

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-155**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Donald Granatstein;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: March 2, 2011

ISSUE(S):

1. Reimbursement of medication expenses.
2. Entitlement to funding for massage therapy and botox treatment.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 5 and 38 of Manitoba Regulation 40/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on June 7, 1997. As a result of the motor vehicle accident, the Appellant sustained soft tissue injuries to her neck and back. Due to the bodily injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant was referred to [Appellant's Neurologist], for assessment of her ongoing pain complaints and possible indication for neurosurgery. In a letter dated July 4, 2008, [Appellant's Neurologist], indicated that:

In terms of her current problem, the treatment should include the following:

1. Massage and relaxation, using hot compress and vibrator on a regular basis.
2. She can use Flexeril and/or Robaxacet a few times per day.
3. She could try Acupuncture treatment.
4. It would be a good idea for her to be assessed at the pain clinic, particularly [Appellant's Doctor #1] at [text deleted], who can consider giving facet joint injection and/or Botox. In particular Botox might help to reduce muscle spasm significantly. I would recommend this very highly.

[Appellant's Neurologist's] recommendations were provided to MPIC for approval of funding.

On April 6, 2009, MPIC's case manager issued a decision which advised as follows:

Your entire medical file has been reviewed by our Health Care Services Team. The medical information suggests that the use of the medication Maxalt, Flexeril and Robaxacet are not medically required as a result of the motor vehicle accident and as such, are not eligible for reimbursement through Manitoba Public Insurance.

...

In regard to [Appellant's Neurologist's] recommendations for Massage Therapy and Botulism treatment, these forms of treatment would be considered elective and not medically required as a result of motor vehicle related injuries. Funding will not be provided through Manitoba Public Insurance for these treatments.

The Appellant disagreed with the case manager's decision and sought an Internal Review of the decision. In a decision dated October 7, 2009, the Internal Review Officer found that:

1. the prescription medications, Flexeril and Robaxacet, were not medically required as a result of the motor vehicle accident; and
2. massage therapy and botulism treatment would be considered elective and not medically required treatments as a result of the motor vehicle accident related injuries.

As a result, the Internal Review Officer upheld the case manager's decision with respect to those matters and dismissed the Appellant's Application for Review.

The Appellant has now appealed from that Internal Review Decision to this Commission. The issues which require determination on this appeal are:

1. reimbursement of medications – Flexeril and Robaxacet; and
2. entitlement to funding for massage therapy and botox treatment.

1. Reimbursement of Medications

Counsel for the Appellant submits that the medications Flexeril and Robaxacet were prescribed for the Appellant by her physician due to her motor vehicle accident related injuries. Counsel for the Appellant argues that these medications are a necessary and effective treatment for the Appellant's pain and muscle spasms. He therefore maintains that these medications are required for a medical reason, namely to provide relief from pain. He submits that if the medications are necessary for the treatment of the Appellant's pain and they are effective, then they are medically required for the Appellant.

In support of his position, counsel for the Appellant relies upon the medical report of [Appellant's Doctor #2]. [Appellant's Doctor #2], in his report of January 25, 2010, advises that he prescribes muscle relaxants for his patients as they report pain relief with their use. Counsel for the Appellant argues that MPIC's Health Care consultants have not provided adequate reasons as to why Flexeril and Robaxacet are not medically required. He maintains that these medications are effective for the Appellant's pain relief and therefore are required for medical reasons resulting from the motor vehicle accident. Therefore, counsel for the Appellant submits that they should be reimbursed by MPIC.

Counsel for MPIC submits that the medications, Flexeril and Robaxacet are not medically required for treatment of the Appellant's condition. In support of her position, counsel for MPIC

relies upon the medical opinion of [MPIC's Doctor], Medical Consultant to MPIC's Health Care Services Team, who advises that the long term use of Flexeril is not described as medically required, and can be described as elective. She argues that [MPIC's Doctor] has had the opportunity to review all of the relevant medical information on the Appellant's file and is in the best position to opine as to the effectiveness of the medications.

Additionally, counsel for MPIC submits that the medical information on the file does not establish that either Flexeril or Robaxacet are effective for control of the Appellant's pain. She maintains that there is no evidence that they have helped with the control of the Appellant's pain. As a result, counsel for MPIC submits that these medications are not medically required and therefore MPIC is not required to reimburse their expense. Counsel for MPIC therefore submits that the Appellant's appeal should be dismissed and the Internal Review Decision of October 7, 2009 should be confirmed.

Decision:

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant is entitled to reimbursement of her expenses for the medications Flexeril and Robaxacet.

Reasons for Decision:

Section 38 of Manitoba Regulation 40/94 provides as follows:

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

Upon a review of all of the evidence before it, the Commission finds that both [Appellant's Doctor #2] and [Appellant's Neurologist] recommended the use of Flexeril for treatment of the Appellant's long-standing neck pain and muscle spasms. Based upon these prescriptions by her treating practitioners, the Commission finds that the medications Flexeril and Robaxacet are required for a medical reason resulting from the accident. With regards to [MPIC's Doctor's] comment that the long-term use of Flexeril is not described as medically required, the Commission finds that this is not a reason to initially decline the use of Flexeril. Going forward, the Appellant's use of the medication should be monitored and if that use exceeds a reasonable length of time, then that may be an appropriate factor in terminating the reimbursement of the expense for that medication. However, initially, the Commission finds that the use of Flexeril and Robaxacet are required for a medical reason and therefore the expense for those medications shall be reimbursed by MPIC.

As a result, the Appellant's appeal with respect to reimbursement of the medications Flexeril and Robaxacet, is allowed, and the Internal Review Decision dated October 7, 2009 is therefore rescinded with respect to that issue.

2. Reimbursement of Massage Therapy Expenses and Botox Treatment

Section 136(1)(a) of the MPIC Act provides 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;

Section 5 of Manitoba Regulation 40/94 provides as follows:

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 Appellant is a resident of [Ontario]. The treatment for which she is seeking reimbursement is to be performed in Ontario. Pursuant to Section 5(b) of Manitoba Regulation 40/94, MPIC shall pay an expense for care when the 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. Massage therapy expenses are not an insured service under *The Health Services Insurance Act* if the care was dispensed in Manitoba. As a result, the Commission finds that the Appellant would not be entitled to reimbursement of the requested massage therapy expenses pursuant to Section 5(b) of Manitoba Regulation 40/94.

With regards to the request for consideration of the expenses for botox treatment, the Commission finds that the Appellant has not established, on a balance of probabilities, that botox treatment is medically required for treatment of the motor vehicle accident related injuries. The medical information on the Appellant's file was insufficient to establish that botox treatment was

medically necessary for treatment of the Appellant's motor vehicle accident related injuries. In particular, the recommendation from [Appellant's Neurologist] merely provided for an assessment of the Appellant at the pain clinic. The Commission finds that the recommendation for the assessment at the pain clinic does not render the botox treatment medically required. As a result, the Commission finds that the Appellant is not entitled to reimbursement of expenses for botox treatment.

Accordingly, the Appellant's appeal is dismissed with regards to funding for massage therapy and botox treatment and the Internal Review Decision of October 7, 2009 is therefore confirmed with respect to those issues.

Dated at Winnipeg this 17th day of March, 2011.

YVONNE TAVARES

PAUL JOHNSTON

LES MARKS