



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.A.R.  
AICAC File No.: AC-04-170**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Mary Lynn Brooks  
Mr. Robert Malazdrewich

**APPEARANCES:** The Appellant, M.A.R., appeared on her own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Dianne Pemkowski.

**HEARING DATE:** October 6, 2005

**ISSUE(S):** Entitlement to Personal Injury Protection Plan benefits and  
specifically, entitlement to physiotherapy benefits

**RELEVANT SECTIONS:** Sections 71(1) and 136(1)(a) of The Manitoba Public  
Insurance Corporation Act ('MPIC Act')

**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, M.A.R., seeks Personal Injury Protection Plan ('PIPP') benefits for physiotherapy treatment.

According to the Appellant's Application for Payment, on January 26, 2004, a bus that she was traveling on made a quick stop while she was standing, causing her to grab the back of the seat while her body twisted around. The Appellant reported that she twisted and injured her right shoulder as a result of the incident.

At the hearing into the Appellant's appeal, she described the incident as occurring soon after she boarded a bus. She gave her transfer to the driver and proceeded down the aisle. She had a briefcase in her left hand. When the driver started to proceed quickly through an intersection, and then changed his mind as the light turned, he braked abruptly. The Appellant reached with her right hand to grab for the left side of the bus, and with the momentum, described herself as turning completely around to face the front of the bus, twisting her shoulder. She testified that she thought she felt something happen to her shoulder at the time.

She testified that she sat down on the bus, pulled out some paper and started writing some notes regarding the incident. She did not talk to the bus driver and stated that she forgot, if she ever knew, that it was necessary to report such incidences right away.

However, the Appellant testified that the incident occurred at approximately 8:25 a.m. After writing notes on the bus, she went to her office and made some further notes, at about 10:45 a.m. A copy of these notes were provided to the panel. They refer to a description of the accident as noted above, as well as to front right shoulder pain on the right side halfway between the neck and shoulders, and to headache.

The panel has also been provided with copies of letters which the Appellant faxed to the City of Winnipeg Transit Commendations and Complaints department that day, and again on January 27, 2004 and February 24, 2004.

Following these injuries, the Appellant received physiotherapy treatment. She testified that prior to the accident she had been receiving physiotherapy treatments for an unrelated problem of neck stiffness, and was almost ready to be discharged from that therapy.

The Appellant's physiotherapist, Joanne Carswell, completed a Primary Health Care Report dated March 9, 2004. She recommended physiotherapy twice per week for six (6) weeks, to treat the Appellant's arm and shoulder joint pain and tenderness.

The Appellant's case manager provided a decision on her claim for physiotherapy treatment benefits on April 19, 2004. In denying the Appellant's claim, the case manager noted that as there were no witnesses to confirm that the Appellant's symptoms were caused by an automobile accident, and the operator of the City of Winnipeg Transit Bus had no knowledge of the occurrence, MPIC was unable to consider the Appellant's request for benefits.

### **Internal Review Decision**

The Appellant sought a review of the case manager's decision. An Internal Review decision was issued on June 28, 2004. The Internal Review Officer, in denying the Appellant's claim, noted:

Since there are no independent witnesses to verify your account of the event, and since the driver of the bus at the time of the alleged incident has no recollection of the alleged event, I must uphold (sic) your Case Manager's decision and find that you are not entitled to PIPP benefits and specifically that you are not entitled to reimbursement of physiotherapy treatments.

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

### **Submissions**

Counsel for MPIC submitted that there were no witnesses to the incident and that the Appellant had not reported the incident to the Police or MPIC until the beginning of March. There is no evidence on the file regarding physiotherapy treatment in regard to the incident until March 2004, over one (1) month after the incident.

The Appellant submitted that, because she was upset at the time, it did not occur to her to tell the bus driver about the incident. However, she argued that she immediately made notes, both on the bus and at the office, and wrote to Winnipeg Transit that day in regard to the incident. As Transit Officials misplaced her first letter, she did not receive a timely response from Transit. Because of Transit's delay in responding to her letter she was not in a position to make a claim with MPIC for some time, and this explains a delay of a few months in applying for PIPP benefits.

As well, counsel for MPIC submitted that there was no evidence that the physiotherapy treatment was necessary because of the incident on the bus. There could be many different causes for such an injury.

### **Discussion**

Section 71(1) of the MPIC Act provides that an individual is entitled to a Personal Injury Protection Plan benefit if they suffered a bodily injury as a result of a motor vehicle accident.

#### **Application of Part 2**

**71(1)** This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Section 136(1)(a) of the MPIC Act provides for medical care and reimbursement of expenses incurred by a victim '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;

The onus is on the Appellant to show, on a balance of probabilities, that she was involved in an accident which caused her injuries.

The panel has reviewed the testimony of the Appellant, the evidence on the file, and the submissions of the Appellant and counsel for MPIC. The panel finds the Appellant to be a credible witness. We have reviewed the notes and letters submitted by her, and when reviewed alongside her testimony, the panel finds that the incident she described on the Transit Bus did occur.

The Appellant testified that the incident occurred at approximately 8:25 a.m. on January 26, 2004. The Appellant submitted notes which were written on the bus at that time. By 10:45 a.m., while at her office, she added to those notes. At 11:43 a.m. she faxed a letter to the City of Winnipeg Transit Commendations and Complaints department which included the statement:

At the moment I feel some pain in my right shoulder, neck and arm, not severe enough, I don't think, to go to an Urgent Care department.

In her submission, the Appellant candidly admitted that her physiotherapist had expressed the opinion that the injury she suffered could have resulted from the kind of incident which occurred on the Transit Bus, but could also have occurred as a result of many other kinds of injuries, such as improper lifting. However, the short time span between the occurrence of the incident and the

emergence of symptoms, which was less than three (3) hours, leads the panel to the conclusion that the Appellant's symptoms were caused by the accident.

Accordingly, the panel finds that the Appellant has met the onus upon her showing that an accident occurred which caused the injuries to her shoulder.

The Appellant submitted two (2) reports from her physiotherapist. The first, dated May 9, 2004, indicated that she would require physiotherapy treatments twice per week for six (6) weeks. The second, dated June 8, 2004, indicated a need for treatment twice per week for a further four (4) to six (6) weeks. The Appellant has testified that she continued to receive treatment, sometimes weekly and sometimes twice a week, for a period of approximately one (1) year.

As a result of the contradiction between the two (2) physiotherapy reports and with this testimony, the panel does not have sufficient medical evidence to determine the number of physiotherapy treatments ultimately required by the Appellant as a result of the accident, beyond the six (6) weeks following March 9, 2004, to June 8, 2004.

The decision of MPIC's Internal Review Officer dated June 28, 2004 is therefore rescinded. The Commission orders that the Appellant be reimbursed for physiotherapy treatments received following the accident until June 8, 2004. Interest in accordance with Section 163 of the MPIC Act will be added to that amount.

The question of the number of physiotherapy treatments after that date for which the Appellant is entitled to reimbursement by MPIC, shall be referred back to the case manager for determination. The Commission retains jurisdiction in this matter and if the parties are unable to agree as to the

amount of physiotherapy treatment benefit reimbursement to which the Appellant is entitled after June 8, 2004, then either party may refer this dispute back to the Commission for final determination.

Dated at Winnipeg this 31<sup>st</sup> day of October, 2005.

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**LAURA DIAMOND**

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**MARY LYNN BROOKS**

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**ROBERT MALAZDREWICH**