

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by M. D.**  
**AICAC File No.: AC-05-74**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson

**APPEARANCES:** The Appellant, M. D., was not present at the hearing; Manitoba Public Insurance Corporation ('MPIC') was represented by Leanne Zabudsky.

**HEARING DATE:** March 23, 2007

**ISSUE(S):**

1. Whether funding for the purchase of a posturpedic mattress is a medical necessity relating to the motor vehicle accident injuries
2. Whether the medical evidence supports the decision to terminate chiropractic care effective August 24, 2004

**RELEVANT SECTIONS:** Section 136(1) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Sections 5 and 10(1) 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**

M. D. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on November 6, 2003 and sustained soft tissue injuries to her neck and back along with headaches. As a result of these injuries MPIC funded chiropractic and physiotherapy treatments.

**Case Manager's Decision**

On September 17, 2004 MPIC's case manager wrote to the Appellant advising her that based on a report from MPIC's Medical Health Consultant, MPIC did not intend to continue to fund further chiropractic treatment effective August 24, 2004. On the same date the case manager wrote to the Appellant advising that based on a report from MPIC's Health Care Services Chiropractic Consultant, the Appellant's request for a mattress was not a medical necessity pursuant to Section 10(1) of Manitoba Regulation 40/94. The Appellant made application for an Internal Review of the two (2) case manager's decisions on November 17, 2004.

### **Internal Review Officer's Decision**

On January 13, 2005 the Internal Review Officer issued a written decision to the Appellant confirming the decisions of the case manager in respect of her two (2) separate decisions dated September 17, 2004 and rejecting the Appellant's Application for Review. In a lengthy Internal Review decision, which is attached hereto as Schedule A and forms part of this decision, the Internal Review Officer stated at page 5:

#### **REASONS FOR REVIEW DECISION**

Section 10(1) of Manitoba Regulation 40/94 provides that Manitoba Public Insurance shall pay for rehabilitation expenses if it considers it necessary or advisable for the rehabilitation of a victim.

I agree with Dr. Pethrick's opinion that a new mattress would not be considered medically necessary for the treatment of your accident-related condition. The medical evidence on your file is clear that it does not support your ongoing musculoskeletal complaints to be temporally related to the motor vehicle collision. Therefore, Manitoba Public Insurance will not provide funding for a new mattress and I am confirming your case manager's decision.

Section 136(1) of The *Manitoba Public Insurance Corporation Act* ("the Act") provides that a victim of a motor vehicle accident is entitled to reimbursement of expenses incurred for medical and paramedical care required as a result of the accident. Section 5 of Manitoba Regulation 40/94 provides that Manitoba Public Insurance shall pay an expense incurred by a victim for the purpose of receiving medical or paramedical care when that care is medically required.

I am satisfied that the treatments you are continuing to receive are no longer "medically required" within the meaning of the PIPP legislation and that Manitoba Public Insurance has no further obligation to provide funding for those treatments. The concept of "medically required" connotes an expectation that the proposed treatment will ultimately lead to resolution of the condition being treated. Treatment which provides only short-term symptomatic relief does not meet this test.

Supportive care is that category of care which assists an individual in maintaining an increased level of function and/or decreased level of symptoms, either of which deteriorate in the absence of care. I agree with Dr. Pethrick's opinion that the file information available does not demonstrate improvement with the care delivered.

As the medical evidence currently available does not support the ongoing need for further chiropractic treatment (including supportive care) beyond August 24, 2004, the decision terminating funding for such treatment is confirmed.

The Appellant filed a Notice of Appeal dated May 5, 2005. A Notice of Hearing was forwarded to the Appellant by Xpresspost mail on February 12, 2007 to her address at [text deleted]. The Commission's records indicate that the Commissioners' Secretary, in a telephone discussion with the Appellant when setting a date for the hearing, verbally confirmed with the Appellant that her address was [text deleted]. The Commission's records further indicate that Canada Post advises that the Xpresspost envelope was "successfully delivered to Receiver" on February 13, 2007.

The Commission further notes that the Notice of Hearing contained the following statement:

Should either party fail to appear or to be represented at the above time and place, the Commission may proceed with the hearing and render its decision. Alternatively, it may dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

### **Appeal Hearing**

The appeal hearing took place on Friday, March 23, 2007 at the Commission office and Ms Leanne Zabudsky, legal counsel for MPIC, attended the hearing. However, the Appellant failed to attend the hearing. As a result, the Commission adjourned the hearing and attempted to contact the Appellant by telephone but was unable to do so. The Commission reconvened th

hearing at 9:45 a.m.

The Commission requested MPIC's legal counsel to make a submission in respect of the appeal issues. In response MPIC'S legal counsel reviewed the medical evidence which supported MPIC's decision to terminate chiropractic care effective August 24, 2004 and reviewed the reasons for not funding the purchase of a posturpedic mattress. At the conclusion of the submission by MPIC's legal counsel, the Commission adjourned the hearing and indicated to MPIC's legal counsel that in due course a decision would be issued.

### **Decision**

The Commission, upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the submission made by MPIC's legal counsel, finds that the Appellant has failed to establish, on the balance of probabilities, that MPIC was justified in terminating reimbursement for chiropractic treatments and not funding a new mattress. The Commission finds that:

1. pursuant to Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94 MPIC was entitled to terminate reimbursement of the chiropractic treatments because they were no longer medically necessary.
2. pursuant to Section 10(1) of Manitoba Regulation 40/94, MPIC was justified in not funding a new mattress on the grounds that a new mattress was not necessary or advisable for the rehabilitation of the Appellant.
- 3.

As a result, the Commission confirms the decision of the Internal Review Officer dated January 13, 2005 and dismisses the Appellant's appeal.

Dated at Winnipeg this 3<sup>rd</sup> day of May, 2007.

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**MEL MYERS, Q.C.**