



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by W.J.
AICAC File No.: AC-04-216

PANEL: Ms Laura Diamond, Chairperson
Mr. Mel Myers, Q.C.
Ms Deborah Stewart

APPEARANCES: The Appellant, W.J., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Dean Scaletta.

HEARING DATE: November 15, 2005

ISSUE(S): Entitlement to physiotherapy treatment benefits

RELEVANT SECTIONS: Section 136(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

Preliminary Matters

A hearing into the above noted appeal was convened on November 15, 2005. Although two members of the panel were present, as well as the Appellant and counsel for MPIC, one panel member was unable to attend, due to a snow storm. However, the panelist was available to participate in the hearing by teleconference, and was in possession of and had reviewed the documentary material on file.

The Appellant and counsel for MPIC were asked whether they had any objection to proceeding in this manner, or whether they would prefer to adjourn and reschedule the hearing to a later date.

Both the Appellant and counsel for MPIC indicated they had no objection to proceeding by way of teleconference with the third panelist.

The hearing proceeded on that basis.

Issue

The Appellant, W.J., was involved in a motor vehicle accident on June 5, 1999. As a result of his injuries, the Appellant was in receipt of Personal Injury Protection Plan ('PIPP') benefits, including chiropractic and physiotherapy treatments, as well as trigger point injection therapy.

On May 5, 2004, the Appellant's physiotherapist recommended that the Appellant attend for two (2) further physiotherapy treatments in the summer and fall of 2004.

This treatment plan was rejected by the Appellant's case manager who indicated that further treatment would be elective therapy and that additional physiotherapy treatment was not a medical necessity.

The Appellant sought internal review of this decision, and, on September 16, 2004, an Internal Review Officer for MPIC upheld the case manager's decision. The Internal Review Officer found that the physiotherapy treatment recommended by the Appellant's physiotherapist was not medically required. He stated:

One of the key considerations in determining whether recommended treatment is “medically required” is whether there is any real likelihood that it will lead to demonstrable improvement in the condition of the patient. Considering the extensive passive therapy you have undergone since the accident, it seems highly unlikely that further physiotherapy will result in any such demonstrable improvement. There are no functional deficits noted that would preclude you from proceeding with your exercise program independently.

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

Submissions

The Appellant submitted that if, as the Internal Review Officer stated, the test of whether recommended treatment is medically required is whether there is any real likelihood that it will lead to demonstrable improvement in the condition of the patient, he meets that test in this case.

The Appellant noted that through the course of his recovery from his injuries, he had remained at high levels of functioning, and continued to work, although he had been forced to curtail certain recreational activities and work around his home. With treatment, he submitted, his condition got progressively better. However, he is not yet at the point where his recovery is complete.

The Appellant noted that both Dr. Arneja, and his physiotherapist, Mr. Lavalley, were of the view that further physiotherapy was required in order to evaluate the results of the exercise program he was following, and to recommend any changes in the regime as required. This treatment was medically required so as to ensure that further progress could be made in his condition. The Appellant submitted that he had not yet reached the point where his recovery was complete and that as a result, MPIC should be required to provide the physiotherapy treatments necessary for him to regain his strength and continue reducing his pain.

Counsel for MPIC submitted that over a five (5) year time span, MPIC had funded a considerable amount of passive therapy for the Appellant. The case manager repeatedly approved the coverage extensions requested by the Appellant's physiotherapist. The reports indicated that from the time of the accident in 1999, the Appellant had displayed a high level of function in terms of the activities of daily living. He argued that it seems doubtful that continued passive therapies, or semi-annual monitoring of his exercise techniques would be likely to produce any demonstrable improvements in his function. Accordingly, the Internal Review Officer correctly concluded that there was no evidence that further treatments are medically required.

Discussion

The onus is on the Appellant to show, on a balance of probabilities, that further physiotherapy treatment is a medical necessity.

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.

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.

In a report dated August 25, 2004, Dr. Arneja reviewed the Appellant's treatments and stated:

. . . He has responded at a slow pace but reasonably well with good success to the physiotherapy treatments including local ultrasound, mobilization and strengthening exercise program as well as to the trigger point injections to the left pelvic girdle and paraspinal muscles.

Dr. Arneja recommended that MPIC should review his case and:

“ . . . fund further treatments regarding further physiotherapy treatments and trigger point injection treatments. The frequency and duration of these treatments will be sporadic. He may require every 3 to 4 months, one week of physiotherapy and/or one to two trigger point injections and this certainly would control or significantly improve his symptoms and improve his quality of life, so he will be able to continue his job as a [text deleted].

The Appellant's physiotherapist, Mr. Lavallee, described the objective, subjective and functional improvement in injuries which the Appellant had achieved under his care. He noted, on August 25, 2004, that the Appellant was still unable to perform minimal repetitions of a single leg bridge and that:

. . . Further treatment is a medical necessity because [W.J.] has not reached his full physical potential despite the time that has elapsed. . . .

Mr. Lavallee recommended “. . . 1 treatment per season (summer and fall) for a further consult and exercise review.”

It was the physiotherapists opinion that “. . . [W.J.] can still improve and rehabilitate further. It is a clear medical necessity for Mr. Johnson to gain further physical independence. With the continued consultations of his medical team, his efforts to rehabilitate and MPI's support, [W.J.] can make further functional gains.”

Accordingly, the panel is of the view that the Appellant has met the onus upon him, of showing, on a balance of probabilities, that the two (2) physiotherapy treatments recommended by his physiotherapist are medically required in accordance with Section 5 of Manitoba Regulation 40/94. The evidence of the Appellant's caregivers is that the Appellant's condition has improved and that he has made gains with the treatments he has received to date. They are also of the view that further physiotherapy treatment is required to evaluate the progress that has been made and make changes to his program, so that further progress may result.

Accordingly, the Commission finds that the Appellant is entitled to MPIC funding for two (2) further physiotherapy visits as were recommended by the physiotherapist, Mr. Lavallee.

The decision of MPIC's Internal Review Officer dated September 16, 2004 is therefore rescinded. The Appellant shall be entitled to two (2) MPIC funded physiotherapy visits, as recommended in the physiotherapy report dated May 5, 2004, to "reassess and progress exercise program" and for "progression of technique".

Dated at Winnipeg this 22nd day of December, 2005.

LAURA DIAMOND

MEL MYERS, Q.C.

DEBORAH STEWART