

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-08-52**

**PANEL:** Ms Yvonne Tavares

**APPEARANCES:** The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

**HEARING DATE:** October 15, 2009

**ISSUE(S):** Entitlement to reimbursement of the cost of a mattress and boxspring.

**RELEVANT SECTIONS:** Sections 136 and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') 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 facts giving rise to this appeal may be briefly summarized as follows:

1. The Appellant, [text deleted], was injured in a motor vehicle accident on June 16, 2007. As a result of that accident, the Appellant experienced severe neck pain, constant headaches, pins and needles on the left side of her body, numbness in her fingers and lower back pain.

- 2 On August 6, 2007, the Appellant purchased a Tempurpedic mattress and boxspring, on the advice of her family physician, [text deleted], in order to enable her to obtain a better sleep.
- 3 The Appellant requested consideration from MPIC for the purchase of the new mattress and boxspring to alleviate her pain and enable her to obtain a better sleep.
- 4 In a letter dated September 25, 2007, MPIC's case manager advised the Appellant that the mattress and boxspring were not a "medical necessity" and therefore MPIC would not consider funding their cost.
- 5 The Appellant subsequently filed an application for review of that decision. By letter dated February 12, 2008, the Internal Review Officer confirmed the case manager's decision on the basis that the medical material on the file did not establish that a new mattress and boxspring were a medical necessity.
- 6 The Appellant filed a Notice of Appeal with this Commission on June 6, 2008 in relation to that Internal Review Decision. At the hearing of the appeal, the Claimant Adviser on behalf of the Appellant submitted that the mattress was medically required because it was prescribed for her by [the Appellant's Doctor] as a means to alleviate the pain from her motor vehicle accident related injuries and to assist with her sleep. The Claimant Adviser also submitted that the purpose of the mattress was to lessen the disability resulting from the bodily injury caused by the motor vehicle accident. The Claimant Adviser argues that the mattress and boxspring are medically required because they will improve the Appellant's treatment and recovery by allowing her to obtain a more restful sleep and relief from her pain. The Claimant Adviser maintains that there is a strong likelihood that the mattress and boxspring will improve the Appellant's chances of recovery from her motor vehicle accident related injuries. As a result, the Claimant Adviser requested that

the Commission order reimbursement of the cost of the mattress and boxspring for the Appellant and allow the Appellant's appeal.

- 7 At the hearing of the appeal, counsel for MPIC submitted that on the basis of all of the evidence contained on the Appellant's file, the mattress and boxspring are not medically required and therefore did not qualify as a rehabilitation expense. Counsel for MPIC argues that the relief of neck pain and obtaining a better sleep are not a medical necessity and therefore the Appellant has not established that the new mattress and boxspring were medically required. Counsel for MPIC further maintains that [the Appellant's Doctor] provided no analysis or real explanation as to why a new mattress and boxspring were medically required for the treatment of the Appellant's injuries. As a result, counsel for MPIC maintains that the Appellant's appeal should be dismissed and the Internal Review Decision of February 12, 2008 confirmed.

Sections 136(1) and 138 of the MPIC Act provide that:

**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:

- (d) such other expenses as may be prescribed by regulation.

**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.

Section 10(1) of Manitoba Regulation 40/94 provides that:

**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:

- (d) reimbursement of the victim at the sole discretion of the corporation for
  - (i) ...,
  - (ii) ...,
  - (iii) medically required beds, equipment and accessories...

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that a new mattress and boxspring are medically required pursuant to Section 10(1)(d)(iii) of Manitoba Regulation 40/94. There was no evidence presented to the Commission to establish the medical requirement of a Tempurpedic mattress for the Appellant's particular injuries. [The Appellant's Doctor] did not provide supportive documentation indicating Tempurpedic mattresses are medically required in the management of patients diagnosed with cervical and/or lumbar radiculopathy. There was a lack of evidence as to the particular benefit of a Tempurpedic mattress versus any other type of mattress and how it would have been required in managing the Appellant's injuries. The Commission finds that the mattress must be considered an elective treatment strategy and not a medical requirement. Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision of February 12, 2008 is therefore confirmed.

Dated at Winnipeg this 29<sup>th</sup> day of October, 2009.

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**YVONNE TAVARES**