

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-02**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by Ms Joan McKelvey
[Text deleted], the appellant, by way of telephone conference
call

HEARING DATE: April 4th, 1996

ISSUE(S): Entitlement to compensation for massage therapy treatments
prescribed by a Chiropractor and dispensed by a Registered
Massage Therapist - meaning of 'dispensed'.

RELEVANT SECTIONS: Section 136(1) of the M.P.I.C. Act ('the Act') and Sections 5(b) &
8 of Regulation 40/94.

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.**

REASONS FOR DECISION

THE FACTS:

[The Appellant] was injured in an automobile accident, on January 3,
1995. As a result of the accident he sustained soft tissue damage to his upper back for which he
received chiropractic treatment from [Appellant's chiropractor #1]. [The Appellant] moved to

[text deleted], Alberta, and continued treatment under the care of his chiropractor, [text deleted]. His treatment program included spinal manipulation performed by [Appellant's chiropractor #2], together with stretching exercises and soft tissue therapy for which [Appellant's chiropractor #2] referred him to [text deleted], a Registered Massage Therapist. [Appellant's registered massage therapist] is highly qualified in her field, being (amongst other things) an instructor in Advanced Techniques in rehabilitative therapy - a course that is offered for upgrading purposes to physiotherapists, nurses and massage therapists across Canada and in the United States. [Appellant's registered massage therapist] is also a massage therapist to the members of [text deleted's] national team for the Pan-Pacific, World and Olympic competitions, and has been so for at least four years.. She is not, however, an athletic therapist. Her letter to M.P.I.C. of August 18th, 1995, makes that clear: (“.....I am unsure as to what you require as I am not an Athletic Therapist.....”).

M.P.I.C. repaid [the Appellant] his expenses incurred because of the accident, except those incurred for massage therapy. His application for reimbursement for massage therapy expenses was denied on September 12, 1995, on the ground that these were not compensable expenses covered by Section 8 of Regulation 40/94, referred to below.

[The Appellant] applied for a review of that decision, claiming that he was receiving treatment from an athletic massage clinic which, therefore, qualified him for reimbursement. M.P.I.C.'s Internal Review Officer confirmed the original decision of the Corporation, by way of a letter bearing date the 30th of November, 1995.

[The Appellant] filed a notice of appeal on the 26th of January, 1996, upon the grounds that [Appellant's chiropractor #2] had prescribed massage therapy and had referred him to [Appellant's registered massage therapist], and that the treatment had, therefore, been

“dispensed” by a chiropractor and meets the criterion of Section 8 of Regulation 40/94.

THE LAW:

[The Appellant] is entitled to be reimbursed for any expenses incurred as a result of his automobile accident, to the extent that those expenses are compensable under the provisions of the Act.

The relevant Section of the Act reads as follows:

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:*

(medical and paramedical care, transportation, lodging, prostheses etc., cleaning and repair or replacement of damaged clothing) and

“ (d) such other expenses as may be prescribed by regulation.”

Regulation 40/94, entitled Reimbursement of Expenses(Universal Bodily Injury Compensation)

Regulation reads, in parts, as follows:

“Medical or paramedical care

5. 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.....chiropractor, physiotherapist.....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.*”

8. *The corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.*

Under Section 138 of the Act the Corporation is under an obligation “ *subject to the regulations,* to take measures it considers necessary to rehabilitate a victim, to lessen the disability and facilitate the return to normal life”. Read by itself, Section 138 could readily be extended to include massage therapy administered by [Appellant’s registered massage therapist], but Section 8 of Regulation 40/94 limits reimbursement of the cost of massage therapy to those occasions when it is dispensed by a physician, chiropractor, physiotherapist or athletic therapist, and then only when it is dispensed by one of those professions within the Province of Manitoba. Massage therapy is not covered at all under the Health Services Insurance Act and, if administered outside the Province, the recovery of its cost is therefore precluded by Section 5(b) of the Regulation cited above.

The Concise Oxford Dictionary defines the word “dispense” as follows:

Distribute; deal out; administer; a dispenser is a person or thing that dispenses something. Example: medicine, good advice.

Stedman’s Medical Dictionary defines “dispense” as follows:

To give out medicine and other necessities to the sick.

In this particular section of the statutes the word “dispense” is clear and unambiguous and must be given its ordinary meaning.

Although the appellant’s chiropractor referred the appellant for massage as part of his

rehabilitative treatment, the massage therapy was not “dispensed” by [Appellant’s chiropractor #2]. . [Appellant’s registered massage therapist], a Registered Massage Therapist, did the dispensing and her qualifications, although exceptional, are not, unfortunately, those of an athletic therapist, nor would the cost of her services be reimbursed under the Health Services Insurance Act of Manitoba if dispensed in this Province.

DISPOSITION:

For the reasons stated above we dismiss the appeal of [the Appellant] and confirm the decision of [text deleted], the Internal Review Officer for MPIC.

Dated at Winnipeg this 12th day of April, 1996.

J.F.REEH TAYLOR, Q.C.

CHARLES BIRT, Q.C.

LILA GOODSPEED