

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-137**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Nikki Kagan
Dr. Sharon Macdonald

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Andrew Robertson.

HEARING DATE: November 27, 2014

ISSUE(S): Entitlement to reimbursement of massage therapy expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Sections 5(a) and 8 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 March 31, 2013. As a result of that accident, the Appellant complained of injuries that involved pain to his low back, right hip and right leg (muscle and nerve). Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated August 21, 2013, with respect to his entitlement to reimbursement of outstanding expenses for massage therapy.

On April 29, 2013, MPIC's case manager issued a decision which advised as follows:

Manitoba Public Insurance will consider the cost of massage therapy in accordance with Section 8 of Manitoba Regulation 40/94, a regulation under the Manitoba Public Insurance Corporation Act, which reads as follows:

Massage therapy

8 The corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.

The massage therapy you received was not dispensed by a provider as outlined in the legislation; therefore, we are unable to consider your request for coverage or reimbursement of your massage therapy expenses.

The Appellant sought an Internal Review of that decision. In a decision dated August 21, 2013, the Internal Review Officer varied the case manager's decision of February 27, 2013 to allow coverage for five massage therapy treatments from April 5 to April 24, 2013. The Internal Review Officer found that the Appellant was not informed of the coverage available for massage therapy until the Appellant's initial meeting with the case manager on April 26, 2013. By this time, the Appellant had already attended five massage therapy treatments dispensed by a registered massage therapist. Under these circumstances, the Internal Review Officer varied the case manager's decision to allow funding for massage therapy from April 5 to April 24, 2013. The Internal Review Officer, however, found that the massage therapy treatments beyond that date did not meet the requirements of Section 8 of Manitoba Regulation 40/94 as they were not dispensed by a physician, chiropractor, physiotherapist, or athletic therapist.

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 his outstanding expenses for massage therapy.

Relevant Legislation:

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

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Section 5(a) of Manitoba Regulation 40/94 provides that:

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;

Section 8 of Manitoba Regulation 40/94 provides that:

Massage Therapy

8 The corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.

Appellant's Submission:

The Appellant submits that as a result of the injuries he sustained in the motor vehicle accident of March 31, 2013, he has continued to require massage therapy treatment. The Appellant advises that even though time has elapsed, the symptoms and intermittent discomfort from the

accident have remained. He submits that massage therapy treatment has helped his condition to improve and helped him to return to work. He notes that due to the benefit he derives from the massage therapy treatment, he was able to return to work and terminate his income replacement indemnity benefits sooner than would otherwise have been the case without massage therapy. The Appellant advises that he continues with his fitness training sessions, physiotherapy, athletic therapy and massage therapy. Although those treatments have helped a great deal, he is still not at pre-collision condition. He maintains that massage therapy has helped with his rehabilitation from his motor vehicle accident related injuries and that he should be entitled to reimbursement of those treatments.

The Appellant submits that the massage therapy was prescribed for him by his family physician and he was required to follow his physician's recommendations in order to cooperate with all reasonable rehabilitation plans. The Appellant maintains that the fact that his massage therapy was "prescribed" distinguishes his case from previous cases and complies with the provisions of the MPIC Act and Regulations. As a result, he submits that his massage therapy treatment was dispensed in accordance with the MPIC Act and Regulations since it was prescribed by a physician and therefore his expenses should be reimbursed by MPIC.

MPIC's Submission:

Counsel for MPIC submits that the relevant provisions of the MPIC Act and Regulations are clear and unambiguous with respect reimbursement of massage therapy expenses. He maintains that Section 8 of Manitoba Regulation 40/94 qualifies Section 5(a) of Manitoba Regulation 40/94 and Section 136(1)(a) of the MPIC Act. Section 8 of Manitoba Regulation 40/94 provides that MPIC will not pay an expense incurred by a victim for massage therapy unless the massage

therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist. Pursuant to that section, massage therapy provided by a registered massage therapist is not covered.

Further, counsel for MPIC submits that the term “dispensed” set out in Section 8 of Manitoba Regulation 40/94 is not equivalent to “prescribed”. He argues that if “prescribed” and “dispensed” were meant to include the same thing, then the drafters of the legislation would not have used two different phrases. Counsel for MPIC argues that the phrase “dispensed” means “administer”. He argues that since the massage therapy was “prescribed” by the Appellant’s family physician, the requirements of Section 8 of Manitoba Regulation 40/94 are not fulfilled. Section 8 requires that the massage therapy treatments actually be “dispensed” or “administered” by a physician, chiropractor, physiotherapist or athletic therapist, which did not occur in this case.

Accordingly, counsel for MPIC submits that the Appellant is not entitled to reimbursement of his massage therapy expenses. He submits that the Appellant’s appeal should be dismissed and the Internal Review decision dated August 21, 2013 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant, and after 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 Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for massage therapy.

Reasons for Decision:

Pursuant to Section 136(1)(a) of the MPIC Act, a victim is entitled to reimbursement of medical and paramedical expenses incurred by the victim because of the accident. However, section 136(1)(a) of the MPIC Act is subject to the regulations. Section 5(a) and Section 8 of Manitoba Regulation 40/94 qualify and place limits on the coverage provided by Section 136(1)(a) of the MPIC Act. Section 8 of Manitoba Regulation 40/94 is clear that expenses incurred for massage therapy are not covered unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist. As previously noted by this Commission, the meaning of the word “dispensed” is clear and unambiguous, and the phrase must be given its plain and ordinary meaning. The Commission finds that the ordinary meaning of the word “dispensed” is to “administer” or “to give out”. As a result, the Commission finds that pursuant to section 8 of Manitoba Regulation 40/94, the Appellant is not entitled to reimbursement of massage therapy expenses dispensed by a registered massage therapist.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of ongoing expenses for massage therapy. As a result, the Appellant’s appeal is dismissed and the Internal Review decision dated August 21, 2013 is confirmed.

Dated at Winnipeg this 15th day of December, 2014.

YVONNE TAVARES

NIKKI KAGAN

DR. SHARON MACDONALD