



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.D.
AICAC File No.: AC-04-117**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Neil Cohen

APPEARANCES: The Appellant, D.D., was represented by Ms Liisa Cheshire of the Claimant Adviser Office;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: September 28, 2005

ISSUE(S): Entitlement to funding for trigger point injections

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

The Appellant, D.D., was injured in a motor vehicle accident on March 24, 1999. Following the accident, the Appellant suffered from sleep disturbance and pain in her neck, head and face, as well as periodic stabbing inner ear pain.

The Appellant also had a pre-existing history of bruxism, which was diagnosed by her dentist. She testified that this had been caused by grinding her teeth at night and was remedied by a night guard appliance for her teeth which was prescribed for her by her dentist in 1997 and updated for her in 1999.

However, the Appellant testified that because the symptoms which she experienced following the accident occurred around the same region of her face, she incorrectly assumed that this pain was caused by temporomandibular jaw, or 'TMJ' syndrome, and referred to it as such.

Ultimately, however, the Appellant's symptoms were diagnosed, by physiatrist Dr. Hoy, as Myofascial Pain Syndrome. The Appellant sought a variety of treatment for these symptoms.

Following his assessment of the Appellant, Dr. Hoy recommended treatment for Myofascial Pain Syndrome.

Myofascial pain syndrome. Soft tissue treatments such as acupuncture with advanced techniques and/or trigger point injections with anesthetic medications or corticosteroids might be helpful to settle down the painful areas. . . .

In a memorandum dated March 13, 2002 Dr. Fougere, Medical Consultant to MPIC's Health Care Services Team, reviewed Dr. Hoy's assessment of the Appellant and his conclusion that the Appellant suffered from regional Myofascial Pain Syndrome involving her neck and shoulders and muscles of mastication. Dr. Fougere concluded that:

It would be reasonable to offer the claimant up to ten treatment sessions with Dr. Hoy in order to assess her chronic TMJ symptoms. Persistence with treatment is not indicated, given the claimant's pre-existing status and the opinion of the physiatrist that symptom resolution is not an expectant goal.

Dr. Hoy then administered 'dry' needling treatments, which the Appellant testified she did not

find helpful.

The Appellant then sought treatment from another physiatrist, Dr. Arneja. Finally, according to the Appellant, she found relief from trigger point injection treatment administered by Dr. Arneja.

However, following a series of such treatments, the Appellant's case manager wrote to her on November 18, 2003 stating:

As discussed, this confirms our decision regarding Dr. A. Arneja's request for further treatment as outlined in his report of September 21, 2003.

That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information reviewed indicates that there is insufficient evidence to support a causal relationship between your current jaw symptoms, and the motor vehicle accident of December 20, 2000. Therefore, we are unable to approve funding of further trigger point treatment upon receipt of this letter.

The Appellant sought an Internal Review of this decision. The matter was reviewed by an Internal Review Officer for MPIC and a decision issued on April 29, 2004. The Internal Review Officer referred to three (3) reports from Dr. Fougere and quoted Dr. Fougere's opinion that:

On the basis that the late emergence of temporomandibular joint region symptoms may have a cervicogenic origin, pursuing therapeutic treatment was reasonable. Dr. Arneja's correspondence supports that substantial resolution of cervicothoracic region symptoms has occurred in response to his treatment and does not support that there is a cervicogenic source for aggravation of the claimant's chronic pre-existing TMJ symptoms. Review of both Dr. Hoy and Dr. Arneja's correspondences to file suggest that stress issues are influencing the claimant's symptom presentation. It is this writer's opinion that on the balance of probabilities, the claimant's current jaw region muscle irritation is a result of factors unrelated to the previous motor vehicle collisions. Persistence with therapeutic treatment would not be based on injuries sustained in the motor vehicle collision and as such, are not supported.

The Internal Review Officer also relied on a report by Dr. Hillel Sommer, a physiatrist with MPIC's Health Care Services Team, which noted that trigger point injections are not insured by Manitoba Health and the College of Physicians and Surgeons of Manitoba considers such

therapy as developmental. He noted that there was no validated clinical indication for trigger point therapy.

The Internal Review Officer concluded:

As the medical documentation on your file does not support a causal relationship between your current symptoms and the motor vehicle accidents, I must confirm your Case Manager's decision and dismiss your Application for Review.

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

Issues

Causation

Is there a causal relationship between the Appellant's current symptoms and the motor vehicle accident?

The Internal Review Officer found that the medical documentation on the Appellant's file did not support a causal relationship between her current symptoms and the motor vehicle accident.

The Internal Review Officer relied on opinions provided by Dr. Garnet Fougere, of MPIC's Health Care Services Team, on December 20, 2001, March 13, 2002 and October 23, 2003. Dr. Fougere was of the opinion that, on the balance of probabilities, the claimant's current jaw region muscle irritation was a result of factors unrelated to her motor vehicle collisions. She noted both the possibility of an aggravation of the claimant's chronic pre-existing TMJ symptoms and of stress issues which could be influencing the claimant's symptom presentation.

At the hearing into the Appellant's appeal, counsel for MPIC indicated that he was not taking a strong position on the issue of causation, but rather would be focusing his argument primarily on the issue of the medical necessity for the trigger point injection treatments.

The Appellant submitted that although she had previously been in the habit of referring to her symptoms as TMJ related, she had been mistaken. Her symptoms in fact were ultimately diagnosed by Dr. Hoy as resulting from Myofascial Pain Syndrome. Although she had previously had difficulties with the condition of bruxism, which involved night time teeth grinding, this condition had resolved through treatment, prior to the motor vehicle accident, and it was that accident which caused her recent pain and symptoms.

The panel has reviewed Dr. Fougere's reports and the medical evidence provided by the Appellant's caregivers. On October 17, 2001, her general practitioner, Dr. Judy Komosky, provided a report which indicated:

I have seen her on several occasions since her MVA about increasing jaw pain L>R. She has had a pre-existing problem with this, however, there is no question that her symptoms definitely escalated after the MVA. I first saw her January 16, 2001 and then many times after about this. My notes do not reveal any significant problem with this before the accident.

...

Though I cannot prove it I definitely feel the MVA aggravated her symptoms. She is in a fair degree of pain and ARCC will see her right away if you approve coverage for this.

On August 26, 2005, Dr. Komosky indicated (in response to questions from the Appellant) that:

After searching through your medical charts I could not find any record indicating you were treated for neck or back pain [prior to the motor vehicle of March 1999].

Records indicate I have not treated you for any bodily pain other than headaches. (Records date back to Jan '95)

The Appellant's dentist, Dr. Hermann, stated, in a letter dated November 20, 2001:

[D.D.] did have a pre-existing TMJ condition prior to her accidents on March 24, 1999 and December 20, 2000. Her symptoms did however significantly increase following these accidents. It is difficult to be certain whether these accidents were entirely responsible for her discomfort, however it is entirely possible and certainly reasonable to suggest that her current TMJ difficulties are a result of her motor vehicle accidents.

The Appellant was then referred to Dr. Hoy of Associated Rehabilitation Consultants of Canada, who examined the Appellant on January 15, 2002. Dr. Hoy provided a diagnosis of the Appellant's condition as resulting from:

1. Myofascial Pain Syndrome – Neck and shoulders – Moderate Severity
2. Myofascial Pain Syndrome – Muscles of mastication – Mild to Moderate Severity

Dr. Komosky then referred the Appellant to Dr. Arneja for treatment. In a report dated September 21, 2003, Dr. Arneja provided a diagnosis of the injuries sustained by the Appellant in the accident:

Question 1. Your diagnosis of injury sustained in this accident.

She suffered flexion extension and possible irritational injury to her neck complicated by musculoligamentous strain, taut bands and trigger points of the soft tissues (several muscles) leading to contractions of the neck muscles, restriction of movements and pain.

Question 5. Your comments as to what role the motor vehicle accident had on preexisting conditions if applicable.

There is no history of any preexisting condition to the neck or arthritis, or in other words there has been no preexisting condition contributing towards her present clinical picture.

On August 26, 2005, the Appellant wrote to Dr. Arneja and inquired as to whether his recommendation for trigger point injections were for release of “symptoms related to my mva injuries and not related to any other extraneous factors?”.

In response, Dr. Arneja stated

Trigger point injections are indicated to relieve muscle pain and your MFPS is related to mva.

The Appellant also inquired as to whether the recommendation for trigger point injections was related to stress injuries or based on exacerbations of injuries from her motor vehicle accidents.

Dr. Arneja responded

Myofascial trigger points is the complication of whiplash injury resulting from mva which caused exacerbation of her injuries and not related to stress issues.

Discussion

Section 136(1) of the MPIC Act provides for reimbursement of medical care expenses incurred because of the accident:

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.

Following a review of the medical documentation on file, the testimony and submission of the Appellant and the submission of counsel for MPIC, the panel finds that the Appellant's symptoms were a result of and causally connected to the motor vehicle accident. This finding is based upon the bulk of the medical evidence from the Appellant's caregivers, some of whom

were familiar with her condition both before and after the accident, and all of whom have had the opportunity to examine, assess and treat her and her symptoms. The panel accepts the bulk of this medical opinion that the Appellant's symptoms result from myofascial pain syndrome caused by the motor vehicle accident.

Medical Necessity

Were trigger point injection treatments a medical necessity required as a result of the motor vehicle accident?

Counsel for MPIC submits that the trial of trigger point injection therapy which the Appellant received was successful and that the Appellant had attained maximal medical improvement. Therefore, any further therapeutic interventions are not necessary. At the same time, counsel for MPIC also argued that there is no validated clinical indication for trigger point or spinal segmental therapy and as such, they should not be insured by MPIC.

The Appellant argued that she tried several different therapies, including chiropractic treatment, physiotherapy, acupuncture, medication and dry needling. She submitted that she found no relief from these symptoms until trigger point injections were administered by Dr. Arneja. When Dr. Hoy diagnosed the Appellant's myofascial pain syndrome on February 20, 2002, he made the following comments regarding her prognosis

Prognosis

The examinee prognosis for complete resolution of pain complaints is fair. The painful condition has now been present for approximately 2.5 years and has been resistant to a variety of treatments. The examinee has **not** reached her Maximal Medical Improvement (MMI) from a physical point of view. It is medically probable that the claimant will achieve further symptomatic reduction with medical, and/or other rehabilitative interventions.

Dr. Arneja reported on September 21, 2003 regarding a series of treatments and follow up appointments between April 23, 2003 and September 12, 2003. He diagnosed the Appellant's injury sustained in the accident as:

Question 1. Your diagnosis of injury sustained in this accident.

She suffered flexion extension and possible irritational injury to her neck complicated by musculoligamentous strain, taut bands and trigger points of the soft tissues (several muscles) leading to contractions of the neck muscles, restriction of movements and pain.

He recommended the following continued care for the Appellant:

Question 7. Your comments as to whether your patient will be left with any permanent impairment resulting from the injury sustained in this accident.

It is unlikely that she will be left with any permanent impairment resulting from the injuries she sustained in the accident of December 20, 2000 but she may experience intermittently or occasionally recurrence of soft tissue pain manifested by taut bands and trigger points and muscle spasms.

Dr. Komosky reviewed this treatment in a letter dated May 16, 2005. She stated

She continues to experience daily symptoms especially to her left neck and ear regions as well as upper back. . . .

I agree she should have trigger point injections by Dr. Arneja. She has ongoing symptoms from the MVAs. Besides medications, there's not much more we can offer. She found the injections very beneficial.

In a narrative report dated June 2, 2005, Dr. Arneja noted that in follow up with the Appellant he had found a recurrence of trigger point and taut band and that the Appellant had developed recent exacerbation of soft tissue pain with formation of the trigger points. He recommended:

TREATMENT & RECOMMENDATIONS:

She has responded well in the past to the trigger point injections and in my opinion, she would benefit by further trigger point injections with 3-5 cc of 1 % lidocaine into these muscles followed by specific stretching exercises and application of local moist hot packs. She has responded well to this intervention and I am hopeful that she will

continue to respond well to this treatment and she may require once or twice a year trigger point injection intervention.

Trigger points are small exquisitely tender areas which spontaneous on compression or needle penetration cause pain in a distant region called the referred pain zone. The two most reliable criteria for diagnosis of trigger points are point focal tenderness reproduction of symptoms on compression of the point of maximum tenderness. Pressure algometers applied over the maximum tender spot, the pressure threshold established, the critical value indicating an abnormal degree of tenderness consist of pressure threshold which is lower by 2 kg/cm² relative a normal sensitive control point. Repeat critical value indicating abnormal degree of tenderness consists of a pressure threshold which is lower by 2 kg/cm² relative to a normal sensitive control point. The treatment of choice is activation of the trigger points and tender spots with injection of 1% lidocaine with a needle followed by specific stretching exercises and application of local heat modalities. Reference Myofascial Pain and Fibromyalgia by Andrew A. Fisher, MD PhD from Physical Medicine & Rehabilitation Secrets, Second Edition.

The Appellant testified that she found the trigger point injections to be successful in alleviating her pain.

Discussion

Subsection 5(a) of Manitoba Regulation 40/94 provides that medical care must be medically required in order to qualify for reimbursement:

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;

In order for the Appellant to succeed in her appeal, she must demonstrate, on the balance of probabilities, that her ongoing complaints are causally connected to the motor vehicle accident, and that the medical care which she is seeking is medically required.

The panel has reviewed the medical evidence on file as well as the Appellant's testimony and submission and the submission of counsel for MPIC. The panel notes that Dr. Sommer, unlike the Appellant's caregivers, has not had the opportunity to examine the Appellant. He does not address the question of whether this particular Appellant, given her condition and circumstances, would benefit from or require further trigger point injection treatments. Rather, he has provided an opinion as to the merits (or lack thereof) of trigger point injection therapy in general.

Accordingly, the panel has given particular weight to the opinions of the Appellant's own caregivers, who have had the opportunity to examine the Appellant, assess her credibility, and to observe the effects of the various treatments which she has undergone upon the Appellant's symptoms and condition.

Based on the opinions of the Appellant's caregivers, the panel finds that the trigger point injection treatments prescribed and administered by Dr. Arneja were medically required as a result of the motor vehicle accident, and did in fact assist in the improvement of the Appellant's condition. It is the finding of the panel that when MPIC discontinued treatment benefits for the Appellant on November 18, 2003, she had not yet reached maximal medical improvement of the injuries she sustained in the motor vehicle accident, and that further trigger point injection therapy was medically indicated and necessary. Accordingly, in the circumstances, the Commission finds that the course of treatment recommended by Dr. Arneja is medically required within the meaning of Section 5(a) of M.R. 40/94.

Decision

Section 136(1)(a) provides for reimbursement of medical and paramedical care expenses incurred by a victim of a motor vehicle accident "because of the accident". Upon a review of all

the documentary evidence on the file and the testimony of the Appellant, the Commission is satisfied, on a balance of probabilities, that the Appellant's complaints relate to the motor vehicle accident of December 20, 2000.

Subsection 5(a) of M.R. 40/94 provides that medical or paramedical care must be medically required in order to qualify for reimbursement. The Commission is satisfied, on the balance of probabilities, that the course of treatment recommended by Dr. Arneja is medically required within the meaning of ss 5(a) of M.R. 40/94.

Accordingly, the Commission finds that the Appellant was entitled to trigger point injection therapy beyond November 18, 2003 and that these benefits should be reinstated by MPIC. The Appellant is entitled to reimbursement of expenses which she has incurred or may incur for trigger point injections to treat the Myofascial Pain Syndrome which she developed as a result of the motor vehicle accident of December 20, 2000.

As a result, the decision of MPIC's Internal Review Officer dated April 29, 2004 is rescinded and the foregoing substituted for it.

Dated at Winnipeg this 24th day of October, 2005.

LAURA DIAMOND

MARY LYNN BROOKS

NEIL COHEN