



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-143

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Antoine Frechette
Mr. Les Marks

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

HEARING DATE: January 12, 2004

ISSUE(S): Entitlement to reimbursement of expenses associated with out-of-province medical consultation.

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

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

The Appellant, [text deleted], was involved in a motor vehicle accident on March 13, 1997. As a result of the injuries which he sustained in that accident, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The issue which arises in this appeal is whether the Appellant is entitled to reimbursement of the expenses incurred in connection with an out-of-province medical consultation.

On May 16, 2003, the Appellant travelled to [text deleted] for a consultation with [Appellant's orthopedic surgeon #1], [text deleted]. At that time, the Appellant explained that he wanted to consult with an orthopedic surgeon to obtain a second opinion as to whether back surgery, and specifically a disc fusion or disc replacement, would be recommended in his case.

In his report, dated May 16, 2003, [Appellant's orthopedic surgeon #1] concluded that [the Appellant] would be an excellent candidate for spinal fusion surgery and would also be a candidate for the Maverick Disc Prosthesis (artificial disc replacement). The Appellant is scheduled for spinal fusion surgery in [text deleted], Ontario on February 6, 2004.

Prior to the consultation with [Appellant's orthopedic surgeon #1], the Appellant had attended upon [text deleted], an orthopedic surgeon in [text deleted] on February 10, 1999. Based upon his examination of the Appellant, [Appellant's orthopedic surgeon #2] concluded that surgical intervention would not be appropriate to remedy the Appellant's low back pain.

Thereafter, the Appellant continued to consult with various specialists throughout [text deleted] for treatment and therapeutic intervention in regards to his low back pain. He continued to research various spinal surgical procedures and he also continued to attend upon [Appellant's chiropractor], for chiropractic treatments.

In his efforts to assist the Appellant, [Appellant's chiropractor] also investigated treatment options for [the Appellant]. [Appellant's chiropractor] presented the Appellant's case, including his CT and MRI scans to a panel of three orthopedic surgeons at the American Back Society Conference. Upon hearing the history and reviewing the imaging, there was a unanimous decision between all three orthopedic surgeons that [the Appellant] required surgical

intervention, specifically fusion at the L5-S1 level. [Appellant's chiropractor] considered that this opinion was made without examining [the Appellant], and in a letter to the Appellant's case manager dated December 28, 2000, he recommended that [the Appellant] be referred out-of-province for an orthopedic consultation.

[Appellant's chiropractor]'s correspondence of December 28, 2000 was referred to [text deleted], Medical Director of MPIC's Health Care Services team for review. In his Inter-Departmental Memorandum dated January 10, 2001, [MPIC's doctor] recommended that once the Appellant had finished his treatment with [Appellant's doctor #1] at the [hospital #1], it would be appropriate to have him see [Appellant's orthopedic surgeon #2] again, and inform [Appellant's orthopedic surgeon #2] of [Appellant's chiropractor's] most recent case presentation. After reviewing [Appellant's orthopedic surgeon #2's] opinion, further consideration to an out-of-province surgical consultation could be made. [MPIC's doctor] determined that the out-of-province consultation, at that point, was premature and could not be described as a medical necessity.

The Appellant did complete the course of treatments with [Appellant's doctor #1], however he did not obtain any lasting improvement with those treatments. Once again he sought approval for an out-of-province consultation with an orthopedic surgeon. [Appellant's chiropractor] also discussed the Appellant's case directly with [MPIC's doctor]. In his Inter-Departmental Memorandum dated July 19, 2002, [MPIC's doctor] recommended that the Appellant undergo a multi-level discography to ensure that the painful disc was included in any surgical procedure. He also advised [Appellant's chiropractor] that the Appellant should be referred back to [Appellant's orthopedic surgeon #2] for a further opinion.

The multi-level discography was carried out by [Appellant's doctor #2] at the [hospital #2] on September 6, 2002. The findings of the discogram were consistent with extensive L5-S1 disc degeneration. The Appellant also had a severe reproduction of pain upon injection at the L5-S1 disc.

Subsequently, there were several discussions between MPIC's case manager, the Appellant and [Appellant's chiropractor] regarding the procedure to be undertaken with Manitoba Health for an individual to be referred out-of-province for assessment and treatment. In a letter dated September 13, 2002, [MPIC's doctor] confirmed the process to be followed as such:

We discussed the normal Manitoba Health protocols for an individual being referred out-of-province for assessment and treatment. I informed you that it was my understanding that the typical Manitoba Health protocols require the patient to be assessed by a Manitoba physician who is duly qualified in the area of concern. In [the Appellant's] case, this would be an orthopedic surgeon, or a neurosurgeon with a special interest in spine surgery. The surgeon in question would have to assess [the Appellant], indicate that the surgical procedure would be a medical necessity, and that the surgical procedure could not be performed properly in Manitoba. If this was the case, the individual is typically covered for out-of-province consultations and treatments.

We discussed that I had suggested that [the Appellant] see [Appellant's orthopedic surgeon #2] to answer his question regarding the risks, benefits, and indication for spinal surgery. This has appeared in my inter-departmental memorandums on at least three occasions. The reason for this suggestion, is that [Appellant's orthopedic surgeon #2] is a duly qualified orthopedic surgeon with a special interest and fellowship training in spine surgery. He has seen and assessed [the Appellant] in the past. His written opinion to [the Appellant's] MPI file is that the patient does not have a condition which is amenable to spinal surgery. As such, any opinions from other surgeons will be weighed against [Appellant's orthopedic surgeon #2's] opinion. If the patient or his practitioners are intent upon pursuing spinal surgery as a therapeutic option, then [Appellant's orthopedic surgeon #2's] support would be very helpful to the patient in his deliberations for such a procedure.

At the appeal hearing, the Appellant advised that when he contacted [Appellant's orthopedic surgeon #2's] office to inquire about his appointment, he was told that there had not been any appointment booked for him and that he was not on the waiting list to see [Appellant's

orthopedic surgeon #2]. He was advised that the waiting time for an appointment with [Appellant's orthopedic surgeon #2] was approximately one year.

The Appellant explained that he was frustrated with the process and decided to consult with [Appellant's orthopedic surgeon #1] in [text deleted], since he could book an appointment relatively quickly. Subsequent to his consultation with [Appellant's orthopedic surgeon #1] in [text deleted], he approached MPIC for reimbursement of his expenses related to this consultation. In a letter dated July 9, 2003, MPIC's case manager advised the Appellant that MPIC would not reimburse his expenses associated with the out-of-province consultation. This decision was confirmed by the Internal Review Officer in his decision dated September 23, 2003. The Appellant has now appealed from that decision to this Commission.

The Law

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(b) 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:

- (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.

Discussion

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant is not entitled to reimbursement of his expenses associated with the out-of-province medical consultation with [Appellant's orthopedic surgeon #1].

The Appellant wanted to obtain a second opinion with respect to the advisability of spinal surgery. Such a consultation, with an orthopedic surgeon, is available in [text deleted] and the consultation is an insured service under *The Health Services Insurance Act*. In the usual circumstances, there would not be any expenses incurred for such a consultation and reimbursement would not be an issue. However, in these circumstances, due to the lengthy delay faced by the Appellant for the consultation with [Appellant's orthopedic surgeon #2], the Appellant felt compelled to seek an alternative option and attend for an out-of-province consultation. While the Appellant's frustration with the public health system may be understandable, the lengthy waiting period for an orthopedic consultation in [text deleted] did not render the out-of-province consult medically required pursuant to subsection 5(b) of Manitoba Regulation 40/94. We find that the Appellant chose to avail himself of the option to consult with [Appellant's orthopedic surgeon #1], and while that choice was understandable and reasonable in his circumstances, we do not find it medically required within the meaning of subsection 5(b) of Manitoba Regulation 40/94.

As a result, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated September 23, 2003 is therefore confirmed.

Dated at Winnipeg this 27th day of January, 2004.

YVONNE TAVARES

ANTOINE FRECHETTE

LES MARKS