



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.S.
AICAC File No.: AC-05-185**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, R.S., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Danielle Robinson.

HEARING DATE: March 23, 2006

ISSUE(S): Entitlement to further chiropractic 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

The Appellant was injured in a motor vehicle accident on November 23, 2001. Following the accident, he attended at a physiotherapist and was diagnosed with a muscular tendinous strain involving his cervical spine, consistent with a whiplash associated disorder (WAD 2) injury. He suffered from shoulder and neck pain and a restriction in cervical range of motion.

The Appellant's physician, Dr. Doctorow, confirmed his whiplash injury on January 16, 2002. He noted full function with symptoms and prescribed Flexeril and physiotherapy as well as massage therapy.

On January 31, 2002, a medical consultant with MPIC's Health Care Services, Dr. Fougere, reviewed the Appellant's file and provided an opinion that, at two months post-motor vehicle collision, the Appellant had progressed beyond the acute stages of injury and that the emphasis on treatment should be on active rehabilitative exercise and not massage therapy.

The Appellant testified that after attending for several physiotherapy appointments with two different physiotherapists, he felt that this was not helping him.

He said that he found massage therapy very helpful and felt substantially better. However he had difficulty finding a practitioner to perform massage therapy under the MPIC guidelines.

Physiotherapist Sherry Wang recommended, on May 17, 2002, that the Appellant resume physiotherapy at a frequency of three (3) treatments per week. However, the Appellant's last physiotherapy treatment was on May 21, 2002, as the Appellant indicated that he did not recognize benefit from that type of treatment.

Approximately three (3) years later, in July of 2005, the Appellant started attending for chiropractic treatment with Dr. Egey-Samu, DC. He wrote to his case manager on July 26, 2005 indicating that recently his neck troubles had become more difficult and requesting coverage for chiropractic care.

Medical Evidence

The Appellant submitted documentation provided by his massage therapist, Lynn Jarvis Almonte, dated October 3, 2005, advising that he had been treated once every three (3) months

to address complaints of cervical and upper back tightness with decreased range of motion. She noted:

After working in my field for over 9 years I often deal with clients who are experiencing pain, contraction, tension or loss of range from an accident or injury that they experienced years before.

Ms Almonte also clarified that the Appellant's last appointment was in the second week of September 2002.

The Commission also reviewed a Primary Health Care Report from the Appellant's chiropractor, Dr. Egey-Samu. This report indicated a clinical diagnosis of moderate chronic vertebral subluxation/fixation and recommended chiropractic treatment three (3) times a week for six (6) months. The report is dated July 6, 2005.

Dr. Baron, Chiropractic Consultant for MPIC's Health Care Services Team, reviewed the Appellant's file and, on August 4, 2005, opined:

Current file contents do not provide evidence to suggest that there is a probable relationship between the MVA & the current necessity for care.

Internal Review Decision

The Appellant's case manager wrote to him on August 4, 2005 denying coverage for chiropractic care, as there was insufficient medical information on file to suggest that the current necessity for chiropractic care bears a relationship to the motor vehicle accident.

The Appellant sought an internal review of this decision. On October 13, 2005, an Internal Review Officer for MPIC found that the file material failed to establish that the Appellant's current symptoms and subsequent need for chiropractic treatment were required as a result of the accident in question. The Internal Review Officer stated:

Given the lengthy time period which has elapsed since the accident (approximately three years), as well as the lack of consistent objective documentation, I have difficulty accepting that your current symptoms are causally related to the motor vehicle accident of November 23, 2001.

Although I can appreciate your very firm conviction that a causal relationship exists, the objective medical documentation fails to support your review. I am unable to conclude that Mr. Reeves' decision of August 4, 2005 was made incorrectly based upon the provisions of the Personal Injury Protection Plan.

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

Submissions

The Appellant submitted that he had followed all the guidelines and procedures set out by MPIC. He attempted physiotherapy treatments, but did not abuse the insurance system, and ceased such treatment when he found it was not helping him.

He then tried massage therapy, but found it difficult to find a practitioner that would qualify under MPIC's requirements that massage therapy be performed by a physician, physiotherapist or athletic therapist. He tried medication such as Naproxen, but found this hard on his stomach.

Once he found that chiropractic care helped him, he felt that MPIC should be responsible for this cost.

The Appellant noted the lack of follow-up on his claim by his MPIC adjuster or case manager. He was never asked to see a different medical practitioner or to try another form of treatment.

The Appellant also addressed the lengthy time span between the motor vehicle accident in November 2001 and his request for chiropractic care in July of 2005. The Appellant submitted that he had continued to suffer periodic flare-ups, and when he was educated regarding the possibilities of chiropractic care, he decided to pursue this. He noted that according to a booklet published by MPIC regarding the Personal Injury Protection Plan, only seventy-five percent (75%) of whiplash victims are pain free after a year. He argued that if twenty-five percent (25%) could still feel pain after a year, he could still be in pain two (2) or three (3) years after the accident. He firmly believed that his pain was caused by the motor vehicle accident, as, other than that, he had always been extremely healthy, and there were no other extenuating circumstances.

Counsel for MPIC noted Dr. Fougere's initial assessment of the Appellant's case, dated January 31, 2002. Dr. Fougere noted that:

. . . the claimant suffered relatively minor soft tissue injuries consistent with a WAD 2 injury.

Counsel for MPIC argued that Dr. Fougere was correct in her assessment that, with such relatively minor injuries, the injury had moved beyond the acute phase two (2) months after the motor vehicle accident. Dr. Fougere had recommended active rehabilitation.

Counsel for MPIC reviewed the Health Care Report completed by Sherry Wang, indicating that the Appellant's last physiotherapy treatment was on May 21, 2002.

She examined Dr. Egey-Samu's report of July 6, 2005, which was the next report to the file, more than three (3) years after the last physiotherapy treatment.

She noted that Dr. Egey-Samu set out no objective medical evidence to establish that any injury or symptoms experienced by the Appellant were due to the motor vehicle accident that took place nearly four (4) years earlier.

This was confirmed by Dr. Baron, who stated that the file did not contain any evidence to suggest that there was a probable relationship between the motor vehicle accident and the current necessity for care.

The evidence from the physiotherapist, Lynn Jarvis Almonte, was vague. She admitted that she had last treated the Appellant in September 2002. As such, she could have no knowledge regarding any current need for treatment or current need for chiropractic treatment by the Appellant.

The Internal Review decision also focused on the lack of medical evidence to connect the Appellant's complaints to the motor vehicle accident, including a lack of information regarding medical treatment since 2002.

Dr. Egey-Samu's report contained no analysis whatsoever regarding whether the symptoms the Appellant complained of were as a result of the motor vehicle accident. Accordingly, there is no objective medical evidence to support the Appellant's argument that his current need for treatment is as a result of his motor vehicle injury. Counsel for MPIC submitted that the

Appellant did not meet the tests which must be met under Section 136(1)(a) and Section 5 of Regulation 40/94, to establish that a treatment must be medically required as a result of the motor vehicle accident.

Given the three (3) year span of time and the complete lack of medical evidence to support a connection with the motor vehicle accident, counsel for MPIC submitted that the Appellant does not meet these tests and that the decision of the Internal Review Officer should be upheld.

Discussion

Section 136(1) of the MPIC Act and Section 5 of Regulation 40/94 provide:

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;

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 show, on a balance of probabilities, that the chiropractic treatment he is seeking is medically required as a result of the motor vehicle accident of November 23, 2001.

The Commission has reviewed the medical and other information on file, as well as the submissions of the parties.

While I agree with the Internal Review Officer that the Appellant is sincere in his conviction that his symptoms are as a result of the motor vehicle accident, I find that there is not sufficient medical evidence to support the Appellant's position.

As counsel for MPIC points out, the motor vehicle accident took place approximately three and one-half (3 ½) years prior to the Appellant seeking chiropractic care. He has not provided any medical reports or evidence establishing a connection between the motor vehicle accident and his current need for chiropractic care. The report from the massage therapist, Lynn Jarvis Almonte, noting that she often deals with "clients who are experiencing pain, contraction, tension or loss of range from an accident or injury that they experienced years before" is too general a statement to meet the onus upon the Appellant to show that the need for treatment was caused by the motor vehicle accident. This practitioner had not treated or examined the Appellant for three (3) years, at the time of this report.

This evidence does not meet the onus upon the Appellant to show that the need for chiropractic treatment was caused by the motor vehicle accident. Nor did Dr. Egey-Samu's report of July 6, 2005 contain any analysis regarding or establish any connection between the motor vehicle accident and the Appellant's current condition.

Accordingly, the Appellant has not met the onus upon him to show that chiropractic care is currently medically required as a result of the motor vehicle accident of November 23, 2001.

For these reasons, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated October 13, 2005 is hereby confirmed.

Dated at Winnipeg this 3rd day of April, 2006.

LAURA DIAMOND