

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-36**

PANEL: Ms. Laura Diamond, Chairperson
Dr. Patrick Doyle
Mr. Les Marks

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

HEARING DATE: January 13, 2009

ISSUE(S): Entitlement to physiotherapy treatment benefits for left lower limb symptoms

RELEVANT SECTIONS: Section 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 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 was injured in a motor vehicle accident on November 2, 2001. He suffered soft tissue injuries affecting various regions of his body.

The Appellant received physiotherapy treatment until June of 2002.

In February of 2002, he complained to his general practitioner, [text deleted], regarding pain and wasting of the left leg calf muscles, as well as weakness in that leg.

[Appellant's doctor] referred the Appellant to numerous specialists to investigate the cause of the Appellant's leg difficulties.

On June 15, 2007, the Appellant's case manager wrote to him indicating that the medical information on his file indicated that his left lower limb difficulties were not related to the motor vehicle accident and MPIC was unable to approve funding for the requested physiotherapy treatment.

On March 12, 2008, an Internal Review Officer for MPIC concluded that the medical file lacked objective evidence supporting the Appellant's view that a causal relationship existed between the accident of November 2, 2001 and the symptoms affecting his left lower extremity. Accordingly, the Internal Review Officer concluded that MPIC does not have an obligation to fund physiotherapy treatment relating to the Appellant's left lower leg.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant testified at the hearing into his appeal. He explained that before the motor vehicle accident he was walking well, but after the accident his leg started to have problems and get stiff. He felt that they gave him too many needles when he was in the hospital following the motor vehicle accident and his blood was not circulating properly, leaving his leg stiff.

The Appellant testified that he used to be able to walk quite far, but now cannot walk beyond one hundred (100) to three hundred (300) feet before his leg gets stiff. He stated that little by little it's getting harder to walk and he can't even clean his sidewalk of snow or do yard work in the summer anymore.

He stated that before the motor vehicle accident he was completely fine and after the motor vehicle accident, little by little, all these other problems began to occur.

He submitted that his left leg problems were therefore due to the motor vehicle accident.

Evidence and Submission for MPIC

Counsel for MPIC indicated that although temporally, the symptoms the Appellant was complaining about may have arisen close to the motor vehicle accident, there was no medical evidence to support his view that the symptoms were due to the motor vehicle accident.

On the contrary, it was submitted that the Appellant has been to see five (5) different specialists, on six (6) different occasions and all have been consistent in their respective opinions that the symptomology that the Appellant complains of is not related to the motor vehicle accident.

The medical evidence was summarized by the Internal Review Officer and reviewed by counsel for MPIC.

[Text deleted], an orthopaedic consultant, reported to [Appellant's doctor] that he was not able to find a cause for wasting of muscles.

[Text deleted], a neurologist, investigated the possibility of a nerve injury, but concluded that the Appellant was not experiencing neural pain and was unable to find a neurological defect.

The Appellant was then referred to [text deleted], a vascular disease consultant, who ruled out any major arterial occlusive disease.

[Appellant's physical medicine consultant], a physical medicine consultant, found no evidence of nerve root compression or spinal cord compression, and treatment he administered resulted in limited success.

After reviewing reports from these consultants, [Appellant's doctor] wrote, on October 16, 2005:

- 3- I do not feel that any further testing, after exclusion of orthopedic, neurological and /or vascular causes of [the Appellant's] pain, weakness, and dysesthesia persistent complaints. The cause of muscular wasting has not been demonstrated, and the same goes for the reported "weakness", "giving way" of the left leg, "numbness and tingling", as reported.
- 4- In the absence of any demonstrable abnormalities, it is very difficult to establish a cause-effect relationship between the injury and the persisting complaints, although this gentleman insists that he had no problems before the injury of November 2001. From my perspective, I regret to indicate that I have no solutions of the problem to present, and apart from analgesica as they may be required, no further treatment is contemplated.
- 5- [The Appellant's] problems will certainly persist but, as I previously mentioned, I am unable to state that they are related to or the result of the motor vehicle accident as, in the first place, there is no evidence that they have a traumatic origin. One might speculate that the injury enhanced some previous problem of which I had no knowledge, and for which there is no diagnosis.

Counsel also reviewed a report from [MPIC's doctor], a medical consultant with MPIC's Health Care Services, who reviewed the Appellant's file on December 7, 2005. She concluded that a cause and effect relationship between the Appellant's lower limb symptoms and the motor vehicle accident could not be substantiated, on the balance of probabilities.

Counsel also noted a case manager's decision dated April 13, 2006, that no impairment benefit should be paid regarding the Appellant's lower limb deformity or left leg calf atrophy, as no connection with the symptoms and the motor vehicle accident could be found. No appeal was filed from that decision by the Appellant.

Counsel submitted that the medical evidence failed to establish a causal connection between the symptoms in the Appellant's left leg and the motor vehicle accident. For those reasons, the Internal Review Decision that no physiotherapy treatment benefit should be paid for the Appellant's lower limb symptoms should be upheld.

Discussion

Manitoba Public Insurance Act

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;

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 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;
- (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.

The panel has reviewed the evidence of the Appellant, the documentation on the Appellant's indexed file, and the submissions of the Appellant and counsel for MPIC.

The onus is on the Appellant to show, on the balance of probabilities, that physiotherapy treatment for his left lower limb symptoms is required because of the accident.

However, a review of the evidence in this appeal leads the panel to conclude that the Appellant has failed to show, on a balance of probabilities, that the symptoms complained of are as a result of the motor vehicle accident.

[Appellant's doctor] provided a report, in October of 2008, which again reviewed the findings of the various specialists to whom he had referred the Appellant. [Appellant's neurologist] was unable to find any neurological abnormality. Even with assistance from [Appellant's physical medicine consultant], [Appellant's doctor] was unable to find any objective reason for the Appellant's leg giving out. [Appellant's vascular disease consultant], a vascular surgeon, ruled out any major arterial occlusive disease to account for the Appellant's problem.

When [Appellant's neurologist] saw the Appellant again on March 1, 2005, he concluded that some involvement of the left S1 root might account for wasting of his leg calf muscles in the absence of ankle jerks, but [Appellant's doctor] indicated:

... subsequent CT scan of the lumbosacral spine indicated multi-level

degenerative changes with foraminal narrowing, but no evidence of central stenosis. It must be indicated that the previous x-rays had already indicated extensive degenerative joint and disc disease, at various levels.

... an Orthopaedic Consultation from [Appellant's orthopedic consultant] was obtained on May 26th with respect to the left leg weakness, and the opinion expressed was that the problem was related to a degenerative lumbar disc disease.

[Appellant's doctor] summarized:

In summary, [the Appellant] had, in my opinion, an extensive and comprehensive multi-disciplinary investigation of his complaints of leg pain, weakness and numbness following the car accident of November 8, 2001. The opinions expressed by the different Consultants were very consistent. In my opinion, the abnormalities revealed by the investigations and examinations done failed to establish a direct relationship to the injuries sustained, as the main factors uncovered, namely some atrophy of the left calf muscles, and extensive spinal degenerative disease with foraminal narrowing that might affect the left S1 nerve root were pre-existing and, by nature, long standing problems. ...

Accordingly, the panel finds that, on the balance of probabilities, the Appellant has failed to establish that his left lower limb symptoms were caused by the motor vehicle accident. The Internal Review Decision of March 12, 2008 is hereby confirmed and the Appellant's appeal dismissed.

Dated at Winnipeg this 17th day of February, 2009.

Ms. Laura Diamond

Dr. Patrick Doyle

Mr. Les Marks