Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-52

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **The Honourable Mr. Armand Dureault** **Ms. Deborah Stewart**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.**
HEARING DATE:	**September 23, 2003 and October 29, 2004**
ISSUE(S):	**1. Entitlement to Income Replacement Indemnity ('IRI') benefits from and after January 26, 2003.** **2. Entitlement to coverage for chiropractic and physiotherapy treatments from and after January 31, 2003.** **3. Entitlement to coverage for two custom ergonomic seats in the Appellant's semi-truck tractor unit.**
RELEVANT SECTIONS:	**Sections 110(1)(a), 136(1)(a) and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 of Manitoba Regulation P215-40/94 and Section 10(1) 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 April 1, 2001, when she was a passenger in a truck. As a result of the motor vehicle accident she suffered soft tissue injuries to her neck and lower back. At the time of the accident she was [text deleted] years of age, had

been employed as a long-distance truck driver and held part-time employment as a [text deleted] cashier.

As a result of the injuries sustained in the motor vehicle accident, the Appellant received chiropractic treatments and physiotherapy treatments which were funded by MPIC. At the time of the motor vehicle accident the Appellant had been collecting Employment Insurance sick benefits in connection with hand surgery that she had undergone in February 2001. The Appellant was cleared to return to work by a doctor in respect of the hand surgery on June 29, 2001 but due to the injuries she sustained in the motor vehicle accident she was unable to return to work and was in receipt of IRI payments. A report from [text deleted], dated November 12, 2002, indicated that the Appellant was working part-time at [text deleted] but was unable to return to work as a truck driver.

On January 17, 2003 MPIC's case manager wrote to the Appellant and advised her that:

1. a member of MPIC's Health Care Services Team had reviewed the medical information on the Appellant's file;
2. this member had confirmed that an impairment of function had not been identified which would preclude the Appellant from returning to her pre-accident employment as a tandem truck driver.
3. as a result, the Appellant was no longer entitled to IRI as of January 26, 2003 pursuant to Section 110(1)(a) of the MPIC Act.

The case manager also advised the Appellant in her letter of January 17, 2003 that:

1. a member of the Health Care Services Team had reviewed the Appellant's file to determine whether MPIC would provide a custom made truck seat to the Appellant

and whether further funding should be provided for chiropractic treatment and physiotherapy treatment.

2. this member of the Health Care Services Team had concluded that pursuant to Section 5(a) of the MPIC Regulations, further chiropractic and physiotherapy treatments were not medically required, nor was a custom made truck seat medically necessary or medically advisable.
3. as a result, MPIC would no longer fund any further chiropractic treatments and physiotherapy treatments effective January 31, 2003.

The Appellant, in an Application for Review dated February 4, 2003, applied for a review of the case manager's decision.

Internal Review Decision

The Internal Review Officer conducted a meeting with the Appellant and her husband on March 7, 2003 and in a letter dated March 24, 2003 to the Appellant confirmed the decision of the case manager:

1. to terminate the Appellant's IRI benefits effective January 26, 2003;
2. to terminate reimbursement of the Appellant's chiropractic and physiotherapy treatments after January 31, 2003;
3. that MPIC was no longer under any obligation to provide a custom ergonomic seat for the cab of the Appellant's semi-truck tractor unit.

As a result, the Internal Review Officer dismissed the Appellant's Application for Review.

In arriving at his decision the Internal Review Officer stated:

DISCUSSION & RATIONALE FOR DECISIONS

1. Entitlement to Ongoing IRI

Section 110(1)(a) of the Act (copy enclosed) provides that entitlement to IRI ends when the claimant is able to hold the employment she held at the time of the accident. There is nothing in the medical evidence to suggest that you do not have that ability.

While it is true that you have consistently complained of ongoing pain, and that you have self-limited your driving and other activities based on those complaints, the medical evidence on file simply does not provide any objective evidence of an inability to work on a full-time basis at this time.

2. Chiropractic and Physiotherapy Coverage

There are two conditions which must be met before MPI becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:

1. the expenses must have been incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the Act (copy enclosed); and,

2. the treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation MR P215-40/94 (copy enclosed).

The Clinical Guidelines for Chiropractic Practice in Canada indicate that, in complicated cases, a failure to show additional improvement over any period of six weeks of treatment should result in the patient being discharged, or being referred to another practitioner to try another form of therapy. The repeated use of acute care measures is not condoned.

There is no indication in the reports from [Appellant's chiropractor] that your condition has improved to any appreciable degree in spite of the fact that you have attended for over 160 chiropractic treatments since the accident.

The same comments apply to your ongoing, albeit intermittent, physiotherapy treatments.

The term "medically required" connotes something more than simply pain relief and requires that the treatments in question result in some demonstrable improvement in function.

As noted by [MPIC's doctor], the reports on file have not indicated any appreciable change in your level of function for quite some time.

In the circumstances, I am satisfied that the treatments you are continuing to receive are no longer "medically required" within the meaning of the PIPP legislation and that MPI has no further obligation to provide funding for those treatments.

3. Custom Ergonomic Truck Seats

There is a complete absence of evidence supporting the medical necessity or advisability of custom ergonomic seats. [Appellant's chiropractor] is the only practitioner who has recommended these seats, but there is nothing whatsoever on the file to suggest that he has the necessary experience or expertise to properly or adequately assess the need for, or the efficacy of, what is a rather expensive alteration to your truck.

With respect to the request for two custom seats, there is no evidence at all that you need a special seat on the passenger side.

I considered whether funding for the seats could be justified under Section 138 of the Act and Section 10(1) of Manitoba Regulation P215-40/94 (copies enclosed), but concluded that the test of the seats being "necessary or advisable for [your] rehabilitation" had not been met in this case.

Appeal

The Appellant filed a Notice of Appeal dated April 24, 2003. The relevant provisions of the MPIC Act and Regulations are:

Events that end entitlement to I.R.I.
110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:
(a) the victim is able to hold the employment that he or she held at the time of the accident;

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;

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.

Manitoba Regulation 40/94:
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;

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:
(a) funds for an extraordinary cost required to adapt a motor vehicle for the use of the victim as a driver or passenger;

The Commission commenced to hear the Appellant's appeal on September 23, 2003. The Appellant appeared on her own behalf and Mr. Morley Hoffman appeared as legal counsel for MPIC.

At the appeal hearing the Appellant submitted that:

1. at the beginning of February 2003 she was able to return to work as a truck driver but was unable to work full time.
2. prior to the motor vehicle accident she was able to drive two five hour shifts each day but since the motor vehicle accident has been unable to work more than two and one-half hours in respect of each five hour shift each day.
3. in order to be able to work and to control her pain she continued to receive physiotherapy treatments at her own expense and advised the Commission that she was getting better.

MPIC's legal counsel submitted that:

1. the Internal Review Officer had correctly interpreted the provisions of the MPIC Act and properly applied them to the facts of the case, and that the Appellant's appeal should be dismissed and the Internal Review Officer's decision confirmed.

2. the medical reports of [MPIC's doctor] and [Appellant's doctor] supported MPIC's position.
3. the medical evidence did not provide any objective evidence of an inability of the Appellant to work full time as a driver.
4. the clinical guidelines for chiropractic practice in Manitoba indicated that failure to show additional improvement for any period beyond six weeks of treatment should result in the termination of the chiropractic treatments and the same principal applied in respect of physiotherapy treatments.
5. at the time of MPIC's decision not to fund any further chiropractic or physiotherapy treatments, MPIC had funded over 160 chiropractic treatments and over 110 physiotherapy treatments and that neither the physiotherapy or chiropractic treatments had demonstrated any significant improvement in the Appellant's functional status or physical condition.
6. MPIC was justified in terminating reimbursement for these treatments because they were not medically required in accordance with Section 5 of Manitoba Regulation 40/94.
7. in respect of an obligation by MPIC to provide custom ergonomic truck seats, there was an absence of any evidence supporting the medical necessity or advisability of MPIC in providing custom ergonomic seats.
8. the Commission should reject the medical opinion of [Appellant's chiropractor] in respect of this matter on the same grounds as had the Internal Review Officer.

At the conclusion of the hearing the Commission decided that they wished to obtain an independent medical report from [text deleted], a physiatrist employed in the [text deleted]. The

Commission wrote to [independent physiatrist] on October 9, 2003, provided him with all of the relevant medical reports and requested him to advise the Commission on the following issues:

1. Whether the motor vehicle accident on April 1, 2002 caused or materially contributed to the medical condition the Appellant is presently complaining about.
2. If causation can be established:
    i. whether the physiotherapy treatments that she has been receiving from her physiotherapist since January 31, 2003 can reasonably be regarded as medically necessary;
    ii. whether the Appellant's condition has prevented her from working as a full-time long-distance truck driver rather than a part-time long-distance truck driver;
    iii. whether the installation of a custom ergonomic seat in [the Appellant's] truck is a medical necessity.

[Independent physiatrist] was provided with a binder of material which was filed with the Commission which included all of the relevant medical reports. He was requested to review the enclosed material, meet with the Appellant and provide us with a report at his earliest convenience.

Unfortunately, [independent physiatrist] did not provide a report to the Commission until October 26, 2004. [independent physiatrist] in his report indicated that on December 4, 2003 he saw the Appellant, obtained her history and conducted a physical examination and stated:

> I would recommend the following diagnostic further investigations:
> 1. MRI of the spine.
> 2. Blood work to rule hypothyroidism as a myopathic cause of her ongoing pain and Vitamin B12 deficiency. Blood work including CBC, CPK, ESR, T4, TSH and Vitamin B12.
>
> I would like to reply to the specific questions you have asked in your letter of October 9, 2003.
>
> 1. <u>Whether the motor vehicle accident on April 1, 2001 caused or materially contributed to the medical condition the appellant is presently complaining about.</u>
>
> [The Appellant], in the motor vehicle accident of April 1, 2001 suffered flexion, extension and possible rotational injury to her spine complicated by musculoligamentous strain and possibility of disc tear. On review of the submitted reports, there has been no evidence of radiculopathy but there is some historical evidence of disc pathology and if

on MRI, there is evidence of disc tear, then I will say that the motor vehicle accident of April 1, 2001 has caused or materially contributed to her present medical condition.

2. If causation can be established .

i. Whether the physiotherapy treatments that she has been receiving from her physiotherapist since January 31, 2003 can reasonably be regarded as medically necessary.

In my opinion, her response to the treatment of physiotherapy has plateaued and unless there is evidence of disc herniation or tear, there is no indication for ongoing further formal physiotherapy treatments except [the Appellant] should be encouraged to continue maintenance dynamic lumbar stabilization exercise program on her own i.e. home exercise program.

ii. Whether the appellant's condition has prevented her from working as a full time long distance truck driver rather than a part time long distance truck driver.

Her reduced functional capabilities are mainly attributed to her pain. She can drive up to 7 hours in divided shifts but beyond this period, she was experiencing increasing pains. If there is evidence of disc tear or herniation, then I would support that due to disc tear or herniation, this can be aggravated by long distance driving, particularly the vibrations and jerking episodes on the highways will prevent her from working full time.

iii. Whether the installation of custom ergonomic seat in [the Appellant's] seat is a medical necessity.

It would only be a necessity to install the custom ergonomic seats in her truck if there is evidence of disc tear or herniation with the purpose to prevent aggravation of her disc pathology.

Upon receipt of that report, the Commission provided copies of [independent physiatrist's] report to MPIC's legal counsel and to the Appellant.

On November 26, 2004 MPIC's legal counsel wrote to the Commission and provided a report from [MPIC's doctor], dated November 25, 2004, in which [MPIC's doctor] reviewed [independent physiatrist's] report dated October 26, 2004.

In this report [MPIC's doctor] indicated that [independent physiatrist] largely agreed with his conclusions. However, [MPIC's doctor] indicated that in his view there is no requirement for an MRI scan to be performed to determine causation and disability and stated:

. . . . In general terms, MRI scans are useful tools to determine if anatomical alterations have occurred within the spine that would affect one's treatment approach. The main reason for ordering this test is to exclude sinister pathological lesions (e.g. fractures, infections or

> tumours) and to determine if interventional treatment is warranted. MRI's do not allow one to determine the specific age of any anatomical variations that may be present outside of the acute setting as is present in this case. MRI scans do not speak in any way to causation. In this case, a CT scan had already been performed which was reported as normal shortly following the collision. A significant time after a collision, if an MRI scan is performed, it would likely not identify a clinically significant lesion that was not identified on early CT scanning. Thus it could not help to establish causation in my opinion.

[MPIC's doctor] further stated in his report dated November 25, 2004 that any MRI finding of an alteration in spinal disc is common and is not determinative of what is in the pain generator in an individual. As well, [MPIC's doctor] stated that MRI results cannot speak to a person's ability to function.

MPIC's legal counsel, in his letter to the Commission dated November 26, 2004 stated that no further hearing before the Commission is required and, based on the existing medical evidence, submitted:

1. There is no basis for further chiropractic/physiotherapy treatment.

2. There is no basis for custom seats.

3. There is no entitlement to IRI beyond January 26, 2003. She can drive up to 7 hours in divided shifts per day and she would only be driving in tandem with her husband. She was not driving much more than this before the motor vehicle accident.

The Commission provided a copy of [MPIC's doctor's] report dated November 25, 2004 to the Appellant and requested her comments, however, no response was received by the Commission from her.

Decision

The Commission agrees with [MPIC's doctor's] medical opinion that an MRI will not determine the issue of causation. As a result, the Commission has decided that it will not recommend that

the Appellant consider obtaining an MRI for the purpose of resolving the causation issue.

The Commission notes that with the exception of [independent physiatrist's] opinion in respect of obtaining an MRI, [independent physiatrist] largely agrees with [MPIC's doctor's] conclusions on the three issues that the Commission requested [independent physiatrist] to provide a medical opinion. The Commission therefore finds that, excluding [independent physiatrist's] opinion in respect of obtaining an MRI, the Commission accepts the medical opinions of both [MPIC's doctor] and [independent physiatrist] and finds that:

1. the Appellant has failed to establish, on the balance of probabilities, as of January 31, 2003 the Appellant's medical complaints were caused or materially contributed to by the motor vehicle accident of April 1, 2001.
2. there was no objective medical evidence to establish that the Appellant was unable, because of this motor vehicle accident, to return to work full time as a truck driver and, as a result, MPIC was correct in terminating IRI benefits at that time.

The Commission agrees with [MPIC's doctor] and [independent physiatrist] that the Appellant's response to the treatment of both physiotherapy and chiropractic have plateaued. As a result, the Commission finds that the Appellant has failed to establish, on the balance of probabilities, the chiropractic and physiotherapy treatments that the Appellant received after January 31, 2003 can reasonably be regarded as medically necessary.

The Commission also accepts the medical opinions of [MPIC's doctor] and [independent physiatrist] that the Appellant has failed to establish, on a balance of probabilities, that the installation of a custom ergonomic seat in her truck was medically necessary.

For the reasons outlined herein, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated March 24, 2003.

The Commission does recommend that the Appellant consider [independent physiatrist's] recommendations to continue her home exercise program and his advice in respect of diagnostic investigations relating to a spinal MRI and blood work as outlined in his medical opinion, and which is referred to on page eight (8) of this decision.

Dated at Winnipeg this 6th day of January, 2005.

MEL MYERS, Q.C.

HONOURABLE ARMAND DUREAULT

DEBORAH STEWART