

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-70**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Mary Lynn Brooks
Mr. Les Marks

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

HEARING DATE: December 9, 2008

ISSUE(S): Entitlement to reimbursement of physiotherapy treatment expenses

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) 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 June 15, 1997. As a result of this accident, the Appellant was diagnosed with left neck, shoulder and lumbar spine region sprain. Treatment recommendations included physiotherapy. [The Appellant] failed to respond fully to physiotherapy with regards to his left shoulder and was subsequently seen by a number of specialists.

He was first referred to [Appellant's orthopedic surgeon #1], orthopedic surgeon, for a possible left rotator cuff tear. He was also seen by [Appellant's rehabilitation specialist], physical medicine rehabilitation specialist, for his reduced left shoulder function and pain. A CT arthrogram was ordered which ruled out a rotator cuff tear.

[The Appellant] continued to attend for physiotherapy treatments and was enrolled in a graduated return to work program at the [rehab clinic] which commenced in May 1998. This latter treatment resulted in re-aggravation of his left shoulder problem. [The Appellant] was then referred to [Appellant's orthopedic surgeon #2], orthopedic surgeon, for assessment of his left shoulder. [Appellant's orthopedic surgeon #2] determined that [the Appellant] suffered from rotator cuff impingement and that his problem could be amended with surgery. [The Appellant] subsequently underwent surgery on October 20, 1998.

[The Appellant] failed to make a full recovery from this surgery and it was medically determined that he was unable to resume his former occupation as a maintenance worker with the [text deleted]. With the [text deleted] assistance, [the Appellant] enrolled in a school bus driver training program, in order to re-train for a less physically demanding occupation. He was able to obtain a part-time job as a bus driver with the [text deleted] effective September 1999. [The Appellant] continued receiving treatment for his shoulder from time to time.

In February 2003, the Appellant reported an increase of pain in his left shoulder after his bus drove over a pot hole. [The Appellant] continued to work in the capacity of a bus driver until May 30, 2003, at which time he stated that he was unable to continue driving a school bus due to the pain in his left shoulder. His physician, [Appellant's doctor], recommended that he stay off work and once again referred him to [Appellant's orthopedic surgeon #2], orthopedic specialist.

The Appellant was subsequently referred by MPIC to [independent orthopedic surgeon], orthopedic surgeon, for an independent medical examination. [Independent orthopedic surgeon] provided a report dated July 28, 2003 wherein he found that the Appellant had a moderate impairment to his left shoulder due to the original accident of June 1997. [Independent orthopedic surgeon] did not believe that [the Appellant] required further ongoing therapy or manipulation but that he would benefit from taking an anti-inflammatory medication and a mild analgesic for one to two months. [Independent orthopedic surgeon] did think that the Appellant was able to continue working at his previous job.

[Appellant's orthopedic surgeon #2] provided a report dated September 4, 2003, based on his examination of [the Appellant] of August 13, 2003. [Appellant's orthopedic surgeon #2] indicated that the February 2003 incident involving driving over the pot hole may have done enough damage to disable the Appellant from working. He stated that an MRI had been scheduled for [the Appellant] in December 2003.

The file was then forwarded to [MPIC's doctor], medical consultant to MPIC Health Services Team, who provided a memorandum dated October 16, 2003, which stated:

Based on my review of [the Appellant's] file, it is noted that he has received an extensive therapy program to address his various symptoms. It is documented that he has been educated with regard to exercises he can perform independently and interventions that he can carry out that may help minimize his symptoms (i.e. application of ice, heat, and self-massage). At the present time, the cause of [the Appellant's] increased shoulder symptoms has not been identified. As indicated earlier, it is doubtful that this is a reflection of a significant tear involving the rotator cuff. It is my opinion that further passive interventions would not assist [the Appellant] in his functional recovery. It is documented that [the Appellant] had a permanent loss of left shoulder function as a result of an injury arising from the motor vehicle incident. It is my opinion that [the Appellant] can minimize the ill effects of this impairment if he remains compliant with a home-based exercise program.

At this stage the medical evidence does not support the need for further supervised treatment programs. This would be in keeping with opinions submitted by [independent orthopedic surgeon] in July 2003. Until further tests are performed, it would be prudent for [the Appellant] to continue with this home program. The medical evidence does not indicate that [the Appellant] requires supervision in order to perform the prescribed exercises.

In a decision letter dated October 30, 2003, the case manager advised the Appellant that MPIC would not fund further physiotherapy treatments for his shoulder as it was not medically required.

The Appellant sought an Internal Review of that decision. In a decision dated January 22, 2004, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that there was insufficient evidence to establish that continued physiotherapy treatments were medically required for management of the Appellant's left shoulder symptoms.

The Appellant has now appealed from that decision to the Commission. The Appellant is seeking reimbursement of expenses for physiotherapy treatments from June 9, 2003 to May 27, 2004, inclusive. The issue which requires determination in this appeal is whether the physiotherapy treatments undertaken by the Appellant were medically required.

The Claimant Adviser, on behalf of the Appellant, submits that the physiotherapy treatments for which the Appellant claims reimbursement were medically required for the following reasons:

1. The physiotherapy treatments were prescribed by the Appellant's family physician, [Appellant's doctor].

2. The physiotherapy treatments provided ongoing benefit to the Appellant in the form of pain control, mobilization and strengthening of his left arm.
3. [Independent orthopedic surgeon's] report of July 28, 2003 was flawed. Despite [independent orthopedic surgeon's] opinion that the Appellant did not require any further ongoing therapies or manipulations for his left shoulder (but would benefit by taking an anti-inflammatory medication or a mild analgesic for the next one to two months), the Appellant did undergo arthroscopic surgery on his left shoulder with [Appellant's orthopedic surgeon #2] on May 28, 2004 in order to provide further diagnostic and therapeutic intervention.
4. The Appellant's treating physiotherapist's opinion that the physiotherapy treatments were required and indeed did improve the Appellant's range of shoulder motion pending his surgery.

The Claimant Adviser maintains that the Appellant required the physiotherapy treatments pending his surgery in order to cope with his symptoms. Accordingly, she argues that the Appellant's appeal should be allowed and his expenses for the physiotherapy treatments pending his shoulder surgery should be reimbursed.

Counsel for MPIC submits that the physiotherapy treatments were not medically required. She maintains that the physiotherapy did not provide lasting benefit to the Appellant, nor did it improve his shoulder condition and therefore the treatments cannot be considered medically required. As a result, she argues that the Appellant's appeal should be dismissed and the Internal Review decision dated January 22, 2004 should be confirmed.

Upon a careful review of all the medical, paramedical, and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has established, on a balance of probabilities, that physiotherapy treatments from June 9, 2003 to May 27, 2004, inclusive, were medically required for the treatment of the Appellant's motor vehicle accident-related injuries.

The Commission finds that physiotherapy treatments were medically required pending the Appellant's further shoulder surgery. The physiotherapy treatments did maintain and improve the active range of motion of the Appellant's left shoulder prior to the surgery. Additionally, the physiotherapy treatments were an important part of the Appellant's pain management program and provided strengthening of the left shoulder. We find that it was a reasonable modality of care to maintain the Appellant's functional ability, and to provide pain relief pending further investigations and the eventual shoulder surgery which resulted in significant improvement of the Appellant's left shoulder symptoms. Accordingly, the Appellant's expenses for physiotherapy treatments from June 9, 2003 to May 27, 2004, inclusive, shall be reimbursed together with interest in accordance with Section 163 of the MPIC Act.

As a result, the Appellant's appeal is allowed and the Interval Review decision dated January 22, 2004 is therefore rescinded.

Dated at Winnipeg this 12th day of February, 2009.

YVONNE TAVARES

MARY LYNN BROOKS

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