



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by P.H.
AICAC File No.: AC-04-172

PANEL: Ms Laura Diamond, Chairperson
Ms Barbara Miller
The Honourable Mr. Wilf De Graves

APPEARANCES: The Appellant, P.H., was represented by W.R.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: June 14, 2005

ISSUE(S): Entitlement to coverage for medication Remeron.

RELEVANT SECTIONS: Sections 136(1) and 171(1) 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

P.H., the Appellant, was injured in a motor vehicle accident on April 14, 2002. As a result of his injuries, the Appellant received chiropractic and medical treatment in accordance with Part Two (2) of the MPIC Act. He has also claimed entitlement to MPIC funded coverage for the medication Remeron, which he has taken, following the accident, to assist with difficulties with pain and sleep.

Remeron was prescribed for the Appellant by his general practitioner, Dr. Dyck. However, on June 29, 2004, the Appellant's case manager wrote to him indicating that the medication would not be covered by MPIC. It was MPIC's view that the medication was for sleep assistance due to back pain, and that the back pain was the result of underlying degenerative changes in his back which pre-dated the motor vehicle accident. The case manager stated that it was medically improbable that the vast majority of his back pain was a result of the injury he suffered in the motor vehicle accident over two (2) years previously.

Internal Review Decision

This decision of the case manager was considered by an Internal Review Officer who issued his decision on the matter on August 20, 2004. The Internal Review Officer reviewed the medical evidence from Dr. Dyck, Dr. Groenewald, the Appellant's chiropractor, Dr. Swenarchuk, and Dr. MacKay, Health Care Consultant to MPIC. He concluded that soft tissue injuries suffered by the Appellant in the motor vehicle accident should not have gotten worse – they should either have resolved or plateaued. The fact that the Appellant's symptoms appeared to have been worsening indicated that the pain was due to the Appellant's underlying degenerative condition, as degenerative conditions do tend to get worse.

He noted:

The worsening of your condition post-accident may suggest the progression of a degenerative condition. Alternatively, you may be suffering from the expression of an emotional injury done to you by the car accident. My earlier Review decision pointed out that Dr. Dyck's December 28, 2002 letter refers, in five different paragraphs, to the exceptional emotional or psychological impact this accident had on you. That earlier decision raised the possibility that Dr. Dyck might refer you for counseling or psychological therapy. I was quite surprised to learn that he has apparently not done so as yet. The decision under Review makes it clear that your case manager is still prepared

to consider funding psychological intervention in your case. Perhaps you should take the matter up with Dr. Dyck. For present purposes, the most important point is that Dr. Dyck provides no evidence he was prescribing the Remeron to address emotional or psychological issues. Accordingly, we cannot even consider extending coverage on that basis.

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

Submissions

On behalf of the Appellant, it was submitted that the Appellant was a man of advanced years who was involved in a motor vehicle accident that severely impacted his quality of life. Although the Appellant had prior medical conditions, these only served to make him more susceptible to injury and less likely to respond favourably to treatment. As a result of the motor vehicle accident he now faced chronic pain, which is often associated with a shortening of life expectancy. The Remeron, which is also an anti-depressant, had been necessary to assist with his difficulties which he had sleeping, due to the pain.

Counsel for MPIC recognized that the Appellant suffered from pain, but suggested that the Appellant's perception of the reason for the pain was not consistent with the evidence. The medical evidence suggested that the Appellant had chronic pain issues even prior to the motor vehicle accident, and a review of Dr. Dyck's clinical notes would bear this out. He had a history of back pain and poor sleep.

While the accident did cause injury and pain to the Appellant, it was submitted by counsel for MPIC that the pain from the accident resolved within a few weeks.

As well, counsel for MPIC noted that Dr. Dyck's narrative report was not always consistent with the clinical notes he had kept. He suggested that a full review of these clinical notes indicated that the Appellant did not complain to his general practitioner about pain from the motor vehicle accident until approximately July 22, 2002. Counsel for MPIC submitted that the Appellant's injuries from the accident had resolved by early May 2002, and that in July 2002 he had more back problems that were likely due to the Appellant's age and other chronic medical conditions and deterioration.

Discussion

The Appellant is only entitled to MPIC funded medical care 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.

Section 5 of Manitoba Regulation 40/94 provides:

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 the requirement for the medication Remeron was caused by the motor vehicle accident.

In preparing for this appeal, the Appellant submitted a narrative report from Dr. Dyck, dated January 24, 2005. Dr. Dyck's clinical notes from November 19, 1996 to January 11, 2005 were also provided, as was an Inter-Departmental Memorandum from Dr. Michael MacKay, Medical Consultant to MPIC's Health Care Services, dated May 16, 2005.

The evidence on the file indicates that the Appellant was first treated, on April 14, 2002, the day of the accident, by Dr. Groenewald, who diagnosed a contusion of the right hip and abrasion of the right elbow.

The Appellant was then treated by his chiropractor, Dr. Swenarchuk, who examined him on April 17, 2002. Dr. Swenarchuk diagnosed thoraco-lumbar strain and right hip sprain.

A review of Dr. Dyck's clinical notes indicates that while the Appellant saw his general practitioner, Dr. Dyck, on April 24th, and reported the motor vehicle accident to him, he also saw him on April 25, April 30, May 7 and May 16. There is no record in the clinical notes made following any of these visits, of a discussion regarding back pain or back pain arising out of the motor vehicle accident.

In May of 2002, the evidence indicates that the Appellant self discharged himself from chiropractic care, as he was not satisfied with the progress he was making. Dr. Swenarchuk reported on July 4, 2002, that as of May 3, 2002, the Appellant's lumbar range of motion (active) was essentially full and that his right hip range of motion (active) was essentially full with mild end range pain.

Dr. Dyck's clinical notes indicated that he saw the Appellant on May 7 and 16, 2002, again with no recorded discussion regarding back pain.

The first recorded discussion of back pain following the motor vehicle accident is found in Dr. Dyck's notes of a visit on July 22, 2004.

From this evidence, counsel for MPIC argues that any back problems arising from the motor vehicle accident have resolved, and complaints of back pain from July 22 and forward were the result not of the accident, but of the pre-existing degenerative changes from which the Appellant suffered.

The onus is on the Appellant to show, on a balance of probabilities, that the back problems necessitating his use of the medication Remeron were caused by the motor vehicle accident.

From the evidence, it appears that the Appellant suffered a soft tissue injury as a result of the motor vehicle accident. He also suffered from pre-existing back problems and degenerative changes in the dorsal and lumbar spine which were evident on the radiological reports.

The Internal Review Officer found that the fact that the Appellant's symptoms had worsened over time, instead of resolving or plateauing, indicated that the degenerative condition was progressing and causing his symptoms, rather than the effects of the accident.

Thus, Dr. Dyck's opinion of January 24, 2005 that the Appellant's back pain was due to the accident, must be weighed against the Appellant's history of pre-existing back problems, the radiological evidence of degenerative changes, and his chiropractor's opinion that the soft tissue injuries he had suffered in the accident had, by his examination, for the most part resolved by May of 2002.

In the panel's view, this finding by Dr. Swenarchuk is consistent with a review of Dr. Dyck's clinical notes, which indicate that he did not record any complaints of back pain from the Appellant until July 22, 2002. This supports the finding of the Internal Review Officer that the

Appellant's soft tissue injuries as a result of the accident had resolved and that his continuing (and worsening) condition was the result of the progression of a degenerative condition.

The Internal Review Officer, however, also reiterated a concern that the exceptional emotional or psychological impact which the accident had on the Appellant could be contributing to his overall condition and pain. The Internal Review Officer stated:

The worsening of your condition post-accident may suggest the progression of a degenerative condition. Alternatively, you may be suffering from the expression of an emotional injury done to you by the car accident. My earlier Review decision pointed out that Dr. Dyck's December 28, 2002 letter refers, in five different paragraphs, to the exceptional emotional or psychological impact this accident had on you. That earlier decision raised the possibility that Dr. Dyck might refer you for counseling or psychological therapy. I was quite surprised to learn that he has apparently not done so as yet. The decision under Review makes it clear that your case manager is still prepared to consider funding psychological intervention in your case. Perhaps you should take the matter up with Dr. Dyck. For present purposes, the most important point is that Dr. Dyck provides no evidence he was prescribing the Remeron to address emotional or psychological issues. Accordingly, we cannot even consider extending coverage on that basis.

The Commission is conscious of the fact that, although this suggestion was not followed, and there is no report before us of a psychological assessment or treatment, there may be some basis for that recommendation, and a possibility of some psychological component or overlay to the Appellant's pain, or possible chronic pain, which may have a connection to the accident.

However, there is insufficient evidence before the panel to date, for the Appellant to meet the onus upon him of showing, on the balance of probabilities, that his difficulties were caused by the accident and not by his pre-existing degenerative condition. Had such psychological evidence been available, the panel would have considered it but, on the evidence before the Commission, the Appellant has failed to establish, on a balance of probabilities, that his continuing back pain is a result of the motor vehicle accident.

It is still open to the Appellant to attempt to obtain psychiatric or psychological assessment and/or treatment. If this occurs, counsel for MPIC has indicated that the Appellant would still

have the option of submitting any new information relevant to the accident to his case manager for review. Under Section 171 of the Act, a claimant can submit new and relevant information to the corporation and request that the matter be reconsidered.

Corporation may reconsider new information

171(1) The corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

Thus, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that he is entitled to coverage for the medication Remeron, as a result of the motor vehicle accident.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated August 20, 2004.

Dated at Winnipeg this 15th day of July, 2005.

LAURA DIAMOND

BARBARA MILLER

HONOURABLE WILF DE GRAVES