

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-71**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Mr. Keith Addison
the Appellant, [text deleted], appeared in person

HEARING DATE: November 4th, 1997

ISSUE(S): (a) Whether victim entitled to cost of gymnasium
membership;
(b) Whether victim entitled to cost of new mattress.

RELEVANT SECTIONS: Sections 136(1) and 138 of the MPIC Act, and Sections 5 and
10(1)(d)(iii) 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 Appellant, [text deleted], was involved in a motor vehicle accident on
December 20th, 1996, as a result of which he sustained lumbar strain and sacroiliac joint
dysfunction. At the time of his accident, [the Appellant] was [text deleted] years of age and was
employed in building and yard maintenance by [text deleted] and, concurrently, as head doorman
at the [text deleted], both in the [text deleted].

Following his accident, [the Appellant] was treated by his chiropractor, [text deleted], [text deleted], a specialist in sports medicine, [text deleted], a practitioner in family and sports medicine, and by two or more physiotherapists at the Reconditioning Department of the [clinic]. His reconditioning program at the [clinic] lasted for eight weeks, at the conclusion of which he was discharged from their program. He had, in the meantime, returned to work on January 29th of 1997. [The Appellant's] present appeal relates to two matters only: MPIC's refusal to pay for a year's membership in a commercial gymnasium for him, and MPIC's refusal to purchase a new mattress in substitution for the waterbed that he has hitherto been using.

In the context of the waterbed, [the Appellant] testified that he had been using one for as long as he could remember or, as he put it, "since I was old enough to have one". This item falls within the language of Section 10(1)(d)(iii) of Regulation 40/94, which reads, in part, as follows:

"Rehabilitation Expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:.....

(d) reimbursement of the victim at the sole discretion of the corporation for.....

(iii) medically required beds, equipment and accessories."

The sole question, therefore, is whether a particular form of new mattress that [the Appellant] seeks can properly be described as 'medically required'. [the Appellant's] current physician, [text deleted], expressed the view that [the Appellant's] complaints of increased pain in his back every morning was "probably due to his current bed. I have advised him to purchase a more supportive

mattress". In subsequent correspondence addressed to [Appellant's family and sports medicine practitioner] by [text deleted], a specialist in sports medicine on the staff of MPIC, [MPIC's doctor] pointed out that he was "unaware of any reasonable data to indicate that specialized mattresses can decrease the type of low back pain associated with motor vehicle accident related trauma", adding that he was therefore unaware of the medical necessity of that type of product. Since [Appellant's family and sports medicine practitioner] did not respond to that letter, we have to assume that she was essentially in agreement with those comments and that her suggestion for a new mattress was just that - that is to say, a suggestion rather than a prescription based on medical necessity. That being so, we have to concur with the decision of MPIC's acting review officer in denying [the Appellant's] claim for a new mattress.

In the context of [the Appellant's] claim for a gym membership, the material on his file, taken together with his testimony at the hearing of his appeal, is somewhat confusing. We have the report from the [clinic] on April 14th, 1997, indicating that they had implemented a full back protocol for [the Appellant] which he had tolerated quite well, that his range of motion was then nearly complete in all areas and that he was able to function fully without any major complaints. That report went on to say that [the Appellant] was now relying upon stretching and exercises for his back pain but that "Further supervised reconditioning is not required, this patient should be able to self-manage his condition and therefore is discharged from our program".

Similarly, a few days later on April 20th, 1997, [Appellant's family and sports medicine practitioner] writes to MPIC to say that she was continuing to follow [the Appellant]

regarding injuries sustained in his motor vehicle accident. She says "He no longer requires supervised reconditioning, but should continue with stretching and strengthening exercises. As such, I have advised him to purchase a membership at a local fitness centre". However, on April 24th, [Appellant's family and sports medicine practitioner] writes a further letter to MPIC to say that she has re-examined [the Appellant], that his condition has deteriorated considerably since "being cut off reconditioning and not being able to afford a gym membership". She adds that she has advised [the Appellant] to return to supervised reconditioning until his pain improves, then continue his reconditioning exercises at a local fitness centre.

On April 28th, the letter from [MPIC's doctor] to [Appellant's family and sports medicine practitioner] referred to above expresses the view that what [the Appellant] really needs is a Swiss gym ball, and a thorough education in the meticulous technique of a lumbar stabilization protocol involving the use of that gym ball. A Swiss gym ball was, in fact, purchased for [the Appellant]. His chiropractor, [text deleted], reports that "I have already put [the Appellant] on a home lumbar stabilization program with the gym ball. This has been helpful but has not rehabilitated his back as fully as when he was under the reconditioning program at the [clinic].....". [Appellant's chiropractor] goes on to express the view that it would be in [the Appellant's] best interests to see [text deleted] (the director of the Reconditioning Centre at [clinic]) to review his previous program, to make sure that he is doing the exercises safely and correctly, and then to continue his program at a fitness facility. [Appellant's chiropractor] feels that [the Appellant] would be best suited to a type of more aggressive program that would offer him more benefit than

a home stabilization program and that he would rely more on active rather than on passive care, in which latter phrase he includes chiropractic manipulation.

[The Appellant] wishes to be returned to the [clinic], and counsel for MPIC having concurred in the disposition that follows:

- (i) [text deleted], [the Appellant's] case manager at MPIC, will make arrangements with [text deleted], the director of the Reconditioning Department at the [clinic], for [the Appellant] to attend there at a mutually convenient time and date, so that [the Appellant's] physical reconditioning needs may be fully assessed;
- (ii) to the extent that [director of Reconditioning Department] deems it necessary or advisable, [the Appellant] will receive such further rehabilitation program as will, in [director of Reconditioning Department's] view, restore him to his pre-accident condition;
- (iii) if [director of Reconditioning Department] is of the view that a further rehabilitation program is needed, then concurrently with that program [the Appellant] is to receive, from the [clinic], proper training in the use of the Swiss gym ball and such further education in his home exercise program as may be appropriate;
- (iv) if [director of Reconditioning Department] feels that no further rehabilitation program is required, [the Appellant] shall still receive the foregoing training with the Swiss gym ball and such further re-education in his home exercise program as [director of Reconditioning Department] may feel appropriate; and
- (v) the foregoing steps will be at MPIC's expense.

We are not of the view that the purchase of a gymnasium membership is something that the insurer should be required to pay for in the present circumstances. Once [the Appellant] has been fully restored to pre-accident condition, he should be able to maintain that condition by following the prescribed home care exercises.

Dated at Winnipeg this 18th day of November 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX