

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-50**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf, assisted by her husband, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: October 22, 2001, and March 7, 2002

ISSUE(S):

- 1. Entitlement to reimbursement of the cost of chiropractic treatments.**
- 2. Entitlement to reimbursement of the cost of an exercise bicycle.**
- 3. Entitlement to reimbursement of the cost of a new box spring and mattress.**
- 4. Entitlement to Income Replacement Indemnity ('IRI') benefits.**

RELEVANT SECTIONS: Sections 81(1), 136(1), and 138 of the MPIC Act and Sections 5 and 10 of Manitoba 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

On November 25, 1998, the Appellant, [text deleted] was operating a motor vehicle in the city of [text deleted] and was rear-ended by another motor vehicle. She complained about neck pain, upper and lower back pain, and headaches as a result of the accident and was treated by [text

deleted], a chiropractor, in respect of her complaints. She continued with chiropractic treatment every other day for six months, then subsequently twice per week, once per week, and then once every two weeks. On February 28, 2000, MPIC terminated reimbursement to the Appellant of the cost of chiropractic treatments. The Appellant reports that the chiropractic treatments appeared to ease the pain for approximately 24 hours, allowing her to walk, sit and stand better. In respect of her headaches, she obtains relief from Tylenol ES and Fiorinal. Chiropractic treatments do not provide her with any relief from these headaches.

The Appellant's continuing complaints relate to right-sided neck pain which is sharp in nature and occasionally wakes her up from her sleep three days out of the week. The Appellant also complains of a dull, right shoulder pain which extends from the posterior shoulder down to the posterior arm. She is unable to lift objects off a high shelf and cannot sleep on her right side. This pain is worsened by sitting or moving the arm horizontally. Her other complaint is that of the right-sided low back pain which is sharp in nature.

Of the above discomforts, the right-sided low back pain is the most constant, but the right-sided shoulder pain is more debilitating because she uses her right arm on a daily basis while employed at a telephone answering service.

For a period of 17 years, the Appellant was employed as a teacher's aide, working with behavioural problem and handicapped children. This job required her to sit on the floor in order to lift and help with the activities of daily living of these children. She continued with this employment until she took stress leave in December 1999. She terminated her employment as a teacher's aide at the end of June 2000. She commenced employment with a telephone answering service on October 16, 2000.

The Appellant is appealing decisions of the Internal Review Office, dated March 20, 2001, February 7, 2001, and January 12, 2001, which have dismissed her Applications for Review and confirmed the decisions of the case manager.

The issues under appeal are as follows:

1. Entitlement to reimbursement of chiropractic expenses.
2. Entitlement to IRI.
3. Entitlement to reimbursement of the cost of a new box spring and mattress.
4. Entitlement to reimbursement of the cost of an exercise bicycle.

1. Entitlement to Reimbursement of Chiropractic Expenses

The Appellant received chiropractic treatments from [Appellant's chiropractor #1] in respect of the injuries resulting from the motor vehicle accident.

MPIC's records indicate that as of February 25, 2000, the Appellant had received 70 chiropractic treatments from [Appellant's chiropractor #1]. In the middle of November 2000, the Appellant complained to a case manager at MPIC that there had been a flare-up of right shoulder pain and that she was required to be treated by [Appellant's chiropractor #1]. As a result of this complaint, the case manager at MPIC referred the medical file to MPIC's chiropractic consultant, [text deleted], who conducted a file review of the medical reports. In a memorandum to the case manager, dated February 22, 2000, [MPIC's chiropractor #1] states:

After reviewing the file contents, there is a lack of evidence on file to support a right shoulder condition as being causally related to the motor vehicle accident. Reports as early as November, 1998 submitted by [Appellant's chiropractor #2] and several reports subsequent to that submitted by [Appellant's chiropractor #1] failed to mention any shoulder complaints whatsoever. The first mention of any

shoulder or arm complaints is in November, 1999, one year following the motor vehicle collision when the claimant presented with acute upper back and right arm pain. At this point in time, it is my opinion that file contents do not support the claimant's recent symptomatology with the motor vehicle accident in question.

As a result, the case manager wrote to the Appellant on February 28, 2000, and indicated as follows:

With reference to our conversation of today, we wish to advise we have reviewed all the medical information on file with our Medical Services Team.

We are not able to establish that the injury to your shoulder is as a result of the motor vehicle accident. We note that there was no mention of a shoulder injury until November 17, 1999, approximately one year after the accident.

As such, we are not in a position to fund any further chiropractic treatments, effective the date you receive this letter.

The Appellant made application to have this decision reviewed at an internal review hearing that took place on July 23, 2000. At the conclusion of the internal review hearing, the Internal Review Officer wrote repeatedly to [Appellant's chiropractor #1], requesting a copy of his clinical notes. When these notes were received by the Internal Review Officer, she forwarded them to MPIC's chiropractic consultant, [text deleted], and asked for his opinion. The Internal Review Officer, in her decision dated January 12, 2001, states:

It is [Appellant's chiropractor #1's] opinion that the pain in your right shoulder is caused by your neck injury and thus related to the motor vehicle accident. After a review of all of the information on the file, [MPIC's chiropractor #1] could not find any indication of shoulder or arm discomfort before November of 1999, one year after the motor vehicle collision. The Initial Health Care Report submitted in November 1998 by [Appellant's chiropractor #2] and several reports subsequent to that submitted by [Appellant's chiropractor #1], did not mention any complaints of shoulder pain.

As a result of the above-noted information, [MPIC's chiropractor #1] was of the opinion that in the absence of any objective evidence from [Appellant's chiropractor #1] relating your right shoulder complaint to the motor vehicle accident that it cannot be causally related. I agree with [MPIC's chiropractor #1] and I can see no objective medical evidence that would indicate that your right shoulder complaints are related to your motor vehicle accident of November 25, 1998. As a result, it is my decision that any chiropractic treatments you require as

a result of your right shoulder injury are not the responsibility of the Manitoba Public Insurance corporation and therefore I agree with your Case Manager's decision of February 28, 2000.

The Appellant appealed that decision to this Commission, and the appeal was heard by the Commission on October 22, 2001. After hearing the parties, the Commission adjourned the proceedings and requested [independent orthopedic surgeon], [text deleted], to examine the Appellant and provide a report with his conclusions. In this respect, the Commission specifically requested in its letter to [independent orthopedic surgeon] dated November 15, 2001, that he advise the Commission:

...in respect of the medical problems which the Appellant has complained about for which she received chiropractic treatment which MPIC refuses to fund, whether or not there is a causal connection between these medical problems and the injuries which the Appellant suffered as a result of the motor vehicle accident on November 25, 1998.

In his reply dated November 29, 2001, [independent orthopedic surgeon] stated:

Her complaints of right shoulder discomfort and subsequent disability may have made her job as a teacher's aide in the [text deleted] difficult, however in her medical records there is no mention of difficulty related to her right shoulder until November 17th 1999 when her accident is dated as the 25th of November 1998. There is approximately a one year lag in the accident and her recorded symptoms.

He further stated: "Her right shoulder pain is her most disabling problem." In addition, [independent orthopedic surgeon] stated:

Her primary complaint and disability is related to her right shoulder and chiropractic treatments to date have not had marked improvement in her arm symptoms. I would therefore agree with the refusal of MPIC to fund chiropractic treatment to [the Appellant].

The relevant sections of the MPIC Act with respect of the issue of chiropractic treatments are as follows:

Section 136 of the MPIC Act provides that:

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:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Section 5 of Manitoba Regulation 40/94 provides that:

Medical or paramedical care

5 Subject to sections 6 to 9, 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, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician.

The above provisions of the legislation make it clear that in order to receive reimbursement for chiropractic treatments, the Appellant must establish, on a balance of probabilities, that:

1. there is a causal connection between the motor vehicle accident and the injury to her right shoulder, and that
2. it is medically required that she receive chiropractic treatments for the injury to her right shoulder.

Having regard to:

1. [MPIC's chiropractor's] opinion that there is no objective medical evidence that would indicate that the Appellant's right shoulder complaints are related to the motor vehicle accident of November 25, 1998, which opinion appears to be corroborated by [independent orthopedic surgeon], and

2. [Independent orthopedic surgeon]’s opinion that chiropractic treatments are not medically necessary,

the Commission finds that the Appellant has not established, on the balance of probabilities, that:

1. there is a causal connection between the motor vehicle accident and the injury in question, and that
2. chiropractic treatments are medically required with respect to the injury to her right shoulder.

2. Entitlement to IRI

The Appellant had been employed as a teacher’s aide in [text deleted], working with behavioural problem and handicapped children for a period of 17 years. This job required her to sit on the floor and to lift and help these children. After the motor vehicle accident, the Appellant continued with her job until she took stress leave in December 1999. After her return to work, she found it difficult to continue this work, due primarily to her right shoulder pain. On June 30, 2000, the Appellant obtained a medical certificate from [Appellant’s chiropractor #1] who asserted that the Appellant will “terminate employment on June 30/00 due to inability to perform job duties assigned (rt, shoulder weakness and dysfunction).” At the conclusion of the school year, the Appellant resigned from her employment as a teacher’s aide and subsequently commenced employment on October 16, 2000, with the [text deleted], a telephone answering service.

The Appellant requested IRI on the grounds that she was unable to continue employment as a teacher’s aide due to the injuries sustained to her right shoulder in the motor vehicle accident and further indicated that, as a result of advice received from her chiropractor, [Appellant’s chiropractor #1], she terminated her employment with the [text deleted].

In a letter dated September 5, 2000, the case manager advised the Appellant that he had reviewed the issue with [Appellant's chiropractor #1], who had not indicated that he had recommended that the Appellant resign her employment for medical reasons. The case manager indicated that [Appellant's chiropractor #1] had informed him that the Appellant had attended his office after resigning from employment due to her arm and shoulder symptoms. The case manager indicated that [Appellant's chiropractor #1] had informed him that he had merely agreed with the Appellant that if she was unable to do the job, then why continue.

The Appellant made Application for Review of this decision by letter dated March 8, 2000. The Internal Review Officer issued her decision in this respect on March 20, 2001, and rejected the Application for Review on the following grounds:

1. The Internal Review Officer confirmed her earlier decision dated January 12, 2001, which is referred to above under the heading "Entitlement to Reimbursement of Chiropractic Expenses." In that decision, the Internal Review Officer concluded that the right shoulder injury which the Appellant was complaining about, and which caused her to resign from her employment as a teacher's aide, was not connected to the motor vehicle accident of November 25, 1998.
2. The Internal Review Officer rejected the Appellant's submission that, as a result of the medical advice received from [Appellant's chiropractor #1], she should resign her employment with the school division due to the right shoulder pain. The Internal Review Officer confirmed the case manager's decision that [Appellant's chiropractor #1] had not made such a recommendation but only had supported the decision taken by the Appellant to resign from her employment.

The Appellant appealed that decision, and the Commission heard this appeal on October 22, 2001. During the course of the hearing, the Appellant asserted that she had resigned from her employment as a teacher's aide in the month of June 2000 based on [Appellant's chiropractor #1's] recommendation. She asserted that her previous duties as a teacher's aide involved occasional lifting of disabled children and the physical restraint of violent students, and that as a result of her continuing disability following the accident, she was unable to perform these duties.

At the conclusion of the hearing on October 22, 2001, the Commission adjourned the proceedings and wrote to [Appellant's chiropractor #1] by letter dated October 24, 2001, requesting the following information in respect of this issue:

1. Your statement setting out your recollections of your discussion with [the Appellant] in respect of the resignation of her employment with the [text deleted]. The Commission wishes to know whether you recommended that [the Appellant] resign her employment with [text deleted] or whether you did not recommend her resignation of employment.

In a letter to the Commission dated November 28, 2001, [Appellant's chiropractor #1] stated:

On June 26, 2000 [the Appellant] presented for care complaining of a recent onset of low back pain and continuing right arm and shoulder pain. She informed me at this time that she was on unpaid sick leave and was certain that she did not have the physical ability to perform her job duties as assigned. I am uncertain at which time she informed her employer, but she told me that her last day as an employee of the [text deleted] would be June 30, 2000.

I supported this decision as there were few options available. Due to the canceling of all M.P.I. benefits, I could not arrange for alternative therapy, provide a work place assessment, consult an occupational therapist, nor provide adequate care at my own office. I informed her that under the circumstances, assuming that there would not be any undo [*sic*] financial hardship as a result of her retirement, I fully understood and supported her decision to clarify, I did not advise [the Appellant] to quit her job. However, with the discontinuation of other resources with which her condition could have been managed, and her continuing inability to perform her job duties because of the associated pain, it was, and is, my opinion that there was no other feasible alternative.

As a result, [Appellant's chiropractor #1] confirmed to the Commission that he had not advised the Appellant to resign from her employment, but merely supported her decision that she intended to resign from her employment.

As well, the Commission wrote to [independent orthopedic surgeon] by letter dated November 15, 2001, asking him to advise the Commission "whether the injuries sustained by the Appellant in the motor vehicle accident on November 25, 1998, caused the Appellant to terminate her employment as a teacher's assistant which resulted in a loss of income to her." In his reply of November 29, 2001, [independent orthopedic surgeon] stated:

- 4) The refusal of MPIC to provide compensation for loss of income relating to a career change.

[The Appellant] remained off work from December 1999 through October 2000 and was off on stress leave secondary to clinical depression which was diagnosed and treated by her family physician [text deleted]. Her complaints of right shoulder discomfort and subsequent disability may have made her job as a teacher's aide in the [text deleted] difficult, however in her medical records there is no mention of difficulty related to her right shoulder until November 17th 1999 when her accident is dated as the 25th of November 1998. There is approximately a one year lag in the accident and her recorded symptoms. I therefore would agree with MPIC's refusal to compensate for loss of income relating to a career change.

The relevant section of the Act with respect to this issue is Section 81(1) which provides that:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;

Having regard to the medical opinions of [MPIC's chiropractor #1] and [independent orthopedic surgeon], referred to herein, the Commission concludes that the Appellant has not established, on

the balance of probabilities, that she is entitled to IRI. The primary complaint of the Appellant, which caused her to resign from her employment as a teacher's aide, was the injury to her right shoulder. The evidence establishes that the Appellant did not complain about the pain to her right shoulder until one year after the accident had occurred. As a result, the Commission confirms the decision of the Internal Review Officer and rejects the Appellant's appeal in this respect since she has not established that there is a causal connection between the motor vehicle accident which occurred on November 25, 1998, and the pain associated with the injury to her right shoulder.

3. Entitlement to Reimbursement of the Cost of a New Box Spring and Mattress

In a letter to the case manager dated July 19, 2000, the Appellant indicated that prior to the accident, she slept on a water bed and had done so for many years. She further advised the case manager that [Appellant's chiropractor #1] had recommended that in order to help manage the injury, she should start sleeping on a firm-support, regular mattress. The Appellant requested reimbursement for the box spring, mattress and frame.

In a letter to the Appellant dated September 5, 2000, the case manager rejected the claim and asserted that the change from one mattress to another is not necessary for recovery from an injury. Accordingly, MPIC was not in a position to consider the Appellant's request for replacement of her bedroom suite.

The case manager sought advice from [text deleted], a chiropractor, with respect to the purchase of a mattress. Although [MPIC's chiropractor #2] thought a firmer mattress would benefit individuals with lower back pain, individuals who complained about upper back or shoulder pain

may benefit from softer supports found in a waterbed. However, in a memorandum dated August 21, 2000, [MPIC's chiropractor #2] stated: "In general, I would suggest that a change from one mattress style to another is not generally necessary to recover from an injury."

The Appellant made application for a review of this decision. In a decision dated March 20, 2001, the Internal Review Officer rejected the Application for Review in respect of this matter. She stated that the purchase of a new bedroom suite was not a medical necessity related to injuries suffered in the motor vehicle accident. The Internal Review Officer further stated that notwithstanding [Appellant's chiropractor #1's] recommendation to change the mattress, she did not see any information on the file that would lead her to believe that switching from a waterbed to a firm mattress would materially improve the Appellant's chances of recovery from upper back and neck injuries and rejected her Application for Review in respect of this matter. As a result, the Appellant appealed the Internal Review Officer's rejection of her application in respect to this matter to the Commission.

The Commission heard evidence and argument by both parties at the appeal hearing on October 22, 2001. At the conclusion of the hearing, the Commission adjourned the proceedings and, in its letter to [independent orthopedic surgeon] dated November 15, 2001, requested [independent orthopedic surgeon] to advise the Commission whether or not it was medically necessary, having regard to the injuries sustained by the Appellant in the motor vehicle accident of November 25, 1998, that she required a new mattress and box spring.

In his reply to the Commission dated November 29, 2001, [independent orthopedic surgeon] stated:

The disability of [the Appellant] related to her right shoulder would not be improved by a change in bed furniture. I therefore agree with MPIC's refusal to reimburse the appellant for the cost of a new mattress and box spring.

A copy of [independent orthopedic surgeon's] letter was provided to the Appellant who subsequently wrote to the Commission by letter dated January 1, 2002, commenting on [independent orthopedic surgeon's] opinion. In this correspondence, the Appellant requested an opinion from [independent orthopedic surgeon] as to whether the use of an exercise bicycle or sleeping on a firmer mattress would provide some degree of relief or remediation of the observed right-sided lumbosacral pain rather than the shoulder disability. In [independent orthopedic surgeon's] second letter to the Commission, dated February 4, 2002, he states:

I have reviewed the correspondence submitted to you by [the Appellant] dated the 1st of January 2002. [The Appellant] has requested an opinion as to whether the use of an exercise bike or sleeping on a firmer mattress would provide some degree of relief or remediation of the observed right sided lumbosacral pain rather than the shoulder disability.

The majority of patients who sustain a soft tissue injury to the shoulder, neck or lower back are able to rehabilitate without the use of a prescribed exercise bike or firm mattress. In [the Appellant's] case I believe that the use of an exercise bike or sleeping on a firmer mattress would not have been expected to provide some degree of relief or remediation of the right sided lumbosacral pain.

Exercise bike and new mattress and box spring were not medically required as necessary or advisable in the rehabilitation of [the Appellant's] right shoulder, neck or right sided low back pain.

Exercise that could be undertaken by the patient, as outlined in my letter on page 5, would be that of brisk walking, swimming or use of a road bike.

The relevant provisions of the MPIC Act relating to this issue are set out in Section 138 of the Act and in Section 10(1)(d)(iii) of Manitoba Regulation 40/94, as follows:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

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.

Having regard to the medical opinions of [MPIC's chiropractor #2] and [independent orthopedic surgeon], the Commission determines that:

1. the change from one mattress style to another was not medically required for the Appellant's rehabilitation from her back injury,
2. the Appellant has not established, on a balance of probabilities, that the purchase of a mattress was necessary or advisable for the rehabilitation of her injury, pursuant to Section 138 of the Act and Section 10(1)(d)(iii) of Manitoba Regulation 40/94.

4. Entitlement to Reimbursement of the Cost of an Exercise Bicycle

The Appellant's request for reimbursement by MPIC of the cost of an exercise bicycle was rejected by the case manager in his letter dated May 8, 2000. The Appellant requested a review of that decision by the Internal Review Officer who rejected that Application for Review in a decision dated February 7, 2001, for the following reasons:

After your request for a review on this issue, I forwarded your medical information to [MPIC's chiropractor #1], a Chiropractic Consultant with the Manitoba Public Insurance Corporation. [MPIC's chiropractor #1] reviewed your information and provided his opinion on the medical necessity of an exercise bicycle in your circumstances.

There is a chart note from [Appellant's chiropractor #1] dated January 15, 1999 that recommends an exercise bicycle three times a week for 15 minutes. There is no other prescription or recommendation for an exercise bicycle in any of the other documentation to your file.

It is [MPIC's chiropractor #1's] opinion that you suffered soft tissue injury to your neck, upper back and low back as a result of this motor vehicle accident. Those conditions would not require an exercise bicycle as a medical necessity.

It is also [MPIC's chiropractor #1's] opinion after a review of all the medical information on your file, that a prescription of aerobic exercise was made for your overall health and not specifically as a medical necessity for the injuries sustained in your motor vehicle accident of November, 1998.

After my review of your file, I agree with [MPIC's chiropractor #1's] opinion. With the injuries you sustained in your motor vehicle accident there is no indication that an exercise bicycle would be a medical necessity in your treatment. If a form of treatment is not a medical necessity, it will not be funded by the Manitoba Public Insurance Corporation. As a result, it is my decision that the purchase of an exercise bicycle will not be funded by the Manitoba Public Insurance Corporation as a result of the injuries sustained in your November, 1998 motor vehicle accident.

The legislative provision in respect of this matter is set out in Section 138 of the MPIC Act, as follows:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Section 10(1)(d)(iii) of Manitoba Regulation 40/94 provides that:

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:

(ii) ...equipment...

As indicated earlier in these Reasons (at page 13), [independent orthopedic surgeon], in his letter to the Commission dated February 4, 2002, concluded that an exercise bicycle was not medically required as necessary and advisable in the rehabilitation of the Appellant's right shoulder, neck,

and right-sided low back pain. [Independent orthopedic surgeon] stated that exercises that could be undertaken by the Appellant would be that of brisk walking, swimming, or use of a road bike.

The Commission is satisfied that the purchase of an exercise bicycle was not required for the purpose of rehabilitating the Appellant in accordance with the above-mentioned provisions and was not a medical necessity. As a result, the Commission confirms the Internal Review Officer's decision dated February 7, 2001, in this respect.

By authority of Section 184(1) of The Manitoba Public Insurance Corporation Act, the Commission orders that:

- A. the appeal of [the Appellant] be dismissed; and
- B. the decisions of the Internal Review Officer, bearing dates January 12, 2001, February 7, 2001, and March 20, 2001, be confirmed.

Dated at Winnipeg this 8th day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN