



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-54

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Antoine Fréchette
Mr. Paul Johnston

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

HEARING DATE: May 22, 2003

ISSUE(S): Reimbursement of various expenses.

RELEVANT SECTIONS: Sections 136(1) and 138 of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Subsections 5(a), 10(1)(d), 19 and 38 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

The Appellant was involved in a motor vehicle accident on May 27, 1994. As a result of the injuries which he sustained in that accident, the Appellant became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the decisions of MPIC's Internal Review Officer, dated January 12, 2001 and January 22, 2002, with respect to reimbursement of various expenses as follows:

1. Entitlement to reimbursement for prescription medications – Clopidogrel, Neurontin and Gabapentin;

2. Entitlement to reimbursement for foot care expenses;
3. Entitlement to reimbursement for Handi-Transit transportation;
4. Entitlement to reimbursement for various medications prescribed by [Appellant's doctor #1]; and
5. Entitlement to reimbursement for a lift chair and wheelchair ramp.

1. **Entitlement to reimbursement for prescription medications – Clopidogrel, Neurontin and Gabapentin**

The Internal Review decision dated January 12, 2001 rejected the Appellant's Application for Review and confirmed the case manager's decision dated September 22, 2000. The issue under review was whether the Appellant was entitled to reimbursement for the prescription medications – Clopidogrel, Neurontin and Gabapentin. The Internal Review Officer relied on [Appellant's doctor #2's] report of August 24, 2000 which stated:

Your query of July 7, 2000 was as follows. Which of these medications (Clopidogrel, Neurontin (Gabapentin)) were prescribed for and whether they were related to his motor vehicle injury. I replied no to each. The answer is still no to each.

The Neurontin (Gabapentin) was prescribed because of a painful feet syndrome due to his diabetes.

The Clopidogrel was prescribed because of a cerebrovascular accident. Neither of these, in my opinion, was related to his accident.

The Appellant has now appealed that decision to this Commission. The issue which requires determination in the Appellant's appeal is whether the Appellant's ongoing requirement for these particular medications is causally connected to his motor vehicle accident of May 27, 1994.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(d) 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:

(d) such other expenses as may be prescribed by regulation.

Section 38 of Manitoba Regulation 40/94 provides that:

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

In order for the Appellant to qualify for reimbursement of these medications, the medications must be required for a medical condition resulting from the accident. [Appellant's doctor #2's] opinion, expressed in his letter dated August 24, 2000, is clear that none of these particular medications were prescribed for the Appellant due to a medical condition resulting from his accident. The Appellant presented no medical evidence at the hearing of the appeal to contradict the opinion of [Appellant's doctor #2]. The Commission therefore determines, based on the opinion provided by [Appellant's doctor #2], that the requirement for the prescription medications Neurontin, Clopidogrel and Gabapentin did not arise due to a medical condition resulting from the motor vehicle accident of May 27, 1994. As a result, the Appellant is not entitled to be reimbursed for those medications by MPIC.

Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated January 12, 2001.

2. Entitlement to reimbursement for foot care expenses

The Appellant is claiming reimbursement of his expenses related to foot and toe nail care.

The Internal Review decision dated January 22, 2002 dismissed the Appellant's Application for Review and confirmed the case manager's decision on the basis that, the Appellant's inability to cut his own toe nails did not appear to be related to the motor vehicle accident.

At the hearing of the appeal, the Appellant submitted that he was unable to cut his own toe nails because he could not bend down to reach his toes, the arthritis in his hands prevented him from handling toe nail clippers, and the injury to his knee prevented him from bending appropriately to reach his toes. He related all of these difficulties to the motor vehicle accident.

Counsel for MPIC submits that the Appellant does not qualify for reimbursement of his foot care expenses for various reasons. He contends that the Appellant is not actually incurring an expense, within the meaning of Section 136(1) of the MPIC Act, since the Appellant's expenses for podiatry are being covered by the Veterans Independence Program, and consequently there is nothing for MPIC to "reimburse". He also asserts that this expense does not qualify for reimbursement since podiatrists are not included in the list of prescribed health care professionals set out in Section 5(1) of Manitoba Regulation 40/94. Lastly, counsel for MPIC maintains that there is no evidence that the service being provided in this case (the toe nail clipping) was related to the accident, or that it was "medically required", or that it was prescribed

by a physician. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision, dated January 22, 2002, confirmed.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a) 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(a) 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;

In his written submission to the Commission, counsel for MPIC set out the criteria for coverage of medical and paramedical expenses, pursuant to Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94 as follows:

- (a) the expenses must have been “incurred” by the claimant;
- (b) the expenses must be related to, or “because of”, a motor vehicle accident;
- (c) the expenses must have been incurred to obtain “medically required” treatment;

- (d) the treatment must have been dispensed by one of the listed health care professionals, or prescribed by a physician; and
- (e) the claimant must not be entitled to reimbursement under any other government plan (the actual wording is “under the *Health Services Insurance Act* or any other Act”).

The Commission finds that the Appellant has established that he meets four out of the five foregoing criteria for coverage. However, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that the expenses incurred for foot care are causally connected to the motor vehicle accident.

With respect to the submission that the Appellant has not incurred an expense, since his costs have been covered by the Veterans Independence Program, the Commission finds that, although the Appellant may not have any current expenses which require reimbursement, he continues to incur expenses for podiatry on an ongoing basis. Those ongoing expenses could be reimbursed by MPIC, if we found that the requirement for foot care was related to the motor vehicle accident. We also find that this is not a case of a hypothetical expense, which the Appellant has yet to incur, since it was apparent from the evidence before the Commission, that this was a continuing expense incurred by the Appellant relative to his ongoing requirement for foot care.

With respect to the requirement that the expenses must have been incurred to obtain "medically required" treatment, the Commission finds that the Appellant satisfies this criteria for coverage.

The Commission finds, on the basis of the following factors:

1. the Appellant's painful feet syndrome due to his diabetes;
2. the various other ailments which afflicted the Appellant's feet and legs; and

3. the letter dated May 9, 1998 from the Appellant's family physician, [text deleted], wherein [Appellant's doctor #3] recommended that the Appellant would benefit from sessions with a podiatrist;

that podiatry was medically required treatment for this Appellant. Additionally, taking into consideration [Appellant's doctor #3's] recommendation, we find that even if [Appellant's doctor #3] had not formally prescribed the services, his recommendation would likely result in a prescription, if that was required. Therefore, with respect to the submission that the treatment must have been dispensed by one of the listed health care professionals (which does not include podiatrists), or prescribed by a physician, we find that the Appellant would likely have obtained a prescription for this treatment from his family physician.

With respect to the condition that the Appellant must not be entitled to reimbursement under any other government plan, counsel for MPIC contends that the Appellant is not entitled to reimbursement of the foot care expenses pursuant to PIPP, since he is entitled to reimbursement under the Veterans Independence Program.

Section 136(1) of the MPIC Act provides that "*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,...*".

The issue which therefore arises is whether the Veterans Independence Program, being a federal program enacted pursuant to the *Department of Veterans Affairs Act* would fall within the term "Act" as set out in Section 136(1) of the MPIC Act.

Section 17 of *The Interpretation Act* of Manitoba provides a Schedule of Definitions which apply to every Act and Regulation of Manitoba. The Schedule of Definitions provides the following definitions:

"**Act**" means an Act of the Legislature;

"**Legislature**" means the Lieutenant Governor acting by and with the advice and consent of the Assembly; and

"**Assembly**" or "**Legislative Assembly**" means the Legislative Assembly of Manitoba.

Accordingly, we find that the term "Act" in Section 136(1) of the MPIC Act refers to any Act of the Legislature of Manitoba and, therefore, would not include the Veterans Independence Program enacted pursuant to the federal *Department of Veterans Affairs Act*.

The final criteria which must be met in order for the Appellant to qualify for reimbursement of his foot care expenses, is that the expenses must be related to, or causally connected to, a motor vehicle accident. The Commission finds that the Appellant has failed to establish, on the balance of probabilities, that his requirement for podiatry services is related to the motor vehicle accident of May 27, 1994.

The Commission finds that the Appellant's requirement for podiatry services was more likely related to factors other than the injuries he sustained in the motor vehicle accident, including:

1. the Appellant's painful feet syndrome due to his diabetes;
2. the Appellant's inability to bend at the waist;
3. arthritis in his hands; and
4. arthritis in his low back and hip joints.

The Commission notes that the Appellant's request for reimbursement of podiatry services was first made on or about April 22, 1998, approximately four years after the motor vehicle accident. Apparently, the Appellant was able to manage his foot care for the first four years after the accident, even with the permanent loss of range of motion of his right knee which he sustained

due to the motor vehicle accident. We therefore conclude that, on a balance of probabilities, other factors presented themselves on or about April 1998, which led to the Appellant's requirement for podiatry services. As a result, we dismiss the Appellant's appeal and confirm this aspect of the decision of the Internal Review Officer dated January 22, 2002.

3. Entitlement to reimbursement for Handi-Transit transportation

With respect to the Appellant's request for reimbursement of Handi-Transit fares, the case manager's decision dated October 18, 2001 determined that:

You feel that your inability to drive your own vehicle is directly related to your motor vehicle accident. It is more than seven years following your motor vehicle accident and you have been driving up until the beginning of this year when you were admitted into the hospital for over two months. Although [Appellant's doctor #1] has not responded in writing, he has informed me verbally that your stay in the hospital was due to a vascular condition which is not related to your motor vehicle accident. There is no information on file to show that your recent inability to drive is related to your motor vehicle accident.

Even if your inability to drive was directly related to your motor vehicle accident, coverage for travel, assisted or not, is only reimbursed when travelling to and from medical appointments for your motor vehicle related injuries.

There are a number of medical conditions you are now experiencing which are unrelated to your motor vehicle accident. In order for me to consider reimbursement of any travel expenses, I am enclosing travel forms which will have to be filled out along with your physician's signature indicating that your visit with him was for your motor vehicle related injuries.

I am returning your submitted receipts for hand (sic) transit fare. If you can substantiate that any of these trips were to your doctor for your motor vehicle related injuries I will reimburse you for those trips. Again, you will have to fill out the enclosed travel forms, and have your doctor sign beside each trip that is motor vehicle related.

In his decision dated January 22, 2002, the Internal Review Officer found that:

. . . . There is no reason to think that your current need for Handi-Transit transportation is related to your motor vehicle accident injuries. That means it is outside your Personal Injury Protection Plan ("PIPP") coverage. (In any event, [Appellant's case manager] very fairly leaves the door open. If you can show that particular Handi-Transit trips were

taken to obtain medical care that was related to your motor vehicle accident injuries, then MPI will reimburse those fares.)

At the appeal hearing, the Appellant advised that he was seeking reimbursement of the expenses which he had incurred in taking Handi-Transit transportation to attend at [hospital] for a day program, in addition to the Handi-Transit expenses which he had previously submitted to his case manager.

Counsel for MPIC submitted that the Appellant's appeal should be dismissed. He advised that the case manager had invited the Appellant to provide evidence which would bring some (or perhaps all) of the claimed Handi-Transit expenses within the coverage provided by PIPP. However, no evidence has been provided to date, and therefore there was no basis upon which the Commission could order MPIC to make payment to the Appellant.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a) 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:

(d) such other expenses as may be prescribed by regulation.

Section 19 of Manitoba Regulation 40/94 provides that:

Travel and accommodation

19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

At the hearing of the appeal, the Appellant did not present any evidence which would establish that the expenses for Handi-Transit transportation were incurred for the purposes of receiving

medical or paramedical care. The Commission therefore finds that the Appellant has not established that he meets the requirements of the legislation for reimbursement of travel expenses. Accordingly, the Commission finds no reason to disturb the decision of the Internal Review Officer. As such, if the Appellant can produce evidence that particular Handi-Transit trips were taken to obtain medical care, that was related to his motor vehicle accident injuries, then MPIC will reimburse those fares. The Commission also finds that the expenses incurred to attend the day program at the [hospital] would not qualify for reimbursement pursuant to Section 19 of Manitoba Regulation 40/94, since those travel expenses were not incurred for the purpose of receiving care related to the injuries sustained in the motor vehicle accident.

4. Entitlement to reimbursement for various medications prescribed by [Appellant's doctor #1]

The Appellant is claiming reimbursement for expenses incurred for various medications prescribed by his family physician, [text deleted]. As stated earlier in these Reasons, in order to qualify for reimbursement, medication must be prescribed for a medical condition arising from a motor vehicle accident. No evidence was presented to the Commission which could establish that the various medications prescribed to the Appellant by [Appellant's doctor #1], were for an injury sustained in the motor vehicle accident of May 27, 1994. It was also not readily apparent from a review of the list of prescribed medications, that any of these medications would be required for a condition arising from the motor vehicle accident. As a result, the Commission dismisses the Appellant's appeal and confirms this aspect of the decision of the Internal Review Officer dated January 22, 2002.

5. Entitlement to reimbursement for a lift chair and wheelchair ramp

The Appellant is claiming reimbursement for expenses related to a lift chair and a wheelchair ramp. The Internal Review Officer in his decision dated January 22, 2002, found that the Appellant had not established that the requirement for these items was related to the motor vehicle accident.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 138 of the MPIC Act provides that:

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) 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
 - (i) wheelchairs and accessories,
 - (ii) mobility aides and accessories,
 - (iii) medically required beds, equipment and accessories,
 - (iv) specialized medical supplies,

At the hearing of this matter, the Appellant advised that the Veterans Independence Program had covered the cost of the lift chair. He also testified that he did not think that he would be required to replace the lift chair. Subsection 10(1)(d) of Manitoba Regulation 40/94 provides that MPIC may "reimburse" a victim for the cost of certain specialized medical equipment. The Commission finds that the legislation clearly contemplates reimbursement of a sum of money that has been spent. Therefore, as a requirement of this subsection, the Appellant must have

incurred an expense. We find that, in this case, the Appellant has not incurred an expense within the meaning of the regulation, since his costs have been covered by the Veterans Independence Program. As a result, the Commission dismisses the Appellant's appeal and confirms this aspect of the decision of the Internal Review Officer dated January 22, 2002.

With regard to the requirement for a wheelchair ramp, [text deleted], the Appellant's family physician in his report dated March 20, 2003 noted that:

Presently: - areas involved in MVA:

....

6) Mobility reports from geriatrics differ from those of the client re: walking. Due to persistent stasis, edema, need for compression hose gets recurrent weakness in legs & is unable to mobilize stairs but with a walker this is slowly possible for usual daily activity. For further mobility needs a scooter/wheelchair.

From the information available to the Commission, it appears that a wheelchair was made available to the Appellant, although this was not arranged through MPIC. The requirement for the wheelchair subsequently necessitated the building of a wheelchair ramp for access.

Based on the report from [text deleted], the Appellant's current family physician, the Commission finds that the Appellant's mobility is restricted because of the weakness in his legs, which [Appellant's doctor #1] attributed to various medical conditions related to the motor vehicle accident. The Commission also concludes that the motor vehicle accident of May 27, 1994 adversely affected the Appellant's right knee and legs and subsequently his mobility. We note that MPIC has previously provided funds for the purchase of a walker to assist the Appellant with his mobility, on the basis that there was a causal connection to the accident. Therefore, we find that the requirement for a wheelchair and subsequently a wheelchair ramp would be related to the motor vehicle accident. As a result, the expenses which the Appellant

has incurred for the wheelchair ramp, shall be reimbursed by MPIC, together with interest, in accordance with Section 163 of the MPIC Act. The decision of the Internal Review Officer dated January 22, 2002 is therefore varied accordingly.

Dated at Winnipeg this 3rd day of July, 2003.

YVONNE TAVARES

ANTOINE FRECHETTE

PAUL JOHNSTON