



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by P.S.
AICAC File No.: AC-02-79

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Bill Joyce
Mr. Guy Joubert

APPEARANCES: The Appellant, P.S., was represented by her husband, S.S.; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: November 4, 2003

ISSUE(S): Whether the Appellant is entitled to further funding for physiotherapy treatment benefits.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance 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

P.S. (hereinafter referred to as the "Appellant") was involved in a motor vehicle accident on October 22, 2000. The Appellant was operating a motor vehicle which was struck from behind while stopped in traffic. She sustained soft tissue injuries to her neck, mid and lower back. The Appellant, at the time of the accident, who was employed as a [text deleted] at the [text deleted], was initially seen by Dr. G. Lipinski, her personal physician, and subsequently referred for physiotherapy treatment. The Appellant returned to work at the [text deleted] on February 5, 2001.

MPIC reimbursed the cost of the physiotherapy treatments to the Appellant until April 4, 2002 when MPIC's case manager advised the Appellant, by letter on that date, that MPIC would no longer provide such funding. The Appellant applied for review of this decision to an Internal Review Officer.

Internal Review Officer's Officer

On May 16, 2002 the Internal Review Officer issued his decision confirming the decision of the case manager and dismissing the Application for Review. In this decision, the Internal Review Officer relied upon the medical reports of Dr. M. MacKay, a member of MPIC's Health Care Services Team, and stated in this decision:

6. On June 1, 2001, the medical reports were reviewed by Dr. M. MacKay, MD, a member of the MPI Health Care Services Team. On the issue of physiotherapy, Dr. MacKay noted that your exposure to this form of treatment had already greatly exceeded recognized medical guidelines. He felt it was very unlikely that another extensive program of passive treatments (as was being recommended by Ms Robertson) would be required to deal with the increased symptoms you had experienced after returning to work. He was of the view that re-education and a home-based program would suffice in your case. By this point in time, you had attended for approximately 66 physiotherapy sessions since the date of the accident. Treatment appears to have concluded around this time in any event.
7. In November, 2001, you attended for two more physiotherapy sessions. You had recently had a baby and were experiencing renewed symptoms. Even though your complaints were similar to those commonly experienced by pregnant women, MPI agreed to pay for the treatments. Ms Robertson advised the case manager in a telephone conversation on December 11, 2001 that you had not attended since November 8, 2001 and that you had, in fact, failed to show up for two sessions scheduled for the following week. The case manager made it abundantly clear to Ms Robertson that MPI would not fund any further physiotherapy treatments without prior approval from the Health Care Services Team.
8. In mid-February, 2002, you again presented yourself for physiotherapy treatment. In her form report dated February 18, 2002, Ms Robertson suggested you should attend once per week for 6-8 weeks. Again, the symptoms noted (neck and back pain, fatigue, headaches, etc.) are very common among new mothers.
9. Dr. MacKay reviewed the new report and, in his memo dated March 21, 2002, concluded that it was not medically probable that your symptoms were related to the

accident a year and half earlier. The decision of the case manager dated April 4, 2002 adopted this conclusion.

10. No other medical evidence and, in particular, no report from Dr. Lipinski, has ever been provided to support your claim for ongoing physiotherapy coverage.

The Internal Review Officer concluded that MPIC had complied with the provisions of Section 136(1)(a) of the MPIC Act and Section 5(a) of the Manitoba Regulation P215 – 40/94 and stated in his decision:

DISCUSSION & RATIONALE FOR DECISIONS

There are two conditions which must be met before MPI becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:

1. the expenses must have been incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the Act (copy enclosed); and,
2. the treatment must have been “medically required” in accordance with Section 5 of Manitoba Regulations MR P215-40/94 (copy enclosed).

I am not convinced that either branch of the above test has been met in this case.

It seems unlikely – given the passage of time, or your intervening pregnancy – that your current symptoms are causally-related to your motor vehicle accident on October 22, 2000, and Dr. MacKay appears to be firmly of the view that the proposed treatments are not “medically required” in any event.

In the circumstances, I am satisfied that MPI has no further obligation to provide funding for physiotherapy treatments.

The Appellant filed a Notice of Appeal to this Commission dated June 24, 2002. Prior to the appeal hearing Dr. Lipinski, the Appellant’s physician, provided a narrative report dated June 6, 2003 in respect of the Appellant’s treatment of the injuries she sustained in the motor vehicle accident. Dr. Lipinski examined the Appellant on a number of occasions, the last being February 24, 2003. Dr. Lipinski concluded her letter at page 4 by stating:

The problems patient is experiencing now with on going pain in thoracic and lumbosacral spine are definitely related to the injuries sustained in the motor vehicle accident of October 22, 2000.

Appeal

The relevant provisions of the MPIC Act are Section 136(1)(a) and Section 5(a) of the Manitoba Regulation 40/94:

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

At the appeal hearing the Appellant reviewed the injury she sustained in the accident and submitted that she had never fully recovered from the injury she sustained in the accident and required MPIC to continue to fund physiotherapy treatments with respect to the pain to her thoracic and lumbosacral spine. She referred to Dr. Lipinski's letter of June 6, 2003, which indicated that there was a connection between the injuries she sustained in the accident and her present physical problems which required physiotherapy.

MPIC's legal counsel in his submission indicated that the medical opinions of Dr. MacKay in his two reports to MPIC supported the Internal Review Officer's decision that there was no connection between the Appellant's present complaints, pursuant to Section 136(1)(a) of the MPIC Act, and that the treatment the Appellant is requesting to be funded by MPIC was not

medically required in accordance with Section 5(a) of Manitoba Regulation 40/94. MPIC's legal counsel submitted that the Commission should reject the Appellant's request that MPIC continue to reimburse her for the cost of physiotherapy treatments and submitted that the Appellant's appeal should be dismissed.

At the conclusion of the submissions of the parties the Commission recessed the hearing, met privately and decided to obtain an expert opinion pursuant to Section 183(4) of the MPIC Act. The Commission reconvened the hearing and advised both parties of its intention to obtain a medical expert to advise the Commission and adjourned the appeal hearing.

Dr. Michael Johnson, Assistant Professor of Orthopedics and Neurosurgery at the University of Manitoba, and a member of the Winnipeg Spine Program, agreed to provide an independent assessment in respect of the Appellant. Dr. Johnson was provided with all of the relevant medical reports and the essential facts relating to the Appellant's motor vehicle accident, was requested to examine the Appellant, review all of the relevant material, and to advise:

1. whether or not, on April 4, 2002, [P.S.] was suffering from any injuries and, if so, what that assessment is.
2. as to your comments regarding the medically probable cause of those injuries at April 4, 2002.
3. what specific treatment would have been appropriate on April 4, 2002 for each specific injury suffered at that time.
4. the objective basis for any of your medical opinions in respect of the above matters.

On March 2, 2005 the Commission received Dr. Johnson's report dated October 20, 2004 wherein Dr. Johnson stated that he saw the Appellant on October 20, 2004, conducted a physical examination and reviewed all of the relevant medical reports. Dr. Johnson in his letter to the Commission stated:

In spite of limited radiographic information, my impression in regards to [P.S.'s] case would be the following: Firstly, she appears to have sustained a soft tissue injury which

by patient related history relates to the accident. It would be reasonable to expect that since the accident of October of 2000, that she would have plateaued in her rehab phase and that further physiotherapy would be unlikely to be of any assistance. The sole issue appears to be whether continuance of physiotherapy is reasonable, and as the basis at this point in time, physiotherapy management would be centered around stretching and strengthening exercises, I feel it is entirely reasonable that [P.S.] would assume the burden of this upon herself and incorporate these physiotherapy-based activities into her regular life. I do not feel at the current time that organized physiotherapy would be necessary. However, if this sole issue relates to cost, it should be made quite clear that the hospital-based physiotherapists provide the services in the absence of a fee for service agreement. If I can be of any further assistance in this regard, please contact my office. (underlining added)

A copy of Dr. Dr. Johnson's report was provided to both the Appellant and to MPIC's legal counsel with a request that they provide their comments no later that March 21, 2005. The Appellant did not provide any response to the Commission in respect to Dr. Johnson's report.

On March 3, 2005 the Commission received an e-mail from Mr. O'Neill wherein he stated:

I have reviewed Dr. Johnson's report of October 20, 2004, which I received today. It is our submission that Dr. Johnson's comments support our positing that termination of benefits for physiotherapy was appropriate. Specifically, Dr. Johnson says, at p. 2 of his report, "It would be reasonable to expect that since the accident of October of 2000, that she would have plateaued in her rehab phase and that further physiotherapy would unlikely be of any assistance... I do not feel at the current time that organized physiotherapy would be necessary."

Although Dr. Johnson does not appear to have been able to answer your question as to Ms. Sharda's need for physiotherapy in April of 2002, his comments about plateauing, we submit, can be applied to that time frame. The Commission is aware of the health communities' generally held view that physiotherapy is of little therapeutic benefit after several treatments.

We submit the appeal should be dismissed.

Upon receipt of MPIC's legal counsel's e-mail a copy of that was provided to the Appellant, on March 14, 2005, with a request that the Appellant provide her written comments, if any, on or before March 29, 2005. The Commission did not receive any response from the Appellant in respect of Mr. O'Neill's e-mail.

The Commission has met and reviewed all of the evidence that was submitted at the appeal hearing, reviewed the testimony of the Appellant, the medical opinion of Dr. Johnson dated October 20, 2004, and Mr. O'Neill's e-mail dated March 3, 2005.

Dr. Lipinski, in his medical report dated June 6, 2003, supports the Appellant's position. In this report Dr. Lipinski indicates that the Appellant is experiencing on going pain in thoracic and lumbosacral spine which is definitely related to the injuries the Appellant sustained in the motor vehicle accident of October 22, 2000. However, Dr. Lipinski does not provide any objective basis for this conclusion.

On the other hand Dr. Michael MacKay, MPIC's Medical Consultant, in his medical report to MPIC dated June 1, 2001, does set out reasons why in his view there is no causal connection between the motor vehicle accident and the Appellant's physical complaints. Dr. MacKay in his report to MPIC dated June 1, 2001 states:

The medical evidence obtained from the documents presently contained in [P.S.'s] file did not identify objective physical findings in keeping with a musculotendinous tear.

.....

CONCLUSION

Diagnosis

The medical evidence obtained from [P.S.'s] file indicates that she developed symptoms as a result of the collision in question in keeping with a cervical and lumbosacral musculotendinous strain (i.e. WAD II).

Discussion

The medical evidence obtained from the documents presently contained in [P.S.'s] file did not identify objective physical findings in keeping with a musculotendinous tear. It is reasonable to assume that [P.S.'s] symptoms were a result of a mild to moderate strain. The natural history of such a condition is one for recovery over time in the absence of supervised therapy interventions. It is documented that [P.S.] was provided an extensive treatment program that exceeds that normally required to address such a condition. The

main emphasis for any treatment program is to provide assistance to an individual to a point where the individual is able to continue with care independently. Providing excessive passive care can sometimes lead to the development of dependence on the care.

Dr. MacKay, in his report to MPIC dated March 21, 2002, upon reviewing the physiotherapy reports of Ms. Robertson, concludes that it was not medically probable that the Appellant's symptoms were related to an accident a year and a half (1½) earlier.

The Commission finds that Dr. MacKay has provided specific reasons why, in his view, there is no objective basis for determining a causal relationship between the motor vehicle accident and the Appellant's complaints, while Dr. Lipinski has not provided any objective basis for his medical opinion in respect to the issue of causation. The Commission therefore determines that the Appellant has failed to establish, on a balance of probabilities, that as a result of a motor vehicle accident on October 22, 2002, there is a causal relationship between the on going pain and the Appellant's thoracic lumbosacral spine and the motor vehicle accident of October 22, 2000. For these reasons the Commission concludes that the Internal Review Officer correctly interpreted and applied Section 136 (1)(a) of the MPIC Act.

The Commission notes that the appeal by the Appellant also relates to her request for further funding for physiotherapy treatment, subsequent to April 4, 2002 when MPIC determined that funding for physiotherapy treatments would be terminated. In respect of this issue Dr. MacKay, in his report to MPIC dated June 1, 2001, and in his subsequent report of March 21, 2002, concludes that this treatment program of physiotherapy recommended by Ms. Robertson, the Appellant's physiotherapist, is not medically required to address any physical condition arising from the motor vehicle accident. Dr. MacKay determined that the Appellant received an extensive treatment program following the accident which resulted in an overall improvement. Dr. MacKay noted in his report of June 1, 2001 that the Appellant's exposure to physiotherapy

had greatly exceeded recognized medical guidelines, he felt it was very unlikely that another extensive program of passive treatments, as recommended by Ms. Robertson, would be required to deal with the increased symptoms the Appellant had experienced after returning to work. Dr. MacKay further stated that in his opinion a re-education and a home based program would suffice in her case.

The Commission notes that the Internal Review Officer, in his report dated May 16, 2002, indicated that at the time of Dr. MacKay's report dated June 1, 2001 the Appellant had received sixty-six (66) physiotherapy sessions since the date of the accident.

A review of Dr. Johnson's report indicates that he agrees with Dr. MacKay's view that the termination of benefits for physiotherapy were appropriate. Dr. Johnson, like Dr. MacKay, was of the view that since the accident of October 22, 2000 the Appellant had physically plateaued in her rehabilitation phase and that further physiotherapy would unlikely be of any assistance.

Having regard to the medical opinions of Dr. MacKay, which is supported by Dr. Johnson, the Commission is satisfied that the Appellant has failed to establish, on a balance of probabilities, that a continuation of physiotherapy treatments beyond April 4, 2002 was medically required in accordance with Section 5 (a) of Manitoba Regulation 40/94.

For the reasons set out herein the Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated May 16, 2002.

Dated at Winnipeg this 27th day of April, 2005.

MEL MYERS, Q.C.

BILL JOYCE

GUY JOUBERT