



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-153

PANEL: Ms Yvonne Tavares, Chairperson
Ms. Deborah Stewart
Mr. Antoine Frechette

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

HEARING DATE: April 7, 2004

ISSUE(S): Entitlement to reimbursement of expenses for physiotherapy
treatments.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act (the 'MPIC Act') and subsection 5(a) 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, [text deleted], was involved in a motor vehicle accident on January 24, 2003. As a result of that accident, the Appellant complained of neck pain and reduced cervical range of motion. She underwent physiotherapy treatments to treat her complaints and was discharged from physiotherapy care as of May 9, 2003, with resolution of her cervical strain. This initial course of physiotherapy care was reimbursed by MPIC.

On July 8, 2003, the Appellant returned for physiotherapy treatments due to a return of her neck pain, which was brought on while she was painting a closet. The Appellant claimed reimbursement from MPIC for her subsequent physiotherapy treatments, related to this flare-up of her neck pain.

In a letter dated August 11, 2003, MPIC's case manager wrote to the Appellant to advise her that:

. . . The medical information (*on the Appellant's medical file*) reviewed indicates that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of January 24, 2003. Therefore, we are unable to approve funding of the requested treatment.

The Appellant sought an internal review of that decision. In a decision dated September 22, 2003, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. In arriving at his decision, the Internal Review Officer concluded that:

It would appear from the information contained in your file that your soft tissue injuries arising out of your motor vehicle accident of January 24, 2003 had essentially resolved with the treatment that you received. That fact, coupled with the indication that you incurred further significant symptoms following the painting of a ceiling, resulted in [MPIC's doctor] concluding that there is no causal relationship between your July symptoms and the motor vehicle accident. Given the opinion expressed by [MPIC's doctor], I am unable to conclude that you have established, as required, on a balance of probabilities, that the July symptoms are causally connected to the motor vehicle accident. Accordingly I am upholding [text deleted's] decision and dismissing your Application for Review.

The Appellant has now appealed the September 22, 2003 Internal Review decision to this Commission. The issue which requires determination in this appeal is whether there is a causal relationship between the motor vehicle accident of January 24, 2003 and the Appellant's flare-up of neck pain sustained in July 2003.

At the appeal hearing, the Appellant submitted that the neck pain she experienced in July 2003, represented an exacerbation of her motor vehicle accident related injuries and accordingly, she was entitled to be reimbursed for the expense of the physiotherapy treatments she undertook to treat her neck pain. The Appellant maintains that she never had neck problems before the motor vehicle accident of January 24, 2003. She also insists that her complaints in July 2003 were exactly the same as the neck complaints she experienced subsequent to the January 24, 2003 motor vehicle accident.

In support of her claim, the Appellant relies upon the report of her treating physiotherapist, [text deleted], dated October 24, 2003, where [Appellant's physiotherapist] notes the following:

[The Appellant] returned for treatment at this clinic on July 8, 2003. She felt that she had an exacerbation of the same presenting symptoms from her motor vehicle injuries. The precipitating event was painting a ceiling. At this time she was complaining of headaches, bilateral shoulder neck pain, but worse on the left. After three sessions the right shoulder and neck pain resolved but the left sided neck pain persisted. This was found locally to be in the exact area of pain as she had experienced with the motor vehicle injury. She required nine more treatments to get complete resolution of her left sided neck pain.

My professional opinion is that [the Appellant's] original injuries were of second degree, and included a neurological component. After her initial injury on January 24, 2003 she required two months of treatment to get adequate pain control and healing before she was able to return normal functioning at work and in the home. She required three months of treatments with this injury. I feel that in this time her neck and scapular muscles became deconditioned.

Subsequently, when she tried to exert herself physically (painting), she flared up her motor vehicle injury. This is apparent, in that her right sided neck pain cleared up within a few days, but her left sided neck pain (second degree injury in the same anatomical area as in the vehicle accident) persisted well beyond that.

Based upon the foregoing, the Appellant maintains that her neck muscles had not completely recovered as of May 9, 2003, when she was discharged from physiotherapy care, such that the

relatively minor exertion involved in painting a closet ceiling aggravated her injuries. As a result, she claims that the resultant physiotherapy care, which she undertook was necessitated by the injuries sustained in the motor vehicle accident of January 24, 2003, and she should be reimbursed by MPIC for the cost of those treatments.

Counsel for MPIC submits that the conclusions drawn by the Internal Review Officer and by [MPIC's doctor], that the Appellant likely sustained the neck pain as a result of painting the closet ceiling, are more likely in this case. He notes that the Appellant had recovered from her motor vehicle accident related injuries and the painting itself was the likely cause of the neck strain experienced by the Appellant in July 2003. As a result, counsel for MPIC submits that the Internal Review decision should be upheld, and the Appellant's appeal dismissed.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's complaints of neck pain in July 2003, were, on a balance of probabilities, related to the injuries she sustained in the motor vehicle accident of January 24, 2003. As a result, the cost of the physiotherapy treatments, which the Appellant undertook to relieve this exacerbation of neck pain, and travel expenses incurred in attending those physiotherapy treatments should be reimbursed to the Appellant, together with interest in accordance with Section 163 of the MPIC Act.

We base our findings of a causal relationship between the motor vehicle accident and the Appellant's neck pain in July 2003 upon the following factors:

1. The exacerbation of the Appellant's neck pain occurred within a very short time following her discharge from physiotherapy treatment;

2. the signs and symptoms with which she presented in July 2003 were the same as her areas of complaint following the motor vehicle accident of January 24, 2003; and
3. the opinion of her treating physiotherapist, that this was a flare-up of her previous neck injury.

The foregoing factors lead us to the conclusion that the complaints which necessitated the physiotherapy care beginning July 8, 2003 were more likely related to residual effects from the Appellant's motor vehicle accident of January 24, 2003, rather than a completely new injury caused by the exertion involved in painting the closet ceiling.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated September 22, 2003, is therefore rescinded.

Dated at Winnipeg this 22nd day of April, 2004.

YVONNE TAVARES

DEBORAH STEWART

ANTOINE FRECHETTE