



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-210

PANEL: Ms Laura Diamond, Chairperson
Mr. Neil Margolis
Ms Jean Moor

APPEARANCES: The Appellant, [text deleted], did not appear; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

HEARING DATE: June 17, 2009

ISSUE(S): Entitlement to reinstatement of Personal Injury Protection Plan ("PIPP") coverage for physiotherapy treatments

RELEVANT SECTIONS: Section 136(1)(a), 184.1(1) and 184.1(2) 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

A Notice of Appeal was filed by [the Appellant] on November 15, 2004 in respect of an Internal Review Decision relating to PIPP coverage for physiotherapy treatments. The Notice of Appeal listed the Appellant's address as [text deleted], Manitoba.

The Commission set the hearing of the Appellant's appeal down for June 17, 2009 at 9:30 a.m. at the Commission's office in Winnipeg. The Commissioner's secretary advised the Commission

that the Appellant was sent a Notice of Hearing dated March 18, 2009 by Xpresspost and that this notice was claimed by the Appellant, with his electronic signature, on April 3, 2009.

A copy of the Notice of Hearing is attached hereto as Exhibit "A", and a copy of the Canada Post delivery confirmation showing scanned delivery date and signature of the recipient of the item is attached hereto as Exhibit "B".

Appeal Hearing:

How notices and orders may be given to appellant

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

- (a) personally; or
- (b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

The appeal hearing commenced on June 17, 2009 at 9:30 a.m. MPIC's legal counsel was present at the commencement of the hearing, but the Appellant did not attend at that time. The parties waited until 10:00 a.m., but the Appellant did not arrive. He did not answer his telephone.

The Commission found that the Appellant had received a copy of the Notice of Hearing and provided signed acknowledgement of that receipt. Accordingly the Appellant was properly

served with the Notice of Hearing pursuant to the provisions of the MPIC Act and the Commission had jurisdiction to hear the merits of the appeal.

Internal Review Decision:

The Appellant's appeal was from an Internal Review Decision of October 1, 2004. This Decision upheld a case manager's finding that there was insufficient evidence to support a causal relationship between the motor vehicle accident in which the Appellant was injured on July 9, 2002, and the conditions for which he sought physiotherapy treatment. The Internal Review Officer concluded that:

"I am not prepared to say that there is no possibility of a causal relationship between the symptoms first documented in May, 2003 and the accident more than 10 months earlier, but the law requires that I apply a "balance of probabilities" test. In other words, I must be convinced that it is more probable than not that the event caused the condition.

Having carefully considered the whole of the evidence – set out in some detail above – I have concluded that a causal connection is possible, but not probable."

Notice of Appeal:

The Appellant did not appear at the hearing into his appeal. However, on the Notice of Appeal completed by him on November 15, 2004 he stated:

"All evidence/documentation requested by me to support my claim was provided. As provided to support my case more was requested each time, in which I provided more. This included confirmation from employer (manager) and peers supporting claim. I believe I have proved beyond doubt that I had no back injury before the accident and after the accident is when the back pain (disc herniation) occurred as a result of the accident. MPI indicated that a connection is possible but not probable. I don't accept this."

Submission for MPIC:

Counsel for MPIC noted that a review of the Appellant's medical file, including reports from his physiotherapist and from [Appellant's doctor] was conducted by [MPIC's doctor], a member of the MPI Health Care Services Team. She noted the absence of neurological symptoms reported

in the early reports from the Appellant's physiotherapist and general practitioner and concluded that a causal relationship between the accident on the one hand, and the Appellant's right leg symptoms and lumbar radiculopathy on the other, had not been established.

[MPIC's doctor] also reviewed clinical notes obtained from the Appellant's physiotherapist. She concluded that the requisite causal relationship could not be established, primarily because there was no documentation of symptoms, functional deficits or neurologic findings suggestive of lumbar discopathy between the time of the accident and his discharge from care.

Counsel for MPIC submitted that the test used by the Commission for determining whether the injuries complained of were caused by the motor vehicle accident is the balance of probabilities. The question that must be answered is whether it is probable that the Appellant's current symptoms were caused by the accident. Counsel for MPIC submitted that the accident was not the cause of the Appellant's current symptoms and that, having already had numerous physiotherapy sessions; further physiotherapy had not been shown to be medically required. Accordingly, she submitted that the decision of the Internal Review Officer should be confirmed.

Discussion:

MPIC Act:

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;

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;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant, to show, on a balance of probabilities, that the medical treatment benefits sought are medically required as a result of the motor vehicle accident. The onus of proof is on the Appellant to establish this, on a balance of probabilities.

The Appellant failed to appear at the hearing and provide evidence or make any representation. Accordingly, the Commission reviewed the Appellant's Notice of Appeal, the documents on the indexed file, and the submission of counsel for MPIC. Based upon the evidence and information before us, the panel finds that the Appellant has failed to establish, on a balance of probabilities, that the Internal Review Officer erred in his decision or that the Appellant should be entitled to further physiotherapy benefits as a result of the motor vehicle accident.

Accordingly, the Appellant's appeal is hereby dismissed and the Decision of the Internal Review Officer dated October 1, 2004 is confirmed.

Dated at Winnipeg this 30th day of June, 2009.

LAURA DIAMOND

NEIL MARGOLIS

JEAN MOOR