

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.K.
AICAC File No.: AC-07-47**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Paul Johnston

APPEARANCES: The Appellant, M.K., was represented by S.K.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Pardip Nunrha.

HEARING DATE: July 29, 2008

ISSUE(S): Entitlement to further physiotherapy treatment benefits.

RELEVANT SECTIONS: Section 136(1)(a) 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 was injured in a motor vehicle accident on May 5, 2006. The Appellant sustained soft tissue injuries to her left elbow, knee and foot, right hip and shoulder, as well as her neck and back. She also experienced eye and ear pain.

The Appellant began physiotherapy treatments with Shannon Larkins at the Pan Am Physiotherapy Centre on May 25, 2006, with recommended treatment at a frequency rate of two (2) times a week for eight (8) to ten (10) weeks.

On August 26, 2006, the Appellant's case manager issued a decision letter indicating that, consistent with the opinion of Dr. Fougere, a medical consultant with MPIC's Health Care Services Team, the Appellant met the criteria for primary care treatment, but that further, additional treatment was not medically required.

The Appellant sought Internal Review of the case manager's decision. On February 8, 2007, an Internal Review Officer for MPIC found that the medical evidence fell short of establishing that further in-clinic physiotherapy treatment for the Appellant was medically required. She found that the proposed treatment would provide only short term symptomatic relief and would not lead to resolution of the condition being treated.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant gave evidence at the hearing into her appeal. She described the neck problems which had arisen following the motor vehicle accident and which the physiotherapist treated with manipulation. She also described pain in the lower part of her back and physiotherapy treatment for that area.

The Appellant testified that she still had a lot of pain. She said that the physiotherapy treatments helped a little, but that after twenty-six (26) treatments, she still felt she needed more. She testified that the further treatments still helped her only a little and that she still needed more help. Her hip on her right side, as well as her bruised knee and neck still gave her a lot of pain.

The representative for the Appellant submitted that the Appellant had suffered a good deal from a total of six (6) accidents in which she had been involved. He pointed out that the Appellant was at least getting temporary relief from the physiotherapy treatments, yet MPIC had terminated these treatments while, at the same time funding seventy (70) visits to a chiropractor. He submitted that MPIC had made several errors in calculations on the Appellant's file and that they had erred in refusing to fund further physiotherapy treatments which the Appellant had continued, at her own expense.

Submission for MPIC

Counsel for MPIC noted that in the discharge report provided by Ms Larkins, the Appellant's physiotherapist, dated September 27, 2006, she indicated that the Appellant's condition was much improved and that exercise instruction and education had been provided. Counsel for MPIC reiterated the position of the Internal Review Officer who had reviewed Dr. Fougere's opinion of January 17, 2007 which indicated that:

. . . It is not uncommon for individuals to experience residual symptom complaints after completing a course of physiotherapy treatment. This does not imply that continued physiotherapy care is a medical requirement.

In my opinion, it would be anticipated, that continued hands-on therapeutic treatment on an indefinite basis would yield positive perceived response to individuals receiving that care. This apparently is the case for the claimant. This does not translate into continued care being a medical requirement.

It would not be surprising that, if an individual reported positive benefits from physiotherapy care to his or her treating providers, that the involved providers would support further care. This apparently is the case for the claimant. This does not make further care a medical requirement.

Counsel also reviewed an opinion provided by Dr. Fougere dated May 14, 2008. In that memorandum, Dr. Fougere indicated that she had reviewed a further report from Ms Larkins dated March 19, 2008. Dr. Fougere stated:

According to the physiotherapist's clinic notes, the claimant embarked on a course of physiotherapy and a review of the clinic notes for the May, June and July 2006 period reflected that treatment was directed at the neck and back. In the latter half of July 2006, the physiotherapist addressed complaints associated with the claimant's anterior pelvic region. At that time, according to clinic note review, the claimant was being assessed for unrelated problems affecting her abdominal/anterior pelvis region.

The physiotherapist's clinic notes are absent for reference to treatment being directed to the left elbow or left shoulder (glenohumeral joint). An overview of the physiotherapist's clinic notes reflect that the claimant appeared to plateau from treatment by the time that she was discharged from claim supported care (the claimant's 26th visit being on September 14, 2006).

Review of clinic notes following September 14, 2006 reflect that on November 3, 2006, the claimant suffered a slip and fall on "*back stairs*" hitting her right knee. Subsequent visits were directed to treatment of the claimant's right hamstring, right buttock and posterior thigh region.

Counsel for MPIC also reviewed the opinion dated March 19, 2008, submitted by Ms Larkins.

Ms Larkins notes:

[M.K.'s] rehabilitation was complicated by her pre-existing orthopaedic conditions and multiple pain complaints. A request for extended category treatment was justified based on the difficulty in adequately dealing with each area during the course of a single physiotherapy appointment and likelihood in such a situation that the overall duration of treatment could be expected to be longer. In my opinion, it can be argued that a longer course of physiotherapy treatment (extended versus primary category) in this case could be considered a medical requirement.

Counsel for MPIC argued that Ms Larkins' March 19, 2008 letter did not provide any new information. It was her position that the Appellant's condition had improved, but then plateaued with physiotherapy intervention and that further physiotherapy treatment care was not medically required.

Discussion

The relevant sections of the MPIC Act and Regulations in this appeal 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 further physiotherapy treatment is medically required.

The panel has reviewed the evidence of the Appellant as well as the documentary evidence on file and the submissions of her representative and of counsel for MPIC. Although Ms Larkin's letter of March 19, 2008 expressed the view that a longer course of physiotherapy treatment could be considered a medical requirement, she also acknowledged that it had been explained to the Appellant that "*. . . given her age, the presence of a significant spinal scoliosis and her past history of injury and surgery with resulting loss of mobility and function, that any further objective changes in range of motion, strength and function had likely reached a plateau with the physiotherapy interventions provided, despite the short-lived pain relief still obtained from treatment.*"

The evidence of the Appellant was that the physiotherapy treatments helped her a little bit, but that she still had lots of pain. The panel finds that this is consistent with Dr. Fougere's

observation that *“It is not uncommon for individuals to experience residual symptom complaints after completing a course of physiotherapy treatment. This does not imply that continued physiotherapy care is a medical requirement.”*

Counsel for MPIC submitted that the Appellant had shown some improvement during the course of twenty-six (26) physiotherapy treatments, and then, shortly thereafter began chiropractic treatments, with the chiropractor reporting good progress.

The panel agrees with counsel for MPIC that although the Appellant made some progress under chiropractic care, the Appellant had reached maximum medical improvement through physiotherapy. This is consistent with the report of the physiotherapist which stated that the Appellant had likely reached a plateau, and with the Appellant’s evidence at the appeal hearing that even the extra physiotherapy treatments which she received at her own expense helped only a little and that she still had.

Accordingly, the Commission finds that the Appellant has not met the onus upon her of showing, on a balance of probabilities, that further in-clinic physiotherapy treatments are a medical necessity. The decision of the Internal Review Officer dated February 8, 2007 is affirmed and the Appellant’s appeal hereby dismissed.

Dated at Winnipeg this 16th day of September, 2008.

LAURA DIAMOND

MARY LYNN BROOKS

PAUL JOHNSTON