

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by K. S.
AICAC File No.: AC-03-98**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Errol Black
Mr. Paul Johnston

APPEARANCES: The Appellant, K. S., was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: September 8, 2004 and October 18, 2007

ISSUE(S): Entitlement to reimbursement for medication expenses

RELEVANT SECTIONS: Section 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 38 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, K. S., is appealing the Internal Review decision dated June 4, 2003, with respect to reimbursement of medication expenses arising from two (2) motor vehicle accidents – February 24, 1998 and January 26, 2001.

The Internal Review decision of June 4, 2003 confirmed the case manager's decisions of July 9, 2002 and May 30, 2003 and dismissed the Appellant's Application for Review. The Internal

Review Officer found that there was no reason to interfere with the case manager's decisions. The case manager had determined that there was no information to support that the medications for which the Appellant was seeking reimbursement were medically necessary in the treatment of her injuries arising out of either the February 24, 1998 motor vehicle accident, or the January 26, 2001 motor vehicle accident.

At the hearing of this matter, the Claimant Adviser submitted that the Appellant was entitled to reimbursement for certain medications, including Fiorinal C1/2, Zaleplon, Orlistat and Cyclobenzaprine, as a result of the motor vehicle accidents. She noted that in mid-November 1997, the Appellant had undergone a revision of her medication regime. She began taking Paxil 20mg OD and Clonazepam 0.5mg TID. The Claimant Adviser relied upon Dr. Skoglund's report of January 5, 1998, wherein he notes that:

[K.S.] has continued to make very slow progress in the management of her Post-Traumatic Stress Disorder. As a result of her consultation with Dr. Daniel Globerman, Psychiatrist, [K.S.] has undergone a complete revision of her medication regime. She has had the desipramine and Alprazolam discontinued and these have been replaced with Paxil 20mg OD and Clonazepam 0.5mg TID which she started in mid-November of 1997.

Following the change in medication [K.S.] experienced some initial increased insomnia with frequent waking during the night which (sic) left her quite tired and more prone to her combination muscular contraction/migraine headaches. At her most recent reassessment of December 17, 1997, [K.S.] appeared more settled and relaxed. There were no tearful episodes and she was alert, orientated, responsive, co-operative and very communicative. Her speech was more animated and her mood appeared less depressed and markedly less agitated. She continues to have ongoing stressors in her life that include marital disharmony, fear of upcoming trial of Examination for Discovery, marked financial constraints due to little income, struggles with loss (job, independence, family cohesiveness, mother's death, etc.).

The Claimant Adviser then referred to Dr. Skoglund's chart note of March 1998 – which stated that:

Mar 01 1998

Fup PTSD

Has not coped well since examination for discovery, father in law's illness and above MVA - ↑ anxiety / crying all the time / not sleeping / ↑ abd pain. Above Ranitidine has been helpful for abd pain. Has had some ↑ bladder irritability & frequency & extreme urgency – occl incontinence when can't get to bathroom. Has clearly decompensated & is not coping well. Maintaining Paxil 20 OD / Clonazepam 0.5 TID. Should probably ↑ anti anxiety component (therefore) will ↑ to Clonazepam 1.0mg TID immediately. Will titrate Paxil later.

[K.S.] in agreement (with) present management plan & may have occl HS 0.5 mg of Clonazepam – has 10 swing pills / month to use at her discretion. Will follow.

Based upon the foregoing chart note, the Claimant Adviser argued that the intervening motor vehicle accident on February 24, 1998 was the cause for the increase in medication referred to in Dr. Skoglund's chart notes. The Claimant Adviser also referred to the Appellant's letter dated June 5, 2003, wherein the Appellant stated that:

Also be advised that the increase in medication was at the time of the 1998 MVA not the 2001 MVA so when Dr. Greg Wilson advised you in his April 16, 2002 response to your letter of March 21, 2001 I was already at the prescribed higher dosages. Also please note that Dr. Greg Wilson was not my family doctor at the time and he would have to review my complete file starting from the 1995 mva's in order to properly address questions pertaining to my medical history.

As a result, the Claimant Adviser maintains that the medical information establishes that the Appellant's increase in medication was as a result of the February 24, 1998 motor vehicle accident. Therefore, the Claimant Adviser submits that the Appellant is entitled to be reimbursed for the expenses relating to the change in her medication by MPIC.

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 and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that the medication expenses which she incurred, or any change in

her medication regime, resulted from either the February 24, 1998 or the January 26, 2001 motor vehicle accidents.

The submissions made by the Claimant Adviser established that there was a change in the Appellant's medication regime in March 1998. However the chart note in itself is insufficient to establish a causal connection between the changes in the Appellant's medication regime and the February 1998 motor vehicle accident. In his letter of January 5, 1998, Dr. Skoglund had specifically advised that:

Although [K.S.] has made some initial progress with the change in her management, it is very early to predict whether or not this initial improvement will be sustained and it progress will continue to occur. It is, naturally, our hope that it shall, however, she will continue to require ongoing assessment in the coming months.

Additionally, according to Dr. Skoglund's chart notes the Appellant had also been experiencing a great deal of anxiety relating to the Examinations for Discovery which she was undergoing and her father-in-law's illness. All of these issues could have accounted for the increase in her anxiety which resulted in the change in the medication in March 1998.

Lastly, the Appellant did not testify at the hearing before the Commission. Without further evidence from either the Appellant, or her treating physicians, the Commission was unable to conclude, on a balance of probabilities, that either of the motor vehicle accidents was a contributing factor to the change in the Appellant's medication regime. Dr. Skoglund's chart notes were insufficient to establish a causal connection between the increase in medication in March 1998 and the Appellant's motor vehicle accident of February 24, 1998. There were a multitude of other factors which could have accounted for the Appellant's change in medication.

The evidence provided to the Commission was insufficient to establish that the motor vehicle accident was a contributing factor.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated June 4, 2003 is hereby confirmed.

Dated at Winnipeg this 18th day of December, 2007.

YVONNE TAVARES

ERROL BLACK

PAUL JOHNSTON