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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by W.F.**  
**AICAC File No.: AC-04-223**

**PANEL:** Ms Laura Diamond, Chairperson  
Mr. Antoine Frechette  
Mr. Paul Johnston

**APPEARANCES:** The Appellant, W.F., appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Morley Hoffman.

**HEARING DATE:** September 8, 2005

**ISSUE(S):** Entitlement to funding for physiotherapy treatment 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, W.F., was involved in a motor vehicle accident on July 24, 2001. An application for payment of medical, traveling and clothing expenses was filed on September 24, 2001. The Appellant did not make application for physiotherapy benefits at that time.

In September 2004, the Appellant attended a physiotherapist, Jeff Blair of D'Arcy Bain Physiotherapy, who recommended physiotherapy treatment for a C6 radiculopathy.

On October 1, 2004, the Appellant's case manager issued a decision denying the Appellant's request for physiotherapy treatment benefits. The Appellant sought an internal review of this decision.

### **Internal Review Decision**

An Internal Review Officer for MPIC considered the Appellant's Application for Review and issued an Internal Review Decision dated December 6, 2004, confirming the decision of the case manager. The Internal Review Officer reviewed documentation which the Appellant had provided identifying medical appointments that he had attended, as well as the Primary Health Care Report dated September 16, 2004 completed by Jeff Blair, physiotherapist, documenting a C6 radiculopathy and chronic neck strain and recommending a three (3) to four (4) week trial period of physiotherapy treatment.

The Internal Review Officer also reviewed an opinion provided on September 27, 2004 by Dr. Neil Craton, Medical Director with MPIC's Health Care Services, who reviewed the file.

The Internal Review Officer concluded that the information on the file did not support the Appellant's position that his current symptoms and subsequent need for physiotherapy treatment were causally related to the motor vehicle accident in question.

It is from this decision which the Appellant has filed his appeal.

### **Preliminary Matters**

The Appellant was advised of the date set for his appeal hearing by a Notice of Hearing dated June 17, 2005. Subsequent to this hearing date being set, on July 13, 2005, the Appeal

Commission received an amendment to the Appellant's Notice of Appeal indicating that he had authorized the Claimant Adviser Office to represent him with his appeal.

At 9:30 a.m. on September 8, 2005, the appointed time for the hearing of the Appellant's appeal, neither the Appellant, nor a representative from the Claimant Adviser Office appeared at the hearing. The Appellant was contacted by telephone and advised the panel that he wished to proceed with the hearing by way of teleconference.

When the Appellant was advised that no representative was present from the Claimant Adviser Office, the Appellant indicated that he had not contacted the Claimant Adviser Office after signing the amendment to the Notice of Appeal. However, the Appellant indicated that he wished to proceed with the hearing at that time, without representation by the Claimant Adviser Office, as he wished to complete the hearing of his appeal and was willing to represent himself in this regard.

Accordingly, the hearing proceeded by teleconference and the Appellant represented himself.

### **Submissions**

The Appellant submitted that he had not suffered from neck pain prior to the motor vehicle accident and that such difficulties had only arisen after the accident. He stated that he had first received a prescription for Tylenol #3 and then continued to take the drug, which he purchased illegally. Because of complications in his life at that time, he found it more convenient to cope with his pain in that way.

He then testified that he wanted to stop using the medication and so, went to see a physiotherapist. He was now hoping that a course of physiotherapy would assist him.

Counsel for MPIC submitted that according to the evidence, the accident occurred on July 24, 2001, and the Appellant's attendance at physiotherapy did not occur until three (3) years later, in September 2004.

He referred to Dr. Craton's opinion of September 27, 2004 which noted that the condition of a C6 radiculopathy (which was diagnosed by the physiotherapist) is a serious and painful condition. Dr. Craton noted that "It is not probable someone would go for three years without care. The problem is common without trauma."

Counsel for MPIC submitted that there is no medical evidence prior to September 2004 and the medical evidence that is before the Commission does not support a causal connection between the symptoms in 2004 and the accident in July 2001. Counsel for MPIC submitted that there is nothing there to make this link. People have neck problems all the time without ever having a car accident. The onus is on the Appellant to show that the treatment is medically required because of the accident and there is no medical evidence to support a causal link between the Appellant's current symptoms and the accident.

### **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;

**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.

The onus is on the Appellant to establish, on a balance of probabilities, that the medical treatment benefits sought are medically required because of the accident.

It was the Appellant's position that the Tylenol #3 medication he was taking masked the pain he was suffering after the accident, and the panel does not dispute that this was a possibility. However, the panel finds that this is not sufficient to meet the onus upon the Appellant, which must be met in order to be successful in this appeal. Having considered all of the evidence before us, both oral and documentary, the panel finds that there is not sufficient medical evidence to establish a causal connection between the Appellant's current symptoms and the motor vehicle accident of July 24, 2001. Accordingly, the Appellant has failed to show, on the balance of probabilities, that physiotherapy treatments were medically required as a result of the accident.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date December 6, 2004.

Dated at Winnipeg this 21<sup>st</sup> day of September, 2005.

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**LAURA DIAMOND**

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**ANTOINE FRECHETTE**

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**PAUL JOHNSTON**