

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-60**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mrs. Lila Goodspeed
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan G. McKelvey
the Appellant, [text deleted], appeared in person, with her
husband, [text deleted]

HEARING DATE: August 29th, 1997

ISSUE(S): Whether Appellant entitled to wheelchair at insurer's expense.

RELEVANT SECTIONS: Sections 136 and 138 of the MPIC Act, and Sections 10(1)(d)(i)
and 34 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

While the file, and the material presented to us by both parties in connection with this appeal, are voluminous in the extreme, the issue before us may be stated very simply: was the expense incurred for the purchase/rental of medical equipment, in the form of a wheelchair, incurred for a medical reason related to a motor vehicle accident, and on the prescription of a physician?

[The Appellant], a teacher by profession, was traveling in a school bus with a number of her students when a water container or some other, similar, heavy object fell and injured her leg. The accident took place on the 28th of September 1994, and [the Appellant] has been incapacitated ever since, to the point of being obliged to quit her job - a job to which she appears, from all the available evidence, to have been devoted.

Reduced to its basic terms, the well supported evidence of [the Appellant] may be summarized this way: she is unable to walk more than about 100 yards without extreme discomfort; she is unable to sit or, indeed, to maintain any one standing or sitting position, for more than approximately twenty to thirty minutes without pain; when she does push herself to further limits by, for example, exercising beyond the amount recommended, or even attempting to sit still for any length of time beyond her pain threshold, she is obliged to pay the price shortly thereafter by taking to her bed, either for a few hours or, in more extreme circumstances, for one or more days. In consequence, [the Appellant's] recreational and social activities are severely limited. The one and only item of equipment that seems to afford her any relief is a wheelchair which is adjustable, allowing her to vary the position of her leg when she is seated and to accompany members of her family on walks, shopping expeditions and the like. In other words, as has been noted by several of the experts who have examined both [the Appellant] herself and her extensive file, the wheelchair increases [the Appellant's] ability to get out of the house, increases her function and access to the community in general, and enables her to lead an enriched quality of life.

Amongst the other material presented to us were several reports from [text deleted], a clinical psychologist and neuro-psychologist, dated October 30th, 1996, January 7th, 1997 and July 15th, 1997. [Appellant's psychologist], while expressing the view that [the Appellant] "is a strongly focused, inter-active, pleasant and bright-sounding woman who unfortunately does have a chronic pain condition and her personality, psychological make-up, and interactional presence obviously has been very productive for her throughout her life, has led to success in her career, and obvious strong and supportive relationships with her family..... ..and her employer", goes on to express the opinion that [the Appellant] "has had a pain condition with physical and psychological perpetuating factors...my belief is that there are psychological factors of relevance here". [Appellant's psychologist] is of the further view that [the Appellant] was suffering from Chronic Pain Syndrome, and that this was seen to be a "psychological barrier as the contemporary approach is not to consider pain to be a limitation but a barrier that needs to be worked through and around in increasing function as much as is possible within the bounds of the pathophysiological entity and objectively determined restrictions". [Appellant's psychologist's] views are supported by those of [Appellant's rehab specialist #1], a specialist in physical medicine and rehabilitation who, in a twenty-three page report bearing date April 3rd, 1997, also expresses the view that [the Appellant] suffers from a Chronic Pain Syndrome. He points out that the generally accepted definition is that "Chronic Pain Syndrome is distinct from chronically or intermittently painful disease in which the patient experiences pain but manifests function and behavior appropriate to the degree of tissue injury. In Chronic Pain Syndrome, subjective and behavioral manifestation of pain persist beyond objective evidence of tissue injury". Similarly, "Chronic Pain Syndrome is an abnormal condition in which pain is no longer a symptom of tissue injury, but in which pain and pain behavior become the primary disease processes". He suggests that further interventions, in terms of diagnosis and treatment by medical, surgical and therapeutic means, are likely to offer

no significant relief to [the Appellant] from her pain experience. He expresses the view that further intervention for [the Appellant] should be in the psychological/psychiatric arena and that she should be encouraged to focus on functional aspects, which should include the pursuit of vocational goals that are acceptable to her. [Appellant's rehab specialist #1] adds "I believe that she should be permitted to manage her pain experience independently" - that is to say, without any further medical, surgical or other physical intervention. He bases that opinion upon his finding that [the Appellant], as he puts it, "has her own set of firm ideas as to what her present status and what the appropriate treatments are. She has denied all reasonable medical interventions that would be designed to relieving her pain experience and improving her function."

Whether the conclusions of [Appellant's psychologist] and [Appellant's rehab specialist #1] are valid or, as [the Appellant] submits, flawed, appears to us to be beside the point and we do not believe that any useful purpose could be served by any attempt on our part to answer that question. We are faced, here, with what [Appellant's psychologist] describes as a "paradigm clash over the appropriate treatment". By that, we take [Appellant's psychologist] to be referring to the fact that [the Appellant] herself, with the support of [Appellant's rehab specialist #2], [Appellant's doctor #1], [Appellant's doctor #2] and [Appellant's doctor #3], are all of the view that a wheelchair will be helpful in her rehabilitation, while others, consulted by MPIC and having various fields of expertise, lean to the view that [the Appellant's] problem is primarily an attitudinal one that might best be helped through psychological counseling and, in [Appellant's psychologist's] view at least, by a multi-disciplinary team approach. This is not to say that all of [the Appellant's] advisors are opposed to the team concept, although she, herself, does not seem to favour it.

However, the only issue before this Commission today is the much more limited one of the need for a wheelchair. We have reference to Section 138 of the MPIC Act, to Section 34 of Regulation 40/94 already referred to above, and to Section 10(1)(d)(i) of that same regulation, all of which are reproduced as an appendix to these Reasons.

It is clear that not even those who, with patently sincere and professional motives, are strongly opposed to the purchase of a wheelchair for [the Appellant] suggest that she is in any way malingering; they do not question her good faith and sincerity but, rather, her wisdom.

On the other hand, we have [Appellant's rehab specialist #2], of the [Appellant's doctor #1] and, coincidentally, a specialist frequently consulted by MPIC, who says in his letter of July 12th, 1996:

"([the Appellant]) is presently using a wheelchair (rented from the [Appellant's doctor #1]) and this helps her to do more with her family. This increased interaction has been very positive psychologically. As you may be aware, she is now doing volunteer work which requires work on her home computer. She finds the wheelchair supports her leg better than other chairs when doing this type of work. I have discussed the issue of the wheelchair and how it may lead to negative physical effects (muscle weakness, joint stiffness) but feel the positive psychological benefits outweigh these risks.....It is my suggestion that [the Appellant] purchase a wheelchair that best suits her needs. It should be light weight as well as usable inside and outside the home. This may also assist her in taking on other types of work similar to what she is doing now."

We have [Appellant's of the [Appellant's doctor #1] who says, in his letter of June 27th, 1997, that he has known the Appellant for five years, both as her family physician and as the father of one of her pupils. He goes on to say, in part:

"I do not see her as a dependent or abusive person. I certainly think the idea of having a wheelchair, to help her function as best she can, is quite appropriate.....I have read the report from [Appellant's rehab specialist #2] who has attended her since the accident, and I would agree with his position with regard to wheelchair issue, the benefits outweigh the risks."

[Appellant's doctor #1] also points out that [the Appellant] has been supplied with assistive devices by [Appellant's rehab specialist #2] and by her physiotherapist but has been able gradually to wean herself off the use of those devices - a cane, a walking splint, a night splint and a tensor bandage, other than using the bandage from time to time for the relief of severe pain and to keep the leg warm.

We also have [Appellant's doctor #2] of the [text deleted], who writes to MPIC on February 20th, 1997 to the effect that he is aware of "the copious correspondence that you already have about her case" and says that he is writing to the Corporation to support [the Appellant's] request for a wheelchair on the grounds that it will help her to return to her functional status. [Appellant's doctor #2] goes on to say that, in his view (a view that seems to be strongly supported by [Appellant's doctor #3], the highly respected Director of the [text deleted]) [the Appellant] has "a plausible case for peripheral nerve injury and resulting chronic pain symptoms", and that he would like to encourage [the Appellant's] activity and mobility to be maximized. In that context, says [Appellant's doctor #2], he is persuaded that a wheelchair would increase the Appellant's

ability to get out of the house and that she would only use this as necessary.

Finally, we have the uncontradicted evidence of [the Appellant] that, on or about August 1st of 1996, [Appellant's rehab specialist #2] had prescribed and had, in fact, ordered the wheelchair in question from [text deleted], with the prior knowledge and approval of [the Appellant's] Adjuster, [text deleted]. The member of the Claims Department who succeeded [Appellant's adjuster] as the manager of [the Appellant's] file rescinded that consent but, by that time, the order for the wheelchair had gone forward and [the Appellant] was already using a wheelchair rented to her by [text deleted] on a temporary basis while awaiting the arrival of the new one.

We find that, whatever other areas of disagreement may exist between [the Appellant] and her advisors, on the one hand, and MPIC and its advisors, on the other, the appellant's present condition was caused by the use of a motor vehicle and that the wheelchair now acquired by [the Appellant] falls within the purview of those sections of the Act and Regulations cited above and annexed to these Reasons. [The Appellant] is, therefore, entitled to have the initial, rental costs of the first wheelchair, together with the net, capital cost of her present wheelchair paid by MPIC. To the extent that she has paid any of those costs out of her own pocket, she is also entitled to interest thereon from the respective dates of her expenditures up to the date of her reimbursement by the insurer, at the statutory rate.

Dated at Winnipeg this 11th day of September 1997.

J. F. REEH TAYLOR, Q.C.

LILA GOODSPEED

F. LES COX