

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-117

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Linda Newton

APPEARANCES: The Appellant, [text deleted], was represented by Ms Laurie Gordon of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: February 15, 2012

ISSUE(S): Reimbursement of medication expenses.

RELEVANT SECTIONS: Section 136(1)(d) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 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], is appealing the Internal Review Decision dated August 22, 2007 with respect to her entitlement to reimbursement for the medication Wellbutrin. The Internal Review Decision also denied reimbursement for the medication, Cyclobenzaprine. However, at the appeal hearing, the Claimant Adviser confirmed that the Appellant had not incurred any expenses for that medication and therefore, there was no appeal relating to the reimbursement of expenses for the medication, Cyclobenzaprine.

Facts and Background:

The Appellant was involved in a motor vehicle accident on April 4, 1994 when she was the driver of a vehicle wearing her seat belt, stopped at a yield waiting for traffic. She was rear-ended and immediately felt pain in her left shoulder, neck and low back. One to two days later, she sought medical treatment from her family physician. X-rays of her neck and back were performed and were normal. She was given a prescription for pain medication and a referral to physiotherapy.

Following the motor vehicle accident, the Appellant had difficulty maintaining her pre-accident activities of daily living and was unable to return to her employment [text deleted]. On March 17, 1998, the Appellant attended for an Independent Medical Examination with [Independent Doctor]. Due to her ongoing complaints of pain and several signs and symptoms of depression, [Independent Doctor] recommended that the Appellant be evaluated by [Appellant's Psychiatrist]. In a report dated September 7, 1998, [Appellant's Psychiatrist] diagnosed the Appellant as suffering from a Major Depression without Psychosis due to loss of function and loss of income following the motor vehicle accident and he prescribed anti-depressant medication for the Appellant. At that time, the Appellant's expenses for the anti-depressant medication were reimbursed by MPIC.

The Appellant continued to attend for treatment with [Appellant's Psychiatrist] and he continued to prescribe anti-depressant medication for the Appellant. In a report dated November 5, 2004, [the Appellant's Psychiatrist] confirmed that the Wellbutrin medication was being prescribed for her depression and that this depression was related to the motor vehicle accident of April 4, 1994. He also noted that she would require this medication as long as she was depressed.

In a report dated February 21, 2005, [Appellant's Psychiatrist] advised the case manager that:

She [the Appellant] said work is not hard. She stated that her sleep is alright and she's feeling good in the morning. Her mood is better. She is not depressed. She's also been taking B12 and that has helped her energy level. She said she's able to do some work at home.

For the past several months she has not taken any medication that I had prescribed. She said that she used to put some honey in her milk at night and that helped her sleep and her depression disappeared. When she was home, she was feeling better, her pain also had lessened.

...

Her DSM diagnosis is as follows:

Axis I -Major Depression- in remission.

Axis II -Nil

Axis III -Taking B12 and thyroxine for hypothyroidism.

Axis IV -Motor Vehicle Accident-suffered soft tissue injuries, complains of pain-enjoying sick roll (sic) -family complies with her wishes

...

Her depression is in remission and she's taking Wellbutrin 150 mgs bid.

On June 29, 2006, [Appellant's Psychiatrist] prescribed Wellbutrin 150mgs at hs for treatment of the Appellant's depression. On or about September 6, 2006, the Appellant submitted a claim to MPIC for reimbursement of medication expenses, including the medication Wellbutrin. The Appellant's file was subsequently referred to MPIC's Health Care Services Team to determine whether the prescription for Wellbutrin was medically required as a result of the motor vehicle accident of April 4, 1994. In an interdepartmental memorandum dated October 10, 2006, [MPIC's Doctor], medical director of MPIC's Health Care Services determined that the Appellant's use of Wellbutrin was probably not related to the motor vehicle accident of April 4, 1994.

In a decision dated October 24, 2006, MPIC's case manager wrote to the Appellant to advise her that there was insufficient evidence to support a causal relationship between the requirement for

the Wellbutrin medication and the motor vehicle accident of April 4, 1994. Therefore, MPIC would not provide reimbursement of the expenses for the Wellbutrin medication.

The Appellant sought an Internal Review of that decision. In a decision dated August 22, 2007, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there was insufficient evidence on the Appellant's file to indicate that the requirement for the medication Wellbutrin was causally related to the Appellant's motor vehicle accident.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of expenses for the medication Wellbutrin.

At the appeal hearing, the Claimant Adviser advised that the Appellant was claiming reimbursement in the total amount of \$327.46 for expenses related to the purchase of the medication Wellbutrin from May 4, 2006 to November 7, 2010. The Claimant Adviser argued that the Appellant continued to require the medication Wellbutrin for treatment of her depression which was caused by the motor vehicle accident of April 4, 1994. In support of her position, the Claimant Adviser refers to the initial diagnosis of depression by [Appellant's Psychiatrist] and his opinion that the Appellant's depression was related to the motor vehicle accident of April 4, 1994. The Claimant Adviser contends that the Appellant has continued to use anti-depressants since the initial diagnosis of depression by [Appellant's Psychiatrist] and that no other factors account for the Appellant's ongoing use of anti-depressants.

In further support of her position, the Claimant Adviser also relies upon the report of [Appellant's Psychiatrist] dated December 30, 2008 (which report replied to the Claimant Adviser's letter dated December 9, 2008), wherein [Appellant's Psychiatrist] stated as follows (his responses to her questions are set out in bold type):

1. *In your February 21, 2005 report, attached hereto, you identified [the Appellant's] DSM diagnosis as "Major Depression-in remission."*

A) *Please state whether this DSM diagnosis has changed.*

Her diagnosis has not changed.

B) *If [the Appellant's] DSM diagnosis remains "Major Depression-in remission," please state whether, on the balance of probabilities, the medication "Wellbutrin" is medically required to keep her depression in remission. Please explain your conclusion.*

Initially Wellbutrin was prescribed 150 mgs bid which was required to keep her depression in remission which was a consequent (sic) of her motor vehicle accident of April 4th, 1994.

In 2006, she had seen me less frequently on the following dates: June 29th, September 6th, November 7th, 2006 and in 2007 she saw me on the January 29th, May 15th, June 26th, August 7th, and November 21st, 2007. In 2008 she saw me on July 18th, September 11th, and November 13th, 2008 and she has only been taking Wellbutrin 150 mgs at hs since June 29th, 2006. On the balance of probabilities, she's taking a reduce (sic) of Wellbutrin for psychological reasons. Her Major Depression was in remission a long time ago.

The Claimant Adviser argues that, based upon [Appellant's Psychiatrist's] reports, the Appellant's diagnosis of depression is in remission, but treatment is still medically required. Accordingly, the Claimant Adviser submits that there are arguable grounds for allowing the reimbursement of the medication Wellbutrin.

Counsel for MPIC submits that the Appellant's appeal should be dismissed based upon the following factors:

1. The Appellant has abandoned her appeal as demonstrated by her lack of a continuous intention to prosecute the appeal. Counsel for MPIC submits that the Appellant's lack of intention to pursue her appeal is evidenced by the fact that the Appellant did not personally appear at the appeal hearing. Further, there have not been any instructions from the Appellant with respect to her appeal and with respect to attempts to settle the matter prior to the appeal hearing. As a result, counsel for MPIC submits that the Appellant has abandoned her appeal.
2. There is no reasonable explanation for the considerable delay in pursuing the appeal. Again, counsel for MPIC submits that this further demonstrates that the Appellant has not maintained a continuous intention to pursue her appeal given the lengthy delay since the Internal Review Decision of August 22, 2007.
3. There are no arguable grounds for the appeal. Counsel for MPIC submits that there is no causal relationship between the motor vehicle accident of April 1994 and the Appellant's ongoing intermittent use of anti-depressant medication. Counsel for MPIC submits that the anti-depressant medication has been taken irregularly with large gaps in its use. As a result, she submits that the medication is not required for a medical reason resulting from the motor vehicle accident of April 4, 1994.

Accordingly, counsel for MPIC submits that this appeal meets the test for abandonment. She maintains that the Commission should find that the Appellant has in fact abandoned her appeal

and that the appeal should be dismissed and the Internal Review Decision dated August 22, 2007 should be confirmed.

Decision:

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 and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of her expenses for the medication Wellbutrin.

Reasons for Decision:

The onus is on the Appellant to show that, on a balance of probabilities, the expense incurred for the purchase of the medication Wellbutrin was required for a medical reason resulting from the accident of April 4, 1994. The Commission has carefully reviewed the medical evidence before it and has concluded that the evidence fails to establish, on a balance of probabilities, that the Appellant's ongoing use of the medication Wellbutrin was required for a medical reason resulting from the motor vehicle accident of April 4, 1994.

The Commission finds that the documentary evidence filed in connection with this appeal, was insufficient to satisfy the standard of proof required in this case. The Appellant did not appear at the appeal hearing and did not provide any testimony in support of her appeal. The Commission finds that the documentary evidence is insufficient to establish, on a balance of probabilities, that the irregular use of the Wellbutrin medication was related to her depression resulting from the motor vehicle accident. Further, the sporadic use of the medication, causes the Commission to question the ongoing requirement of that medication. We required further explanation from the Appellant as to the intermittent nature of her use of this medication. No evidence explaining the

reason for the intermittent use of the medication was provided to the Commission, which causes us to question the ongoing requirement for the medication and whether its continued use was related to the motor vehicle accident of April 4, 1994.

With respect to the argument that the Appellant abandoned her appeal, the Commission is not prepared to make that finding. The Appellant appeared at the appeal hearing when it was initially convened on October 6, 2010. The Appellant also attended a Case Conference Hearing at the Commission on March 15, 2011, to determine the status of the appeal. Although the Appellant did not personally appear at the appeal hearing on February 15, 2012, she had the Claimant Adviser represent her at the appeal hearing. We find that the Appellant was satisfied that her interests would be fairly represented by the Claimant Adviser and that as a result she was not required to personally attend. As a result, the Commission is not prepared to make a finding that the Appellant has abandoned her case, in these circumstances.

The Commission therefore finds that the Appellant has not established, on a balance of probabilities, that the Wellbutrin medication was required for a medical reason resulting from the motor vehicle accident of April 4, 1994. Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated August 22, 2007 is confirmed.

Dated at Winnipeg this 22nd day of March, 2012.

YVONNE TAVARES

LEONA BARRETT

LINDA NEWTON