

Automobile Injury Compensation Appeal Commission

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RESPECTING THE APPEAL OF: A.N.
AICAC File No.: AC-06-033

MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Decision

The Automobile Injury Compensation Appeal Commission held a hearing on: November 5, 2007

The facts giving rise to this appeal may be briefly summarized as follows:

1. The Appellant, A.N., was injured in a motor vehicle accident on October 9, 2004. As a result of this accident, the Appellant sustained injuries including compression fractures of L2, L3 and L4 and soft tissue injuries to her thoracic and lumbar spine.
2. On October 27, 2005, Dr. Brian Lukie provided a medical report to the Manitoba Public Insurance Corporation ('MPIC') wherein he advised that, "I did suggest an appropriate mattress with a pillow top support as well as massage therapy as a means of treatment".
3. The Appellant requested reimbursement from MPIC for the purchase of a new mattress with a "pillow top" support due to the compression fractures and arthrofibrosis which she sustained from the motor vehicle accident.
4. In a letter dated November 22, 2005, MPIC's case manager advised the Appellant that the mattress support requested was not a medical necessity and therefore MPIC would not consider funding the cost of the mattress.
5. The Appellant subsequently filed an Application for Review of that decision. By letter dated January 26, 2006, the Internal Review Officer confirmed the case manager's decision pursuant to Section 138 of the Manitoba Public Insurance

Corporation Act ('MPIC Act') and Section 10(1)(d)(iii) of Manitoba Regulation 40/94.

6. The Appellant filed a Notice of Appeal with this Commission on March 10, 2006, in relation to that decision. At the hearing of the appeal, the Claimant Adviser, on behalf of A.N., contended that the mattress was a medical necessity since it was prescribed for her by Dr. Lukie as a means of treatment for her motor vehicle accident-related injuries. The Claimant Adviser also submitted that the Appellant met the test set out by this Commission in the appeal by M.T.M. (AICAC File No. AC-96-69) for the reimbursement of a mattress. She argues that there is a strong likelihood that the mattress will materially improve the Appellant's chances of recovery and therefore MPIC should exercise its discretion in favour of the Appellant.

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for the MPIC, the Commission finds that:

1. The Appellant has not established, on a balance of probabilities, that the mattress was medically required pursuant to Subsection 10(1)(d)(iii) of Manitoba Regulation 40/94. Although Dr. Lukie advised that the mattress might facilitate a proper sleep position and improve the Appellant's functional status, this did not render the mattress a medical necessity. Rather, the mattress must be considered an elective treatment strategy and not a medical requirement. Additionally, the evidence established that the Appellant had substantially recovered from her motor vehicle accident-related injuries prior to the mattress being purchased and no further evidence was submitted to determine whether the Appellant's status had in fact improved with the new mattress. Accordingly, the Appellant did not establish that the mattress would materially improve her condition or make any meaningful contribution to her rehabilitation.

Therefore, by the authority of Section 184(1) of the MPIC Act, the Commission orders that:

- A. A.N.'s appeal be dismissed; and
- B. the decision of MPIC's Internal Review Officer, bearing date January 26, 2006, be, therefore, confirmed.

Dated this 8th day of November, 2007.

Deputy Chief Commissioner

* Please see attached Notice.

Notice

Appeal to Court of Appeal on Question of Law or Jurisdiction

Appeal to Court of Appeal

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

Appeal with Leave

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

Application for Leave to Appeal

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

Commission Entitled to be Heard

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

Order of Commission Stayed

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

Powers of Court on Appeal

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

Decision Not Subject to Appeal to Court

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.