

Automobile Injury Compensation Appeal Commission

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RESPECTING THE APPEAL OF: A.M.K.
AICAC File No.: AC-05-120

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: October 30, 2007

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

1. The Appellant, A.M.K., was involved in three separate motor vehicle accidents on December 20, 1998, December 23, 2000 and December 20, 2004.
2. On December 23, 2000, A.M.K. was the front seat passenger of a vehicle that slid into the vehicle in front of her. As a result of this motor vehicle accident, A.M.K. aggravated all of her prior symptoms remaining from the December 1998 accident, including generalized body pain and widespread pain complaints.
3. She attended upon numerous medical and paramedical care givers as part of her rehabilitation process, including her general practitioner, Dr. Maharaj, Dr. Rutherford (chiropractor), physiotherapy at Ness Physiotherapy & Sports Injury Clinic and Dr. Chernish.
4. On August 30, 2004, Dr. Rutherford recommended that A.M.K. undertake a walking program on a treadmill, which would give her greater control over the amount of resistance and the speed at which she walks. A.M.K. had purchased a treadmill in 2001 and sought reimbursement of the cost of the treadmill from Manitoba Public Insurance Corporation ('MPIC').

5. In a letter dated October 29, 2004, MPIC advised the Appellant that they would not consider reimbursement of the cost of the treadmill as the treadmill was considered elective and not a “medical necessity”.
6. The Appellant subsequently filed an Application for Review of that decision. In a decision dated April 20, 2005, the Internal Review Officer confirmed the case manager’s decision pursuant to Section 138 of the MPIC Act and Subsection 10(1) of Manitoba Regulation 40/94.
7. A.M.K. filed a Notice of Appeal with this Commission on June 28, 2005 in relation to that decision. At the hearing of the appeal, the Claimant Adviser, on behalf of A.M.K., contended that the treadmill was a medical necessity for A.M.K. and that it was necessary and advisable for her rehabilitation.

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 treadmill was medically required equipment pursuant to Subsection 10(1)(d)(iii) of Manitoba Regulation 40/94. The evidence before the Commission did not establish, on a balance of probabilities, that a treadmill was a medical requirement for this Appellant’s rehabilitation. Rather, the use of the treadmill was an elective option for the Appellant to conduct her walking program. There was nothing particular or unique about the Appellant’s injuries which necessitated a treadmill for a walking program. The use of a treadmill was a discretionary choice for the Appellant.

Therefore, by the authority of Section 184(1) of The Manitoba Public Insurance Corporation Act, the Commission orders that:

- A. A.M.K.’s appeal be dismissed; and
- B. the decision of MPIC’s Internal Review Officer, bearing date April 20, 2005 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.