

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-99-102**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Wilson MacLennan

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms. Joan McKelvey ;  
[Appellant's representative] appeared for the Appellant

**HEARING DATE:** August 2<sup>nd</sup>, 2000

**ISSUE:** Entitlement to physiotherapy

**RELEVANT SECTIONS:** Section 136 of the MPIC Act and Section 5 of Manitoba  
Regulation No. 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's] claim is for reimbursement in the total amount \$183, being the monies that she expended for eight physiotherapy treatments that she received in July and August of 1998, plus a mileage allowance for travel between her home and the [text deleted].

The Appellant's claim arises from a motor vehicle accident that occurred on April 28<sup>th</sup>, 1997. It has to be said that the accident, in which [the Appellant's] vehicle was rear-ended, was not a serious one. Neither of the vehicles involved seems to have sustained material damage, but [the

Appellant], whose head was turned to the left at the time of the impact, did sustain injuries to her neck and lower back.

She consulted [Appellant's doctor], of the [text deleted], on July 11<sup>th</sup>, 1997, some two and one-half months after her accident. He prescribed physiotherapy and gave her a prescription for Naprosyn. He noted a decreased range of motion in her neck and a tender right paraspinal area; he diagnosed neck sprain with chronic pain.

[The Appellant] received a course of physiotherapy, also at the [text deleted], commencing on July 18<sup>th</sup>, 1997, involving the application of heat, massage, transcutaneous electrical nerve stimulation, and stretching exercises. She went there on a weekly basis until about mid-November of 1997, at which point MPIC refused further funding; her physiotherapist felt that she could safely be discharged at that point.

Concurrently with her physiotherapy, [the Appellant] had been attending a gymnasium on a regular basis, primarily for strengthening exercises. She continued to do so until late January or early February of 1998, at which point her gym membership expired and, she testified, she could not afford to renew it.

At the time of her accident, [the Appellant] was living at [text deleted], Manitoba, but was working as a nanny for a family in [text deleted]. On July 2<sup>nd</sup>, 1998, she commenced a series of office jobs for different employers until, at or about the beginning of 1999, she enrolled at [text deleted] in a computer analyst course.

Meanwhile, in May or early June of 1998, [the Appellant] had again started to experience pain in the cervical and thoracic regions of her spine. [The Appellant] contacted her adjuster in mid-June 1998 to tell him of her recurring neck problems. It is significant to note, from [the Appellant's] testimony, that her adjuster told her to see [Appellant's doctor] and that, if [Appellant's doctor] recommended further therapy, she should encounter no problem from MPIC. She reported this to [Appellant's doctor] on June 22<sup>nd</sup>, 1998, indicating that she had been getting better but had deteriorated since she had stopped attending her gym classes. He recommended four weeks of physiotherapy, which she received at the [text deleted].

Her physiotherapist noted that [the Appellant] had reported that she "felt great" until July 1998 but had started a computer job and stopped workouts at her gym, following which her cervical and thoracic regional pain had reappeared. By September 4<sup>th</sup>, 1998, [the Appellant], having received eight physiotherapy sessions, had decided to reattend at her gym, was feeling much better and no longer felt that she required the physiotherapy.

[The Appellant] then sought reimbursement from MPIC for the eight physiotherapy sessions she had received from July 13<sup>th</sup> to August 31<sup>st</sup>, 1998, both inclusive.

MPIC then wrote to both [Appellant's doctor] and to [the Appellant's] physiotherapist, [text deleted], seeking their comments. [Appellant's doctor] offered the opinion that [the Appellant's] symptoms would be related to her motor vehicle accident, as she had no prior neck or shoulder pain or discomfort at all. While commenting that "the current exacerbation may be related to increased work demands, as well as not maintaining regular physical activity workouts", [Appellant's doctor] still said "I do feel that these symptoms are a result of the motor vehicle accident, however with physiotherapy and at home program exercises, she should be able to

control these symptoms and it should not be permanent.” Somewhat puzzling is the fact that, in [Appellant’s doctor’s] clinical notes, he records on June 22<sup>nd</sup> a prescription for four weeks of physiotherapy—[the Appellant] actually received eight weeks of therapy, as noted above—and on September 24<sup>th</sup>, 1998, he recommends two more months of physiotherapy. However, by the latter date, [the Appellant] had already decided for herself that she did not need further professional therapy and would return to her gymnasium.

[The Appellant] makes the point that, although her appointment with [Appellant’s doctor] was not until June 22<sup>nd</sup>, 1998, she had been experiencing increasing pain for some six to eight weeks before that.

A report from [Appellant’s physiotherapist], dated October 28<sup>th</sup>, 1998, indicates:

- (i) [The Appellant] presented in July 1998 with symptoms very similar to those with which she had presented in April 1997. Those symptoms were pain in the neck region, especially on extension and left-side flexion, with tight scalenes and trapezius, as well as right lower back pain on extension;
- (ii) [The Appellant] had always been compliant with home exercises; attending the gym had seemed to be the most beneficial but, due to financial restraint, [the Appellant] had been unable to renew her membership. She had started working at a computer/desk job and her symptoms had reappeared. *(The Commission notes that this is not entirely accurate, since [the Appellant] had been complaining of recurrent neck pain in June of 1998, several weeks before starting her new job.)*
- (iii) [Appellant’s physiotherapist] felt that, now that [the Appellant] had returned to her gym membership and appeared to be keeping up her home exercises, further physiotherapy would not be required.

On January 6<sup>th</sup>, 1999, MPIC's adjuster in charge of [the Appellant's] claim wrote to tell her that the Corporation did not believe that the need for further physiotherapy, if it existed in July of 1998, was causally related to her motor vehicle accident of the previous year, and that payment for that additional physiotherapy would not be forthcoming.

The foregoing decision was confirmed by MPIC's Internal Review Officer, [text deleted], in a letter of May 31<sup>st</sup>, 1999. [MPIC's Internal Review Officer] based his decision primarily upon the opinion of [MPIC's doctor]. [MPIC's doctor] based his opinion, that [the Appellant's] 1998 symptoms were not causally related to her accident, upon the following points:

- a) the apparently light impact between the two vehicles;
- b) the paucity of documentation of objective physical findings identifying a medical condition resulting in persistent or chronic symptoms;
- c) the fact that [the Appellant] had felt "great" immediately prior to starting her new job;
- d) the nature of that new job which [the Appellant] commenced in July 1998, involving the cervical and upper back regions in repetitive strain; and
- e) "Causation cannot be based on the observation of symptoms occurring in a similar region in the absence of objective findings identifying a medical condition that would account for persistent symptoms."

### **Conclusion**

We find that, on a balance of probabilities—albeit a slender one—the flare-up of problems in her neck, shoulder and lower back being experienced by [the Appellant] in the summer of 1998 were related to her 1997 accident. While we have carefully considered [MPIC's doctor's] thoughtful analysis, we are nevertheless prepared to accept the opinions of [Appellant's doctor] and

[Appellant's physiotherapist]. We cannot ascribe the problems that, clearly, arose in May or June of 1998 to the new occupation that [the Appellant] had not even commenced until July.

[The Appellant] is therefore entitled to reimbursement of the sum of \$183, the amount claimed, plus mileage allowance and interest.

Dated at Winnipeg this 21<sup>st</sup> day of August, 2000.

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**J. F. REEH TAYLOR, Q.C.**

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**YVONNE TAVARES**

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**WILSON MacLENNAN**