

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [APPELLANT]
AICAC File No.: AC-19-190**

PANEL: Pamela Reilly, Chairperson
Kristen Legrange
Camille Sylvester

APPEARANCES: The Appellant, [text deleted], was self-represented. Manitoba Public Insurance Corporation (“MPIC”) was represented by Mitch Mraovic (“Counsel”).

HEARING DATE: August 2, 2023.

ISSUE(S): To determine whether the Appellant is entitled to further funding of treatment.

RELEVANT SECTIONS: Sections 136(1) and 184 of *The Manitoba Public Insurance Corporation Act* (the “Act”) and Regulation 40/91, section 5.

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

Background

On August 12, 2017, the Appellant collided with a third party vehicle on the highway (“the MVA”). The Appellant’s [vehicle] was written off. An ambulance did not attend the scene and the Appellant did not attend a hospital immediately after the MVA.

MPIC covered the cost of the Appellant’s three chiropractic treatments in August and September 2017.

In June 2019, the Appellant requested that MPIC fund physiotherapy treatment. MPIC denied further funding on the basis that the Appellant's symptoms, for which he sought treatment, were not MVA-related.

Issue

Is the Appellant entitled to further MPIC funding for physiotherapy treatment?

Decision

The Panel finds that the Appellant's symptoms and treatment were not MVA-related. The Panel upholds the IRD and dismisses the appeal.

The Hearing

In preparation for each hearing, the Commission compiles an Indexed File, which contains all documents agreed upon by the parties as evidence that the parties and Panel may refer to, and rely upon, at the hearing. The Commission numbers these documents for ease of reference by the parties and the Panel. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

Appellant testimony and submissions

The Appellant described his 2017 MVA. The frame of his truck was bent and MPIC wrote it off. He said that he experienced pain in his neck and back. The Appellant conceded that he has a history of back problems but said the MVA caused more severe neck and back pain.

He said that on August 17, 2017, he saw a doctor in [location] who sent him for an X-ray. On August 31, 2017, he saw his family doctor, [doctor 1], who advised that the X-ray revealed no broken bones. The Appellant said that he returned home and treated his pain with heat.

The Appellant said that in 2019 he attended five physiotherapy treatments that essentially consisted of acupuncture and massage therapy. He then had an MRI in 2019 that showed a T3 compression fracture. The Appellant referred to [doctor 1] June 26, 2020 report. [doctor 1] said the T3 fracture had not been seen before and that it was consistent with a flexion extension injury, which could have been caused by the MVA.

When asked by the Chair to describe his 2019 symptoms, the Appellant said that he just got steadily worse. He had a hard time sleeping and a hard time getting comfortable; "getting older I guess." He said that when he found out about the MRI results, he thought that might be why he was getting worse. He said all he wanted was compensation for what he spent.

During cross-examination, Counsel reviewed [doctor 1] chart notes from 2015 to 2019, none of which the Appellant disputed. The Appellant agreed that he had a good rapport with his doctor and trusted his doctor's expertise in diagnosing and treating his various conditions. The Appellant agreed that he had sought treatment for other pain complaints since the MVA.

The Appellant agreed that when he received chiropractic treatment in 2017 he did not feel that the second and third treatments helped and he was concerned the treatments may damage his prior lumbar surgical site. His subsequent physiotherapy treatments were "mostly acupuncture." He said the best treatment for relief of his pain was heat, massage and medication.

The Appellant submitted that after the August 12, 2017 MVA he definitely had more pain. He saw the doctor in [location] when the pain got quite bad and went for an X-ray. He saw [doctor 1] on August 31, 2017 and subsequently used heat, his hand held massager and other home treatments. He said that he received chiropractic treatment and physiotherapy treatment. He has faith in his doctor's opinion that the compression fracture could be caused by the accident. He feels that he did not complain enough and waited too long for treatment, which has now compromised his case.

MPIC Submission

Counsel submitted that the Appellant bears the burden of proving his claim on a balance of probabilities. The issue is whether he is entitled to further physiotherapy treatments for MVA-related injuries.

Counsel submitted that the Appellant's 2019 symptoms are essentially set out in the physiotherapist's June 7, 2019 Initial Therapy Report, which the Appellant does not dispute. Counsel reviewed MPIC's April 15, 2021 Health Care Services ("HCS") physiotherapy consultant opinion, and requested that the Panel give it considerable weight.

The HCS physiotherapy consultant reviewed all of the Appellant's medical chart notes and the Initial Therapy Report. He noted that following the Appellant's medical visit on August 31, 2017, there were no further visits that documented neck or back pain.

The consultant looked at the June 5, 2018 visit to the doctor for a "general checkup" in which there is no mention of any particular complaints. Under "Therapies," the chart note documented "obvious clinically neuropathic leg pain from his low back surgery." Otherwise, the assessment was that "this man is doing well," and while his "spinal stenosis had progressed" the Appellant continued to play golf.

The consultant considered the next visit and chart note dated June 8, 2019 in which the doctor noted "neurological dizziness and syncope." The musculoskeletal examination was noted as normal. The assessment was "poor balance" which may be related to his spinal stenosis. [The Panel noted that "syncope" is more commonly known as fainting.]

Counsel referred to the consultant's statement that, based upon his review of the file, it did not appear that back and neck pain persisted following the MVA. The HCS consultant agreed with the case management decision that the Appellant's current signs and symptoms were not MVA-related, and opined that physiotherapy treatment was not medically required.

Counsel submitted that the Appellant's long standing, pre-existing back condition and age-related factors were the more likely cause of his symptoms. He submitted that the Appellant had not proven his claim on a balance of probabilities and requested that the Panel dismiss the appeal.

Legislation

The applicable sections of the *MPIC Act* and Regulations are 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;

Powers of commission on appeal

184(1) After conducting a hearing, the commission may

- (a) confirm, vary or rescind the review decision of the corporation; or
- (b) make any decision that the corporation could have made.

Manitoba Regulation 40/94

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 expenses 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

Discussion

The Appellant bears the burden of proving, on a balance of probabilities, that his 2019 symptoms were caused by his 2017 MVA, which would thereby entitle him to physiotherapy treatment and associated funding. The applicable section of the *Act* is section 136(1), as well as Regulation 40/94, section 5, as set out above.

Section 136(1) states that the Appellant is entitled to be reimbursed expenses “incurred by [him] because of the accident.” This means the MVA must have caused the injuries or symptoms for which he sought treatment. The Panel considered all of the medical records in the Indexed File.

The Appellant relied upon the June 26, 2020 report from [doctor 1] (“[doctor 1] Report”). [doctor 1] Report stated that the Appellant has been a long standing patient of the clinic. [doctor 1] noted that he reviewed the Appellant’s complete medical chart. [doctor 1] stated that he was “asked by MPI to review this gentleman’s previous x-rays, previous MRI and new MRI completed in 2019 for comparison.”

[As a side note, [doctor 1] Report is addressed to “Claimant Advisor”. The Indexed File contains a retainer letter to [doctor 1] from the Claimant Advisor Office on behalf of the Appellant. The Claimant Advisor Office is not MPIC. Like the Commission, the Claimant Advisor Office is independent of, and not associated with, MPIC.]

[Doctor 1]’s report noted that the Appellant was involved in a motor vehicle accident on August 12, 2017. The report stated that the Appellant “developed acute right paralumbar pain with associated neck pain” [emphasis added]. [doctor 1] stated, “The spinal MRI of 2007 and 2010 have been reviewed and the report suggests this man has spinal osteoarthritis.”

[Doctor 1]’s report stated that the Appellant had the 2019 MRI “due to ongoing mechanical neck pain issues”. [The Panel noted that there is no corresponding chart note that documented why [Doctor 1] ordered the 2019 MRI. The MRI report showed imaging of “MRI brain” and “MRI cervical spine.”] He stated that the 2019 MRI revealed, the following:

...this man actually suffered from an undiagnosed T3 spinal fracture. This is a compression fracture and consistent with a history of a flexion extension injury at the level of the neck. It would be consistent with a motor vehicle accident injury. This is a new finding which was not seen on the previous MRI. This finding is on the thoracic spine which is also partially

reviewed when cervical spine MRIs are completed for completeness. [sic] I would have to agree that this gentleman's progression of spinal arthritis, spinal pain and immobility is likely caused by a motor vehicle accident.

The Panel noted that [Doctor 1] did not make any comparison between the MRIs and the X-ray taken shortly after the Appellant's 2017 MVA, as requested in the Claimant Advisor retainer letter. However, [Doctor 1] August 31, 2017 chart note had referenced the X-ray and read, as follows:

This gentleman was hit on August 13th [sic] in a motor vehicle accident. He developed acute right para lumbar pain of which he is receiving chiropractic care. Clinical examination x-rays are consistent with the above. X-rays were reviewed today and this shows old laminectomy site with spinal fusion but no new findings, except for muscular spasm [emphasis added]. Recommendation – Chiropractor care. Physiotherapy. Review regarding osteopenia on x-rays noted and increasing Vitamin D and Calcium are suggested.

The above chart note diagnosed "acute right lumbar pain." The Panel noted that the August 31, 2017 chart note is inconsistent with the comment in [doctor 1] Report that the Appellant had "associated neck pain." Also, because he apparently did not compare the 2017 X-ray with the 2019 MRI, [Doctor 1] did not explain why the X-ray did not reveal a T3 fracture.

The Panel reviewed the actual August 29, 2019 MRI report of the brain and cervical spine referred to in [Doctor 1]'s report. The 2019 MRI report showed [Doctor 1] as the referring physician, but does not state the reason for his referral. The MRI reads, in part, under the heading "MRI cervical spine", as follows:

There is a mild (15%) superior compression fracture of T3 without retropulsion or change in spinal canal diameter.

...

Impression:

Multilevel degenerative changes as described.

[Doctor 1] stated that the 2019 MRI compression fracture was "a new finding" and implied that 'new' meant in comparison with the 2010 MRI. As noted above, the 2019 MRI

described a “mild” compression fracture. Interestingly, the MRI report does not identify the compression fracture as an ‘old’ or ‘healed’ fracture, which might be expected if the fracture was consistent with a history of a flexion extension injury from 2017 as opined by [Doctor 1].

[Doctor 1] did not reconcile his conclusion of an MVA-related compression fracture with his own suggestion that the MRIs revealed “spinal osteoarthritis”, nor comment on the MRI radiologists’ impression that the MRI showed multilevel degenerative changes. [Doctor 1] did not explain how either his comment about spinal osteoarthritis or his 2017 finding of osteopenia reconciled with his conclusion that the T3 compression fracture was consistent with a 2017 MVA injury.

Further, the Panel noted [Doctor 1] comment that the T3 finding refers to the thoracic spine. If the 2017 MVA caused the thoracic compression fracture, [Doctor 1] did not then explain the apparent discrepancy between this thoracic fracture and his 2017 diagnosis of acute right para lumbar pain.

The Panel considered the final chart note of June 8, 2019, in which [doctor 1] recorded “neurological dizziness and syncope.” The chart notes stated that the Appellant’s musculoskeletal examination was normal. [Doctor 1] assessment was “poor balance,” which may be related to “spinal stenosis.” There is no mention of neck or back pain.

The physiotherapist’s June 7, 2019 Initial Therapy Report stated that the Appellant had “neck pain that has been worse since the accident.” The Appellant reported dizziness when getting up and lying down. The report of dizziness is consistent with [Doctor 1]’s chart note of June 8, 2019. The physiotherapist also noted “pre-existing symptoms from Chiari malformation” (i.e. brain tissue extending into the spinal canal), and lumbar spine surgery. However, “L-spine is not the limiting factor.”

The physiotherapist’s June 19, 2019 follow up Therapy Report documented that after five sessions of treatment, the Appellant had “significant improvement” with “only mild vertigo when lying to sit, or sit to lying and sleep is much improved.” The “Clinical

Diagnoses” was stated as: “Post-whiplash re-occurrence, vertigo/dizziness largely resolved with muscular skeletal treatment.” The Management Plan was for the Appellant to continue with a home program and follow up as required. This reported improvement also does not seem to reconcile with [Doctor 1]’s finding that there was an existing T3 compression fracture.

The Panel does not discount the Appellant’s back and neck pain symptoms. The question, however, is whether his 2019 pain symptoms were causally related to his 2017 MVA. The two year gap between the Appellant’s 2017 MVA and his 2019 treatment is problematic. Further, notwithstanding [Doctor 1]’s opinion that the Appellant’s progression of spinal arthritis and pain was likely caused by his MVA, [Doctor 1] failure to reconcile this opinion with the time gap and conflicting chart notes leaves his opinion in doubt. Therefore, the Panel declines to rely on [Doctor 1]’s opinion. The Panel agrees with the HCS consultant that “there is a notable lack of any documentation of ongoing back or neck pain” in the chart notes. The Panel finds that there is insufficient evidence to link the Appellant’s neck and back pain to the MVA, and accepts the HCS consultant opinion that physiotherapy treatment was not medically required in accordance with the causation requirements of the *Act*.

Disposition

The Panel finds that the Appellant has not proven, on a balance of probabilities, that his treatment was MVA-related. The Panel upholds the IRD and dismisses the appeal.

Dated at the City of Winnipeg, in the Province of Manitoba, this 25th day of August, 2023.

PAMELA REILLY

KRISTEN LEGRANGE

CAMILLE SYLVESTER