeutic benefit to the Appellant and was in fact prescribed by her surgeon, Dr. Hiemstra, on April 8, 2002, there is not currently any appeal before the Commission with regards to physiotherapy treatment benefits. The Appellant, however, can and should submit any unpaid physiotherapy treatment accounts to her case manager for determination, if she has a claim in that regard.

Massage Therapy Treatments

Section 8 of Manitoba Regulation 40/94 makes it clear that there is no Personal Injury Protection Plan coverage for massage therapy administered by a registered massage therapist. Accordingly, the Appellant's claim for such coverage cannot succeed under the Act.

Therefore, based upon the evidence, the Commission finds that the Appellant is not entitled to chiropractic care coverage after February 14, 2001 and is not entitled to coverage for massage therapy administered by a registered massage therapist.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date January 4, 2002.

Dated at Winnipeg this 5th day of April, 2005.

LAURA DIAMOND

DEBORAH STEWART

HONOURABLE ARMAND DUREAULT