

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-62**

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 Mr. Tom Strutt;
[Appellant's representative] represented the Appellant, [text
deleted]

HEARING DATE: April 25th, 1997

ISSUE(S): Compensation for massage therapy treatments.

RELEVANT SECTIONS: Section 136 of the MPIC Act ('the Act')
and Sections 5(a) and 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 involved in six accidents between September 1995 and March 1996 and she suffered of number of injuries. MPIC provided her with a number of treatment regimes for these injuries except for a program of massage treatments. We were advised by the Appellant's physician, [Appellant's doctor], that she "had been suffering from chronic fatigue

syndrome since August 1993".

The first accident occurred on September 11th, 1995 and involved a two car collision with approximately \$2,000.00 in damages to the Appellant's vehicle. She suffered a contusion to her temple and a cervical and thoracic strain. She missed several hours of work.

The second accident occurred on November 5th, 1995 with the Appellant's car being rear-ended and it suffered damage of \$600.00. She aggravated her neck injuries and lost no further time from her employment.

The third accident occurred on November 17th, 1995 when a car in front reversed into the Appellant's car. There was no visible damage to her car. She advised MPIC that she further aggravated her neck and was not able to continue to work at her part time job with [text deleted].

The fourth accident occurred on November 2nd, 1995 when the Appellant attended an MPIC Claims Centre to have her vehicle damage estimated. She claims she slipped and fell in the Claim Centre's washroom and sustained further injury. This claim is not part of these proceedings and is being handled by the Corporation's insurer.

The fifth accident occurred on November 23rd, 1995 when the Appellant was a passenger in a vehicle that ran a red light. The Appellant states that the accident further aggravated her injuries.

The sixth accident occurred on March 14th, 1996 when the Appellant, while driving her car, made a left turn in front of another vehicle. Her vehicle was a total write-off. Her injuries consisted of aggravation of her early injury but there was no further functional loss.

The Appellant appealed to the Internal Review Officer for "further chiropractic sessions and other rehabilitative treatment" because of her physical problems arising from her accidents. This request was denied and she appealed this decision. Her lawyer advised the hearing that the only thing the Appellant wanted MPIC to pay for arising out of all of the automobile accidents was the payment of twelve massage therapy sessions.

A review of the file does not indicate that the massage therapy was medically required or prescribed by a medical doctor. The only source for this suggested treatment appears to be the Appellant herself. She made the request to her case manager at [vocational rehab consulting company] on February 28th, 1996, who recorded that "[the Appellant] states that she spoke with a friend, who is an exercise therapist, who feels that she is experiencing a shortage of oxygen to the brain and requires massage treatment to the shoulders and the head". This type of self-prescription apparently is not uncommon, as [Appellant's doctor] points out in her correspondence to MPIC that "[the Appellant] seems to direct her own treatment for her medical problems".

MPIC had enrolled the Appellant in a rehabilitation program with the [rehab clinic] on January 3rd, 1996 and by February 22nd, 1996 she was discharged by this [rehab clinic]

because "from a functional perspective, it is our opinion that [the Appellant] is at a position to return to pre-accident employment". They recommended that she not undergo any further physiotherapy treatment and gave her a home exercise program to help her flexibility and strength.

The requested massage therapy was to be performed by [Appellant's massage practitioner] of the [text deleted] Clinic. Inquiries by an adjuster at MPIC to the Manitoba College of Physicians & Surgeons determined the [Appellant's massage practitioner] was not a registered medical practitioner in Manitoba. Further enquiries to the [text deleted] Clinic revealed that [Appellant's massage practitioner] practised Chinese medicine but was not able to obtain any confirmation that the 'doctor' was a medical doctor.

THE LAW:

To qualify for any compensation the Appellant's claim must fall within the four corners of the MPIC Act. Section 136(1) of the Act states that, subject to the Regulations, a victim is entitled to reimbursement for various expenses that were incurred due to the accident. Regulation 40/94 states, at Section 5, that:

"5. The Corporation shall pay an expense incurred by a victim 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, registered psychologist or athletic therapist, or is prescribed by a physician."

There is no evidence in the Appellant's MPIC file nor was any adduced at the hearing that showed or would support the claim that the massage therapy was medically required due to the accidents or that it had been recommended by a physician.

Further, Section 8 of that same Regulation limits the payment by MPIC for massage therapy to therapy 'dispensed by a physician, chiropractor, physiotherapist or athletic therapist'. No member of any of those professions is involved in administering massage therapy for [the Appellant].

The Appellant's position at the hearing was that she was led to believe by her adjuster that she would receive the massage therapy treatment. However the evidence from the adjuster's notes concerning his telephone conversation with the Appellant dated May 6th, 1996, in response to this request, makes it clear that he advised her that the corporation would not be authorizing payment for the massage treatments as the individual who would be performing them was not a registered physician in Manitoba and there was no medical prescription for massage.

The Appellant then argued that the treatments were recommended by [Appellant's doctor] in her letter dated February 27th, 1996. A reading of this correspondence leads one to come to only one conclusion, namely that [Appellant's doctor] was not ever addressing the question of massage therapy, let alone recommending it; at best, she was saying that she could see no harm in the Appellant trying a course of acupuncture, although she did not go so far as to recommend that.

Therefore, because the requested treatments were not prescribed as required in Section 136 of the Act and Section 5(a) of Regulation 40/94 we cannot agree with the position of the Appellant on her appeal.

DISPOSITION:

We therefore dismiss the appeal and confirm the Acting Review Officer's decision dated October 25th, 1996.

Dated at Winnipeg this 13th day of May 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED