

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-130**

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnson
Mr. Les Marks

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

HEARING DATE: May 11, 2011

ISSUE(S): Whether the Appellant is entitled to funding of acupuncture
treatments.

RELEVANT SECTIONS: Section 136(1) 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 PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

The Appellant was injured on January 9, 2000 as she was walking her dog. A vehicle backed up and struck her left knee, causing her to fall to the ground. As a result of the accident the Appellant sustained a left knee sprain, left sacroiliac sprain and soft tissue injuries to her upper back and neck.

The medical information on the Appellant's file indicated that she had a pre-existing diagnosis of fibromyalgia.

The Appellant sought funding from MPIC for acupuncture treatment as a result of the motor vehicle accident. However, the Appellant's case manager wrote to her on March 24, 2010 stating that as there was insufficient evidence to establish a cause and effect relationship between the Appellant's current symptoms and the motor vehicle accident, she was not entitled to funding for acupuncture treatment.

The Appellant sought an Internal Review of this decision. She indicated that she suffered from left-sided nerve pain which resulted from the accident.

An Internal Review officer for MPIC reviewed the Appellant's file, which contained an opinion from [MPIC's Chiropractor], a chiropractic consultant with MPIC's Health Care Services, indicating there was insufficient evidence to relate the Appellant's signs and symptoms to the motor vehicle accident. The Internal Review Officer concurred with [MPIC's Chiropractor's] opinion that the current symptoms were not causally related to the motor vehicle accident related injuries and any treatment aimed at symptom reduction would not be compensable under the MPIC Act.

It is from this decision that the Appellant has appealed.

Evidence and Submission for the Appellant:

The Appellant testified, by teleconference, at the hearing into her appeal. She indicated that she was suffering from nerve pain that was not present before the motor vehicle accident. She explained that after the motor vehicle accident, her symptoms of nerve pain got worse on the left side.

The Appellant referred to clinical chart notes provided by [Appellant's Chiropractor], which noted, on April 20, 2009 that her pain had been bad that week with nerve pain on the left side and tighter muscle pain.

An initial chiropractic report provided by [Appellant's Chiropractor] dated July 22, 2007 also mentioned left-sided pain, and a narrative report was provided by [Appellant's Chiropractor] dated July 14, 2008. That report noted:

“[The Appellant] first presented to my office for care on March 17, 2005 with a chief complaint of “left side nerve pain”. After further questioning, she stated that this in fact left lower back and shoulder pain that she stated was a result of an earlier motor vehicle accident.”

He diagnosed chronic recurring left SI syndrome and a myofascial pain syndrome of the upper thoracic and cervical spine.

The Appellant submitted that the motor vehicle accident was the cause of her pain and that therefore, acupuncture, which seems to help her symptoms a little bit, is necessary as a result of the motor vehicle accident.

Evidence and Submission for MPIC:

Counsel for MPIC focused on Section 136(1) of the MPIC Act which requires that expenses, in order to be reimbursed, be necessary as a result of the motor vehicle accident.

She noted that the motor vehicle accident had occurred on January 9, 2000 and reviewed the Appellant's medical history both pre and post motor vehicle accident. Some of the reports and information she referred to included:

- A report from [Appellant's Doctor] dated May 24, 1994 noted that the Appellant had had diffuse musculoskeletal pain for many years with increasing leg pain. The Appellant felt her pain was different to her fibromyalgia pain and had been there for 1½ years. She described the pain as “squeezing the radius between your fingers and crushing it to death”. She also described her toes going numb and swelling of her feet and lower legs with numbness and side cramps` extending into the upper extremity.
- Report from [Appellant's Physiotherapist #1] dated August 22, 1994, noted that the Appellant has the classic symptoms of fibromyalgia.
- Clinical Notes from the [text deleted] Hospital from early 1994 to mid-1999 showed the Appellant attending doctors for attention regarding various complaints, including a good deal of musculoskeletal pain. For example, the Appellant complained of pain in her neck (October 18, 1996), body feeling like it was cramping (1997), back acting up (February 1998), aching hips (October 9, 1998), left knee pain (February 1999), lower back still sore (March 18, 1999) and back sore (August 5, 1999). Counsel for MPIC noted that right up until the motor vehicle accident, the Appellant complained, for extended periods of time, about pain in her back, left shoulder and neck.

Counsel for MPIC then reviewed a series of medical reports investigating the question of whether the Appellant's pain in her left hip was caused by the motor vehicle accident. Eventually, MPIC agreed that the hip pain was caused by the motor vehicle accident and treatment was provided. The Appellant was provided with approximately 10 chiropractic treatments per year until July 30, 2010.

The question of providing coverage for acupuncture treatment was initially suggested by [Appellant's Chiropractor] on May 12, 2009 when he noted that:

“[The Appellant] may benefit from acupuncture for her recurring L shoulder/neck and LBP (lower back pain).”

Counsel for MPIC noted that neither this report from [Appellant's Chiropractor] nor a report from the [Appellant's Physiotherapist #2], dated June 3, 2009, made any mention of the motor vehicle accident, or any indication that the pain in the Appellant's shoulder and neck were related to the motor vehicle accident.

[MPIC's Chiropractor] was asked to review the file, and noted that the Appellant's initial motor vehicle accident injuries were primarily to her left knee, with some soft orthopaedic findings and pre-patellar bursitis. She subsequently developed left sacroiliac joint discomfort, which was determined to be an aggravation of her pre-existing sacroiliac condition.

In regard to the request for acupuncture treatment [MPIC's Chiropractor] noted, on November 12, 2009:

“After reviewing the information on file, it is my opinion that the current file contents do not provide evidence of a probable relationship between her presentation to the physiotherapist in May, 2009 and the necessity for interventions, as described by [Appellant's Chiropractor] in May, 2009 and the motor vehicle accident in question.”

A further report was provided by [MPIC's Chiropractor] on March 3, 2010. He reviewed the Appellant's long history of widespread, diffuse musculoskeletal complaints. He noted that a sufficient trial of treatment directed towards the left sacroiliac joint had been undertaken in order to see the claimant through to maximum therapeutic benefit and maximum medical improvement. He opined that this had been sufficient to address the motor vehicle related

injuries and in his opinion the Appellant's current situation was a natural extension of her pre-existing condition.

Counsel for MPIC submitted that it was hard to disagree with [MPIC's Chiropractor] given the medical information and documents on the Appellant's file. She had a pre-motor vehicle accident history of diffuse muscular pain for many years, with different types of ongoing pain complaints. She had seen various caregivers for pre-motor vehicle accident shoulder pain, full body pain, and back cramping. The Appellant had a clear predisposition to various types of pain throughout her body and it was quite probable that she would have pain complaints and symptoms throughout her life. Even without the motor vehicle accident, one would not expect an individual with the Appellant's medical history to suddenly feel no new pain complaints developing as time progressed. The assumption that the left-sided nerve pain had developed as a result of the motor vehicle accident had not been supported by any medical report.

The Appellant had undergone a total of 93 chiropractic treatments, with 25 physiotherapy visits, paid for by MPIC. She was provided treatment for all her knee pain as well as for her sacroiliac joints and hips. Some was even directed at the upper left cervical spine. She had also received chiropractic treatment, before her motor vehicle accident, for cervical spine stiffness, soreness of her lower back, and right knee and sacroiliac joint, up to three days before the motor vehicle accident.

Counsel for MPIC noted that [MPIC's Chiropractor's] report was unchallenged by any practitioner and therefore, the evidence did not support the Appellant's assumption that all new pain she suffers is due to the motor vehicle accident.

Counsel for MPIC submitted that the treatment which the Appellant sought was not related to the motor vehicle accident and that the Appellant's appeal should be dismissed.

Discussion:

The MPIC Act provides:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94 provides:

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 acupuncture treatment she seeks is medically required as a result of injuries sustained in the motor vehicle accident.

The panel has reviewed the evidence on the Appellant's file, her evidence and submission at the appeal hearing, and the submission of counsel for MPIC. We have carefully reviewed the Appellant's medical history described in the documents on the file and in the submission of counsel for MPIC.

We find that the Appellant has failed to meet the onus upon her of showing that the medical care she seeks is related to the motor vehicle accident. No medical opinions were provided to contradict the opinion provided by [MPIC's Chiropractor] that the requirement for further treatment is not motor vehicle accident related.

We note that [MPIC's Chiropractor's] comments, provided on March 3, 2010:

“...Again, it is my opinion that given the date of loss that the claimant has had sufficient time and care directed toward this area for her to have reached maximum therapeutic benefit with respect to the accident-related injuries sustained in her upper quadrant.

With respect to a cause-effect relationship between the claimant's persistent and ongoing symptoms, it is my opinion that the file contents best describe a long history of widespread musculoskeletal complaints that were worsening prior to the motor vehicle collision and continued to worsen after the motor vehicle collision. These complaints included the areas that were described as injured in the mva in question. These mva related injuries had, in my opinion, sufficient care and time to reach maximum medical improvement. It is therefore my opinion that the current file contents are most suggestive of this claimant having reached her maximum therapeutic benefit and perhaps maximum medical improvement with respect to those areas.

It is clear from the file contents that she continues to suffer from ongoing complaints, however, the file contents are most supportive of her current situation being the natural extension of her pre-existing condition, and not a direct result of the motor vehicle collision in question...”

In the absence of any contradictory medical evidence, the panel agrees with the finding of [MPIC's Chiropractor] that the Appellant continues to suffer from ongoing complaints but that the medical evidence is most supportive of her current situation being the natural extension of her pre-existing condition and not a result of the motor vehicle collision in question.

Accordingly, the decision of the Internal Review Officer dated June 7, 2010 is upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 14th day of June, 2011.

LAURA DIAMOND

PAUL JOHNSTON

LES MARKS