



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.K.
AICAC File No.: AC-05-198**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, M.K., appeared on his own behalf by way of teleconference call;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: June 13, 2006

ISSUE(S): Entitlement to Physiotherapy Benefits

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act (the '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, M.K., was injured in a motor vehicle accident on October 10, 1998. He was examined in hospital by an emergency physician, and later by his family physician, Dr. Cordova. He was knocked unconscious by the motor vehicle accident and experienced poor memory and concentration. He also fractured one rib and complained of a sore neck.

Following the accident, the Appellant received physiotherapy treatment, from December 16, 1998 until January 25, 1999, receiving a total of eight (8) treatments.

In April of 2005, the Appellant complained to his case manager that he was having ongoing back problems and would like to return for physiotherapy treatment for his low back pain. The case manager requested a report from his treating physician, Dr. Abolarin, and referred this report to Dr. Garnet Fougere, a medical consultant with Manitoba Public Insurance's Health Care Services Team for review.

Dr. Fougere noted that a causal relationship was not evident between the claimant's presentation with low back pain in 2004, and the motor vehicle collision. Accordingly, the case manager issued a decision on July 7, 2005 denying the Appellant's claim for funding for physiotherapy treatment due to insufficient evidence to support a causal relationship between his current signs/symptoms and the motor vehicle accident of October 10, 1998.

The Appellant sought an Internal Review of this decision. On September 15, 2005, an Internal Review Officer for Manitoba Public Insurance Corporation confirmed the case manager's decision. She concluded that due to the lengthy period of time which had elapsed since the accident, and a lack of any mention in the initial reports on file of any low back pain, the medical information on the Appellant's file did not support a causal relationship between his current need for physiotherapy and the motor vehicle accident in question.

It is from this decision of the Internal Review Office that the Appellant now appeals.

Submissions

The Appellant submits that his low back condition was caused by the motor vehicle accident and that MPIC should be responsible for reimbursing him for physiotherapy treatment. The Appellant argued that he had been suffering from low back pain since the accident. However, at

the hospital, his caregivers failed to x-ray his lower back. He continued to complain of lower back pain to Dr. Cordova, until an x-ray taken on August 21, 2001 showed that he suffered from spondylolisthesis which was causing his lower back pain.

Although medical reports from his physician, Dr. Abolarin, and Dr. Huebert, an orthopaedic specialist, both indicated that the Appellant suffered from pre-existing developmental spondylolisthesis, the Appellant noted that Dr. Huebert, in a report dated April 6, 2006 recognized that the Appellant may have strained this area in the 1998 accident and caused some increased symptomology. Accordingly, the Appellant argued that the symptoms of low back pain which he was experiencing were caused or exacerbated by the motor vehicle accident and that MPIC should be responsible for funding physiotherapy treatment.

Counsel for MPIC submitted that the Appellant's spondylolisthesis and low back pain were not causally related to the motor vehicle accident of October 10, 1998.

Counsel for MPIC reviewed a number of documents on file which showed that in the year following the accident, the Appellant complained of and was diagnosed with a fractured rib, concussion and sore neck or cervical pain. However, no mention was made in any of the reports by his caregivers or case managers, regarding pain or injury to the lumbar spine. These documents included:

- ◆ Case Summary by Duncan Gillespie, M.D., Health Sciences Centre, dated October 13, 1998
- ◆ Health Sciences Centre, Department of Radiology, X-Ray Report dated October 11, 1998
- ◆ The Appellant's Application for Compensation, dated November 3, 1998
- ◆ Case Manager, Sue MacCutcheon's notes of meeting with the Appellant dated November 3, 1998

- ◆ Case Management Notes regarding conversation with Appellant dated December 3, 1998
- ◆ Par Health Services Report completed by Dr. Cordova dated December 10, 1998
- ◆ Initial Physiotherapy Report completed by Heather Murphy dated December 16, 1998
- ◆ Initial Health Care Report completed by Dr. Cordova dated January 16, 1999

Counsel for MPIC emphasized that none of these reports made mention of any lumbar spine pain suffered by the Appellant, and that the physiotherapist report dated December 16, 1998 indicated that the patient did not complain of symptoms of lumbar regional pain.

Counsel for MPIC also reviewed medical reports from the Appellant's caregivers prepared following his complaints of lower back pain in April 2005. She referred to a report from Dr. Abolarin dated June 20, 2005. In reviewing his assessment of the Appellant, Dr. Abolarin noted that the Appellant denied any specific trauma to his back. Dr. Abolarin concluded that the Appellant suffered from spondylolisthesis of developmental origin. He indicated that he had no details of the motor vehicle accident, as his first contact with the Appellant had not occurred until well after the accident. Depending upon the mechanism of injury, he noted, there is a probability that there may have been an aggravation of the underlying developmental spondylolisthesis by the motor vehicle accident.

Counsel for MPIC also reviewed an opinion provided by Dr. Huebert on April 6, 2006. Dr. Huebert noted that he first saw the Appellant on December 3, 2002 at which time his diagnosis was spondylolisthesis of L5 on S1 with degenerative changes. He noted that this had the appearance of spondylolisthesis of long duration and that spondylolisthesis is not commonly directly a result of an accident but most often a congenital condition. He supposed that the

Appellant had pre-existing spondylolisthesis, although he noted that in 1998 he may have strained the area and caused some increased symptomology.

Counsel for MPIC relied upon an Inter-Departmental Memorandum prepared by Dr. Garnet Fougere dated May 8, 2006. Dr. Fougere reviewed the medical documentation on file as well as the reports of Dr. Cordova, Dr. Huebert and the physiotherapist. Dr. Fougere concluded that since no complaints of lumbar spine pain or symptoms manifested themselves in the year following the accident, it was her opinion that the Appellant's pain was caused by pre-existing spondylolisthesis. Any exacerbation of symptoms secondary to the trauma of the motor vehicle accident would have been evident in the acute recovery period following the motor vehicle accident. The evidence on file did not support a conclusion that the Appellant's lower back complaints were caused by the motor vehicle collision.

Accordingly, counsel for MPIC argued that the Appellant had not met the conditions required under Section 136(1)(a) of the Act and Section 5 of Regulation 40/94 to establish that the physiotherapy treatment was medically required as a result of and caused by the motor vehicle accident.

Discussion

The Appellant is entitled to MPIC funded physiotherapy treatment if that medical treatment is required because of the accident. The relevant sections of the Act and Regulations 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;
- (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;

The onus is on the Appellant to show that physiotherapy treatments for his lower back pain were medically required as a result of the motor vehicle accident.

I have reviewed the submission of the Appellant and counsel for MPIC, as well as the documentary evidence on the file. I have concluded that the Appellant has failed to establish, on the balance of probabilities, a connection between his lumbar spine condition and the motor vehicle accident.

The evidence establishes that the Appellant did not complain of lumbar spine pain until well after the first year following the motor vehicle accident. His condition of spondylolisthesis was not discovered on x-ray until August 21, 2001.

It was the view of both Dr. Abolarin and Dr. Huebert that the spondylolisthesis was of a developmental origin. Neither physician had contact with the Appellant until 2002 and 2004, some years after the motor vehicle accident in question. Although both recognized the

possibility that the motor vehicle accident could aggravate underlying developmental spondylolisthesis, neither was able to provide an opinion regarding the causation of the Appellant's symptoms which would meet the onus upon the Appellant of establishing, on the balance of probabilities, a connection between this condition and the accident.

In his opinion of April 6, 2006, Dr. Huebert summarized his opinion as follows:

I cannot prove or disprove that the spondylolisthesis was initiated by an accident of 1998. My general findings however have been that spondylolisthesis is not commonly directly as a result of an accident, but most often a congenital condition, which then gives aches and pains, and could have symptoms aggravated by a lifting or twisting type of injury. The initial spondylolisthesis however would not be caused by this type of an injury.

It is my supposition therefore that this gentleman had pre-existing spondylolisthesis. In 1998 he may have strained this area, and caused some increased symptomatology. Since I did not see him until four years after the accident it would be impossible for me to be more specific than that.

Having regard to Dr. Huebert's opinion, I accept Dr. Fougere's comments, found in her Inter-Departmental Memorandum dated May 8, 2006:

. . . A biological explanation to explain the late onset of lower back symptoms to the motor vehicle collision is not evident. If the claimant's pre-existing mild spondylolisthesis was to render him susceptible to back symptoms, secondary to trauma, the symptoms would have been evident in the acute recovery period post-motor vehicle collision; not beyond December 1999.

In summary, in my opinion, causality is not supported between the claimant's lower back complaints and the motor vehicle collision.

Decision

The Commission therefore determines, on the basis of the evidence and submission, that the Appellant has failed to establish, on the balance of probabilities, that his lumbar spine condition and symptoms were caused by injuries sustained in the motor vehicle accident of October 10, 1998. Accordingly, he is not entitled to further MPIC funded physiotherapy treatment.

The decision of MPIC's Internal Review Officer dated September 15, 2005 is, therefore, confirmed.

Dated at Winnipeg this 22nd day of June, 2006.

LAURA DIAMOND