

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-02-31

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Jeff Palamar
Ms. Barbara Miller

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

HEARING DATE: January 10, 2003

ISSUE(S):

- 1. Entitlement to reimbursement of chiropractic care beyond May 31, 2001;**
- 2. Entitlement to personal care assistance benefits; and**
- 3. Entitlement to additional permanent impairment benefits.**

RELEVANT SECTIONS: Sections 127, 131 and 136(1)(a) of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Sections 2, 5(a) and Schedule A of Manitoba Regulation 40/94 and Section 2 and Schedule A of Manitoba Regulation 41/94.

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 two separate motor vehicle accidents, on January 26, 1995, and on May 9, 1998. As a result of the injuries which she sustained in those accidents, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The issues which arise in this appeal are:

- 1. Entitlement to reimbursement of chiropractic care beyond May 31, 2001;**
- 2. Entitlement to personal care assistance benefits; and**

3. Entitlement to additional permanent impairment benefits.

1. Entitlement to Reimbursement of Chiropractic Care Beyond May 31, 2001

At the hearing of the Appeal, the Appellant advised that she still experiences pain because of the injuries which she sustained in the motor vehicle accidents. She feels that chiropractic care would help alleviate her pain and therefore she submits that reimbursement of the cost of chiropractic care should not have been terminated by MPIC as of May 31, 2001.

Counsel for MPIC referred the Commission to [Appellant's Doctor's] report dated April 25, 2001, wherein he noted that:

4. With respects to treatment, relative to the accident in question, the chiropractic care did not help and therefore, I see no reason to continue with more of the same.

....

Notwithstanding, it is difficult to relate any physical disabilities as a direct result of the accident in question. As well, it is difficult to relate any physical impairments to the accident of May 9, 1998. As for prognosis, it would appear that many of her symptoms pre-exist the accident of May 9, 1998; are of a long-standing nature; and therefore, her prognosis would remain guarded.

Counsel for MPIC submits that the Appellant has not shown that the ongoing need for chiropractic treatment is related to the motor vehicle accidents of January 26, 1995 or May 9, 1998. Additionally, he submits that the chiropractic treatments are not medically required because they are not helpful or beneficial to the Appellant and do not help improve her condition. Accordingly, counsel for MPIC submits that the Appellant has not established on a balance of probabilities that ongoing chiropractic treatment is medically required within the meaning of the MPIC Act and Regulations and therefore her appeal should be dismissed and the Internal Review decision dated November 8, 2001, be confirmed.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC

Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. We find that the Appellant has not established, on a balance of probabilities, that her continuing physical impairments are related to the accident of January 26, 1995 or May 9, 1998. Additionally, the lack of improvement in the Appellant's condition with chiropractic treatment, leads us to the conclusion that the Appellant had likely reached maximum therapeutic benefit from chiropractic care by May 31, 2001. We are of the opinion that MPIC was justified in terminating payments of further chiropractic care for [the Appellant] on May 31, 2001, as it did.

2. Entitlement to Personal Care Assistance Benefits

The Appellant is claiming assistance for heavy housecleaning. She submits that the injuries which she sustained in the motor vehicle accidents have prevented her from being able to carry out heavy household chores and, therefore she believes that she is entitled to reimbursement of the expenses which she would incur to hire someone to come to her home to take care of those duties.

Counsel for MPIC submits that the Appellant does not qualify for reimbursement of personal care expenses pursuant to the MPIC Act and Regulations, as she does not score high enough on the grids in order to qualify for assistance. Accordingly, counsel for MPIC submits that the decision of the Internal Review Officer, dated November 8, 2001, should be upheld and the Appellant's appeal dismissed.

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

Section 131 of the MPIC Act:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 2 of Manitoba Regulation 40/94:

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under *The Health Services Insurance Act* or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A. Schedule A of Manitoba Regulation 40/94 is attached hereto as Appendix A.

Section 131 of the MPIC Act provides for reimbursement of personal assistance expenses, subject to the Regulations. Section 2 of Manitoba Regulation 40/94 provides that MPIC shall reimburse a victim for an expense of personal home assistance in accordance with Schedule A. Schedule A provides a method of evaluating the needs of the victim regarding personal and home care assistance. Points are assigned to areas of need on an evaluation grid. They are totaled to determine the qualifying percentage of expenses that has been applied to the maximum provision under Section 131 of the Act. The Appellant would have to score a minimum of 5 points on the grids in order to qualify for reimbursement of personal care assistance. If the score is less than 5, no reimbursement of expenses is provided. Taking into account the Appellant's inability to perform housecleaning tasks, the most she could score on the grids would be 1, if she was completely dependant upon assistance.

We find that MPIC correctly applied the provisions of the MPIC Act and Regulations when determining the Appellant's entitlement to reimbursement of personal care expenses. Accordingly, we are obliged to dismiss the Appellant's appeal with respect to this issue, and confirm the Internal Review Officer's decision dated November 8, 2001.

3. Entitlement to Additional Permanent Impairment Benefits

As a result of the accident of January 26, 1995, the Appellant suffered injuries to her teeth. As a result of those injuries, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle her to a lump sum indemnity in accordance with the Regulations to the MPIC Act. The Appellant is appealing the Internal Review decision dated June 24, 2002, with respect to the amount of the lump sum indemnity as calculated by MPIC.

Section 127 of the MPIC Act provides that:

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. And not more than \$100,000. For the permanent impairment.

The Regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

The Internal Review decision dated June 24, 2002, confirmed the case manager's decision of May 7, 2002, which had determined a total permanent impairment benefit of 6.75%. This impairment benefit had been calculated as follows:

◆ Tooth #11 (central incisor)	0.5%
◆ Tooth #21 (central incisor)	0.5%
◆ Tooth #31 (central incisor)	0.5%
◆ Tooth #12 (lateral incisor)	0.375%
◆ Tooth #22 (lateral incisor)	0.375%
◆ Tooth #32 (lateral incisor)	0.375%
◆ Tooth #42 (lateral incisor)	0.375%
◆ Tooth #13 (canine)	0.75%
◆ Tooth #23 (canine)	0.75%
◆ Tooth #34 (first premolar)	0.5%
◆ Tooth #44 (first premolar)	0.5%
◆ Tooth #46 (first molar)	0.75%
◆ Tooth #27 (second molar)	<u>0.5%</u>
Total	6.75%

The foregoing percentages had been recommended based on Division 3 of Subdivision 1; 4(b) *Damaged Teeth*. The total of 6.75% when applied against the \$100,000.00 maximum impairment benefit payable in January 1995 translates into a total impairment benefit in the amount of \$6,750.00.

The Appellant presented no medical evidence at the hearing of the Appeal to contradict the assessment of MPIC or to suggest that an impairment had been overlooked when her entitlement had been assessed.

Upon a careful review of the Schedule of Permanent Impairment Benefits and relying upon the determination of [MPIC's Doctor], Medical Consultant to MPIC's Health Care Services Team, the Commission finds no reason to disturb the permanent impairment benefit as calculated by MPIC. Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated June 24, 2002.

For these reasons, the Commission dismisses the Appellant's appeals and confirms the decisions of MPIC's Internal Review Officer bearing dates November 8, 2001 and June 24, 2002.

Dated at Winnipeg this 28th day of January, 2003.

YVONNE TAVARES

JEFF PALAMAR

BARBARA MILLER