



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-45

PANEL: Ms. Laura Diamond, Chairperson
Dr. Patrick Doyle
Mr. Neil Cohen

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

HEARING DATE: January 11, 2005

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits
specifically chiropractic care benefits

RELEVANT SECTIONS: Section 136(1)(a) of the Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5 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 June 2, 2003, the Appellant, [text deleted], was involved in an incident as a passenger on a [text deleted] Transit Bus. The Appellant testified that while riding the bus home after a day at her job as an office manager in a chiropractic clinic, she was bent over reading her book when she suddenly felt herself bounced up and down in her seat. She noted, out loud, that that "kind of hurt", but the bus did not stop. When she got off at her bus stop, she says that she felt alright and went home, prepared dinner and went to bed. She started to feel restless and uncomfortable

during the night, but it was the next morning, when she woke up, that she felt so much pain she could hardly stand it. The pain was in her neck and shoulders and she had difficulty getting dressed. She considered not going to work, but went anyways and called her employer, a chiropractor, to come in early to see if he could help her. After examining her, her employer, [Appellant's chiropractor], asked her what she done to get herself in such a mess. When the Appellant told him about the bus incident the previous evening, he continued his examination and at the end, told her that she had a bad whiplash injury.

The Appellant testified that although she normally has a high pain threshold, she was in a great deal of distress and could not bend her head down or turn either way to the side. She went home that afternoon, and returned to work on Wednesday. She was somewhat restricted in her duties and received chiropractic adjustments from [Appellant's chiropractor].

The Appellant also testified that it was her understanding that she was predisposed to injury as a result of a previous car accident. It was her understanding that there was very little curvature to her spine(as shown by previous x-rays), and because she was bent over when she bounced up and down on the bus, this resulted in an injury to her neck.

The Appellant testified that she had chiropractic treatments at first, almost everyday, even going back to the office at [text deleted], on a Saturday (when she doesn't work) for treatment. The adjustments provided her with pain relief, as she still continued to be sore and to have headaches.

When the pain continued and she continued to require chiropractic treatment, she decided to file a claim with MPIC for chiropractic care benefits.

The Appellant seeks reimbursement for chiropractic treatments between June 3, 2003 and December 29, 2003.

Internal Review Decision

On March 2, 2004, an Internal Review Officer for MPIC considered the Appellant's Application for Review from a decision of the case manager dated September 30, 2003 denying her claim for chiropractic care benefits.

The Internal Review Officer reviewed the Appellant's account of the incident on the bus, including the fact that she did not mention the incident to the bus driver, there was no Operator's Report prepared by the driver, and no witnesses provided to confirm what happened. Still, the Internal Review Officer stated that he accepted the Appellant's story that she was riding a bus and that the bus hit a pot hole or other object, which was jarring to her.

However, the Internal Review Officer concluded that that did not necessarily mean that the symptoms that she subsequently complained of were caused by the incident. He relied on a report by [text deleted], Chiropractic Consultant to MPIC Health Care Services, dated July 15, 2003, wherein he noted that:

Neck and upper back pain is common in the general population; the findings reported are not necessarily suggestive of a traumatic event. However, trauma as described could possibly precipitate such a condition.

Although it was the opinion of the Appellant's chiropractor that the Appellant's symptoms were caused by the bus incident, the Internal Review Officer concluded that the evidence was not convincing that the bus incident was the source of the Appellant's neck symptoms. It is from this decision of the Internal Review Officer that the Appellant now appeals.

Medical Opinions

An Initial Health Care Report was completed by [Appellant's chiropractor] on June 27, 2003. He described symptoms of severe neck pain, severe headaches, moderate jaw pain and severe mid and upper back pain, with a diagnosis of a whiplash and thoracic spine dysfunction.

[Appellant's chiropractor] provided a report dated February 11, 2004. He stated

.... this patient sustained injuries while on a bus that hit a pothole on June 2, 2003. [The Appellant's] pre-existing loss of cervical curve predisposed her to this injury. ... Since the neck curvature was in an abnormal forward flexed position prior to the bus jarring it took very little force to whiplash her neck. She was also reading at the time, which also puts the neck in a forward flexed position, making her very vulnerable to injury.

The signs and symptoms that [the Appellant] presented with after the bus incident were not present before June 2, 2002.

I do believe that this patient was injured in the bus incident and has suffered the resulting symptoms.

As noted above, [MPIC's chiropractor] provided his opinion on July 15, 2003 that neck and upper back pain is common in the general population and that the findings are not necessarily suggestive of a traumatic event. However, he noted that trauma as described could possibly precipitate such a condition.

The Appellant testified that while working for [Appellant's chiropractor], she had had regular adjustments, but these related to problem areas of her low back/pelvis and knees. Any headaches she had in the past were related to her sinuses or allergy related.

Submissions

The Appellant submitted that she could think of no other cause for a whiplash injury of that severity, aside from the bus incident she described. On Monday she was perfectly fine, and on

Tuesday, after the incident, she woke up with a great deal of pain, and nothing else had happened in between.

Although she did commonly seek treatment for her lower back and pelvis before the accident, after the accident her upper shoulders, neck and upper back area required attention. She would not normally have gone for adjustments as often as she did in the period following the accident, and did not usually require treatment to those areas.

The symptoms she experienced, she submitted, were as a result of the bus incident.

Counsel for MPIC submitted that the fact that the bus incident occurred, followed by a course of treatment and symptoms, is not enough to establish that benefits are payable in this case. The onus is on the Appellant to establish a causal connection between the incident and her symptoms. The fact that the Appellant had a pre-existing condition prior to the motor vehicle accident with a history of treatments to her neck and a pre-existing reversal of the curvature of her spine contribute to the conclusion that her symptoms can not be easily connected to the incident itself.

He submitted that while the Appellant might be of the sincere belief that the incident was the cause of her difficulties, and while her treating chiropractor, her employer, was supportive of that position, that is not determinative of the issues. He asserted that incidents such as buses running over pot holes occur on a frequent basis. In this instance, the Appellant said nothing to the driver, went home, and engaged in her normal activities, any of which, including the stress of the busy time she was experiencing at work, or sleeping in the wrong position, could have caused her symptoms. He submitted that the Appellant had not established on the balance of probabilities that the bus going over a pot hole gave rise to the kind of injuries that would require

chiropractic treatment. He referred to [MPIC's chiropractor's] report as support for the notion that the type of problems which the Appellant experienced could arise without any incident or accident having occurred.

Counsel for MPIC also submitted, in the alternative, that should the Commission find on the facts that the Appellant is entitled to reimbursement for some chiropractic treatment, the Commission should take into account that the Appellant, having regard to her previous history, would have been receiving some treatments in any event. Evidence regarding the nature and extent of treatments before and after the accident, and regarding the possible blending of treatments to the neck and other parts of the body is not fully before the Commission. Accordingly, any entitlement to reimbursement should be referred back to MPIC to determine the nature and extent of such reimbursement.

Discussion

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded chiropractic treatment if that medical treatment is required because of the accident.

The relevant sections of the MPIC Act are as follows:

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;

He also points out that the onus is on the Appellant to show that her symptoms were caused by and treatments necessitated by the incident.

After a careful review of the documentary evidence and testimony of the Appellant, the Commission finds that the whiplash injury neck problems suffered by the Appellant from June of 2003 to December 2003 occurred as a result of the accident. [Appellant's chiropractor] had the opportunity of examining and treating the Appellant both prior to and following the incident in question. He corroborates the position of the Appellant, who we found to be a credible witness, that the symptoms which she experienced following the accident were different from her condition prior to the incident. While [MPIC's chiropractor], who did not have the opportunity to examine the Appellant, notes that the findings reported are not necessarily suggestive of a traumatic event, he also notes that trauma as described could possibly precipitate such a condition.

The Commission finds that the chiropractic treatments which the Appellant received were accelerated or increased as a result of the accident. The Commission finds, as a result, that the Appellant should be entitled to benefits and reimbursement for chiropractic treatment for whiplash injury neck problems which arose as a result of the accident, during the period from June 3, 2003 to December 29, 2003.

However, as pointed out by counsel for MPIC, the Appellant did indicate that she would have been in receipt of one or two chiropractic treatments per week, even had the accident not occurred. Accordingly, the Commission directs the parties to examine the chart notes and statements of [Appellant's chiropractor] in order to determine which treatments, during the period from June 3, 2003 to December 29, 2003, were connected to or necessitated by the accident and the resulting injuries.

The decision of MPIC's Internal Review Officer dated March 2, 2004 is therefore rescinded. The Commission finds, as a result, that the Appellant should be entitled to benefits and reimbursement for chiropractic treatments for whiplash injury neck problems as a result of the accident, during the period from June 3, 2003 to December 29, 2003. Interest in accordance with Section 167 of the MPIC Act shall be added to that amount.

The Commission is remitting the question of the quantum of compensation for chiropractic treatment reimbursement back to MPIC for assessment. If the parties are unable to agree to the quantum of reimbursement which is owing, the Commission will retain jurisdiction to decide the matter, and if necessary, to hold a further hearing and hear further evidence in regard to that issue.

Dated at Winnipeg this 9th day of February, 2005.

LAURA DIAMOND

DR. PATRICK DOYLE

NEIL COHEN