

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by D.L.  
AICAC File No.: AC-00-137**

**PANEL:** Ms Laura Diamond, Chairperson

**APPEARANCES:** The Appellant, D.L., appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Danielle Robinson.

**HEARING DATE:** October 6, 2008

**ISSUE(S):** 1. Entitlement to funding for further medical treatment  
2. Entitlement to funding for a gym membership

**RELEVANT SECTIONS:** Section 136 of The Manitoba Public Insurance Corporation  
Act ('MPIC 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, D.L., was injured in a motor vehicle accident on July 6, 1996. He was in receipt of Personal Injury Protection Plan benefits, including physiotherapy treatment, until October 15, 1997, when he was discharged from treatment.

Although full overall improvement was reported at the time of termination of treatment, the Appellant continued to report problems with his cervicothoracic and lumbar spine region, and problems with his left knee. MPIC took the position that the Appellant had fully recovered from his injuries from the motor vehicle accident and suffered no permanent impairment from these

injuries. MPIC took the position that there was no causal connection between any further therapeutic intervention which might be required and the collision in question.

The Appellant sought an Internal Review of this decision. On August 16, 2000, an Internal Review Officer for MPIC found that further medical therapy for the Appellant's injuries from the motor vehicle accident was not medically required and that there was insufficient medical evidence to identify a medical condition requiring therapeutic intervention arising from the collision in question.

The Appellant was injured in another motor vehicle accident on August 26, 2002. As a result of that accident, he sustained soft tissue injuries involving his neck, arms, back and legs. He attended for physiotherapy treatment and assessment, as well as an assessment at the Wellness Institute Rehabilitation Department regarding the sustainability of his participation in a work hardening program. Certain barriers were identified to successful completion of the rehabilitation program, including chronic pain complaints.

The Appellant participated in a psychological consultation to deal with these barriers as well as assessment by a sports medicine physician. He participated in a rehabilitation program to focus on aerobic/endurance training, general strength training, flexibility, postural correction, and core stabilization exercises.

Discharge Reports in March of 2003 noted evidence of improved pain management technique and greater range of pain management strategies.

The Appellant then requested a transitional gym membership to be paid for by MPIC. The Appellant's case manager considered comments from Dr. Moore, Clinical Psychologist, Dr. Mallory Fast, and Dr. Craton, the Medical Director with MPIC's Health Care Services, in regard to the Appellant's request for a gym membership. The case manager denied the Appellant's request. The Appellant sought an Internal Review of this decision.

On January 25, 2005, an Internal Review Officer for MPIC found that the requested gym membership was not medically required in that there was not a real likelihood that further supervised gym attendance would lead to a demonstrable improvement in the Appellant's condition. Considering the extensive and lengthy efforts to provide the Appellant with rehabilitation, the Internal Review Officer found that it would be unlikely that further gym attendance would result in any such demonstrable improvement. She found that the Appellant had been educated and provided ample instruction relating to the continuation of an independent home program and that the Appellant had no functional deficits noted that would preclude him from proceeding and excelling with his exercise program independently.

It is from these decisions of the Internal Review Officers that the Appellant has now appealed.

### **Evidence and Submission for the Appellant**

The Appellant gave evidence at the hearing into his appeal. He described the first accident. He testified that because he saw the other car coming, he tensed up and braced himself and so, was weight bearing during the collision. He described the difficulties he had with walking in the periods following the accident as well as the therapies he received for his knee and other injuries.

He also described the difficulties he had with injuries to his neck, suffering pain and discomfort and such reduced range of motion that he could no longer cycle (as he had often done prior to the accident).

As well, he described difficulties with his lower back and flare-ups of sciatica since the 1996 motor vehicle accident.

The Appellant addressed comments on his indexed file which had been made by physicians, regarding degenerative problems in his neck. For example, an MRI ordered by Dr. Fast showed no disc herniation, central spinal stenosis, spinal cord compression or nerve root compression at the C5-6 level, but did show degenerative changes in the cervical spine at that level.

The Appellant submitted that he had never had problems and flare-ups in his neck before the first motor vehicle accident. As well, the motor vehicle accidents had made his lower back pain worse, with difficulty lifting things and a burning sensation which he had never had before.

As for his knee, the Appellant reviewed a report from his orthopaedic surgeon, Dr. Longstaffe, dated January 9, 2008 which described the trimming of a meniscal tear on an otherwise normal knee. Dr. Longstaffe questioned the scarcity of complaints of meniscal pathology to the therapists following the accident.

The Appellant submitted that a review of his indexed file showed that there were at least six (6) references to his complaints of knee pain between September 1997 and the surgery Dr. Longstaffe performed on his knee on July 7, 1998.

It was the submission of the Appellant that prior to the motor vehicle accident he had been active, and involved in cycling and weight lifting. He knew how to exercise and had never needed therapy prior to the motor vehicle accident. Since the motor vehicle accident, he had developed problems with his knee, back and neck and as such, required further treatment and the assistance of a gym membership, to assist with his recovery in injuries sustained in the motor vehicle accidents.

### **Evidence and Submission for MPIC**

Counsel for MPIC noted that in regard to the Appellant's request for physiotherapy treatment benefits, it was only the 1996 motor vehicle accident which is relevant. She noted that the Appellant did attend physiotherapy treatments for one (1) year following the motor vehicle accident and, at the termination of treatments the physiotherapist reported full overall improvement. Although the Appellant continued to request treatment, the physiotherapist felt there would be no clinical benefit to continuing treatment.

In a report dated December 1999, Dr. Fougere, a Medical Consultant with MPIC's Health Care Services Department, agreed, noting that the Appellant had suffered soft tissue injuries. Given the length of time between his discharge from physiotherapy and his reporting of symptoms in 1999, it was improbable that there was a connection between these symptoms and the motor vehicle accident.

Dr. Fougere noted again, in a report dated August 3, 2000, that the Appellant, at the time of his discharge from treatment, had normal function. Therefore, it was medically improbable that his continued complaints related to the motor vehicle accident.

These reports, it was submitted, led to and supported the Internal Review decision of August 16, 2000.

In regard to the Appellant's knee problems, counsel for MPIC pointed to the report of Dr. Longstaffe dated January 9, 2008. She submitted that Dr. Longstaffe was clear that the motor vehicle was not responsible for the problems that the Appellant experienced in his knee.

Counsel noted Dr. Longstaffe's comment that most meniscal lesions occur in a weight bearing mode.

Although the Appellant believes that by bracing his legs against the vehicle at the time of impact he was in a weight bearing mode, counsel submitted that this is not what doctors mean when they refer to a weight bearing mode. Rather, a weight bearing mode means walking, running, or weight bearing over a long term. She emphasized Dr. Longstaffe's comments that, had the meniscal tear occurred during the motor vehicle accident, there would have been more mention of knee pain and complaints to therapists in the period following the motor vehicle accident.

Counsel submitted that the medical information presented to the panel, including Dr. Longstaffe's comments, show that it was highly improbable that the motor vehicle accident caused the meniscal tear and that the Appellant had failed to show, on a balance of probabilities, that this was connected to the motor vehicle accident.

She submitted that the Internal Review decision of August 16, 2000 was correct and should be upheld by the Commission.

On the issue of a gym membership, counsel for MPIC pointed to physiotherapy reports indicating that MPIC had provided a ball and weights to the Appellant to assist him with a home stabilization program. Dr. Craton and the case manager had noted that the Appellant was provided with instructions and equipment to continue a strength and stabilization program at home.

Dr. Fast did not specifically recommend a gym membership and Dr. Craton noted that no claim had been made to substantiate the strength deficit for which specific gym exercises are required and requested by the Appellant.

Dr. Craton reviewed the issue again on March 5, 2007, and again concluded that there was no need for a gym membership. He noted that the exercises which the Appellant should pursue can be performed in a home environment with an exercise mat and in fact, machines in the gym can be contraindicated for such a rehabilitation.

Counsel submitted that since an expense such as a gym membership must be incurred only if it is medical treatment required because of the motor vehicle accident, and the medical evidence showed that a gym membership was not medically required, the Appellant's appeal should be dismissed and the decision of the Internal Review Officer dated January 25, 2005, should be upheld.

### **Discussion**

The relevant provisions of the MPIC Act and Regulations are:

#### **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;

**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;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant to show, on a balance of probabilities, that the treatment benefits and gym membership he is requesting are medically required as a result of the motor vehicle accident.

The Commission has reviewed the evidence of the Appellant, the evidence on the indexed file, and the submissions of the Appellant and counsel for MPIC.

In regard to the Appellant's request for further physiotherapy benefits due to back and neck injuries arising out of the 1996 motor vehicle accident, the Commission notes the extensive reviews undertaken by Dr. Fougere in regard to this issue on December 9, 1999 and August 2, 2000. Dr. Fougere reviewed the Appellant's medical file, including the reports from his family physician and physiotherapist.

In regard to the request for further physiotherapy, she summarized:

**CONCLUSIONS**

At the time of the claimant's discharge from physiotherapy on October 15, 1997, the claimant essentially had normal function. He continued to complain intermittently about pain related to soft tissues in the cervicothoracic or lumbar spine region. The clinical notes indicated that a persistent and lengthy effort had been made to rehabilitate the claimant to optimal functional capacity and that this had been achieved. The file notes support the fact that the claimant suffered no permanent impairment from the injuries sustained in the motor vehicle collision of July 6, 1996. Once full restoration of function is demonstrated clinically, it is medically improbable that future functional losses would be related to injuries sustained in the motor vehicle collision. The opinions expressed in my previous report stand.

The Commission finds that the Appellant has failed to satisfy the onus upon him of establishing, on a balance of probabilities, that he was not recovered from the motor vehicle accident to the extent that he required further physiotherapy treatments as a result of injuries arising from the motor vehicle accident in 1996.

In regard to the Appellant's request for benefits in regard to his knee problems, Dr. Fougere addressed this question in her report dated December 9, 1999.

A period of approximately two years elapsed from the time of physiotherapy discharge and the claimant's report of knee pain to the adjuster in July, 1999. Given the length of time that elapsed between the motor vehicle collision of July 6, 1996 and the conversation with the adjuster of July 6, 1999 in which the claimant reported problems with his knee and leg, it is improbable that there is a temporal relationship between the claimant's current knee symptoms and the motor vehicle collision. It is difficult what to make of the report to the adjuster in their most recent conversation (July 6, 1999) that the claimant had had knee surgery. No information was provided by the claimant or by Dr. Erhard in his August 12, 1999 assessment with regards to the nature of the surgery, the date of surgery or the reason for surgery.

Dr. Fougere reviewed the question again on March 12, 2008. Included in her review was a consideration of a narrative report from the Appellant's family physician, Dr. Erhard, dated February 19, 2008.

Based on the history and mechanism of injury and that fact that [D.L.] never had any left knee pain prior to his mva, it is probable that his left meniscal tear is secondary to his

accident in 1996. It is also probable that the present symptoms are secondary to his accident in 1996.

In Dr. Fougere's view there was no plausible mechanism of injury associated with the 1996 motor vehicle collision as reported, that would indicate a need for knee surgery. She stated:

**OPINION**

There is an absence of information to suggest a mechanism of injury that would have resulted in a left knee meniscal tear as a result of the two vehicle collision. Dr. Erhard describes that the claimant put pressure through both of his knees at the time of the collision. In my opinion, it is improbable that meniscal injury resulted from the cited mechanism. Relevant to the issue of left knee complaint was the evident demonstrated functional capabilities that the claimant consistently has demonstrated under the supervision of a number of physiotherapists. Although there is documentation of a sore knee (as cited above), neither objective findings reflecting pathology nor objective findings of dysfunction were documented.

We have also reviewed the report by the Appellant's orthopedic surgeon, Dr. Longstaffe, who opined that, although a tear would not be impossible under the circumstances of the motor vehicle accident, it would be highly improbable, since the vast majority of meniscal lesions occur in a weight bearing mode. His conclusion was of the mechanics of the accident as described did not point to the left knee meniscal tearing as being the likely outcome of the motor vehicle accident.

The mechanics of the accident as described do not point to LT knee meniscal tearing as being a likely outcome. The vast majority of meniscal lesions occur in a weight bearing mode. A tear would not be impossible under these circumstances but highly improbable. One would expect also swelling and more initial disability. . . .

Accordingly, based upon the medical evidence, the Commission finds that the Appellant has failed to satisfy the onus upon him of showing, on a balance of probabilities, that the left knee tear was a result of the motor vehicle accident.

In regard to the Appellant's request for a gym membership, the Commission notes that no specific recommendation for a gym membership was made by Dr. Fast. Dr. Fast stated, in a report dated January 13, 2004 that:

. . . I did not specifically recommend a gym membership but would rather rely on the expertise of the physiotherapist and the rehabilitation physician to determine the best mode of therapy.

Dr. Craton noted that:

In my opinion, all of these exercises can be performed in the home environment, with an exercise mat and an exercise ball. Even these are not required if any individual has a carpeted floor.

In my opinion, there are numerous machines in gymnasiums that can be contraindicated for people with specific musculoskeletal problems. I have not seen any particular piece of gymnasium equipment recommended which is required for this patient's rehabilitation.

Accordingly, based upon the medical evidence presented, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that a gym membership is medically required for the treatment of injuries sustained in the motor vehicle accident of August 26, 2002.

Accordingly, the Appellant's appeals are hereby dismissed and the Internal Review decisions dated August 16, 2000 and January 25, 2005 are hereby upheld.

Dated at Winnipeg this 25<sup>th</sup> day of November, 2008.

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**LAURA DIAMOND**