

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-142**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Trevor Anderson
Dr. Neil Margolis

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

HEARING DATE: July 5, 2011

ISSUE(S): Reimbursement of physiotherapy treatments.

RELEVANT SECTIONS: Section 136(1)(a) 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 PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on January 26, 2008. As a result of the accident he sustained soft tissue injuries to his neck along with pain across his shoulders. The Appellant commenced receiving physiotherapy treatments on January 30, 2008 and after receiving 42 treatments he was discharged and cleared to return to work as a [text deleted]. The discharge report noted intermittent sternoclavicular pain and stiffness between the chest and collarbone as well as intermittent neck stiffness. However, the report indicated that he could return to work without any restrictions to carry out his duties as a [text deleted].

In a note to file dated March 3, 2009 the case manager reported that the Appellant had informed her that he was having issues with his shoulder. He indicated that X-rays clearly indicated no fracture but degenerative changes to the AC joint. The Appellant indicated he was seeing [Appellant's Doctor #1] who had referred him to MPIC for physiotherapy and to have an MRI.

The MRI Report of the right shoulder indicated:

Clinical History:

Rule out rotator cuff tendon tear.

Findings:

There is moderate AC arthrosis. There is no focal atrophy of the rotator cuff musculature. The rotator cuff tendons appear intact with no evidence for tendinopathy nor tearing.

There is no Hill-Sach's compression deformity. There is mild to moderate degenerative change identified involving glenohumeral articulation. There is fraying of the posterior labrum and early cystic change within the posterior glenoid. A small medial osteophyte is also noted.

Impression:

1. Mild-moderate glenohumeral osteoarthritis.
 2. No evidence for rotator cuff tendon tear.
- (underlining added)

The Appellant's chiropractor made a recommendation for physiotherapy treatment. As a result, on November 4, 2009 MPIC's case manager requested MPIC's Medical Health Services Consultant to determine whether the Appellant's injuries were causally related to the motor vehicle accident, and if so whether the treatment was medically required. In response [MPIC's Doctor] provided a handwritten report to the case manager dated November 18, 2009 and stated:

"The claimant's presentation to [Appellant's Sports Medicine Specialist] (Tab 17 – April 16, 2009 report) with notable pain and dysfunction involving his right GHJ and rotator cuff probably is unrelated to the collision. The claimant did complain of rt shoulder pain acutely post collision, but the remainder of his recovery period before attending [Appellant's Sports Medicine Specialist] does not support collision related injury to the rt shoulder. His restoration to full function to allow for rtn to [text deleted] duties is inconsistent with collision related right shoulder pathology. Oct 16/09 rt shoulder complaint to PT and recommendation for PT in my opinion is not collision related."

Case Manager's Decision:

On December 2, 2009 the case manager wrote to the Appellant and stated:

“This confirms our decision regarding [Appellant's Physiotherapist #1's] request for further physiotherapy treatment as outlined in his report of October 16, 2009.

That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information reviewed indicates that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of January 26, 2008. Therefore, we are unable to approve funding of the requested treatment.” (underlining added)

[Appellant's Orthopaedic Surgeon] indicated he saw the Appellant on January 12, 2010 and stated:

“[The Appellant] is seen in follow up of his right shoulder rotator cuff impingement. Since last time I saw him, he attempted to start a physiotherapy program but apparently this was denied by Manitoba Public Insurance, as they claim that his injury was unrelated to his accident. I think this is probably not correct as his shoulder pain began after his accident in January 2007. He is going to appeal this decision, but also likely start his physiotherapy under his [text deleted] Coverage. I think that at some point we try a trial of physical therapy as his pain is significant but not completely disabling at this point. If we can avoid an operation through physical therapy, I think that it is much better for all parties involved. [The Appellant] will see me back in three months to see how he is doing.”

As a result of [Appellant's Orthopaedic Surgeon's] advice and in order to avoid surgery, the Appellant commenced physiotherapy treatments at his own expense. On April 15, 2010 the Appellant made an Application for Review of the case manager's decision.

On June 28, 2010 the Internal Review Officer wrote an interdepartmental memorandum to [MPIC's Doctor] in which the Internal Review Officer described the Appellant's duties as a [text deleted] with the [text deleted], and indicated that the Appellant had commenced physiotherapy treatments with the last treatment being May 7, 2008. He also indicated the Appellant had started chiropractic treatment and completed 40 treatments on June 19, 2009. The Appellant also indicated that he thought his right shoulder symptoms would settle down on their own, but his

symptoms and restrictions remained the same. The Internal Review Officer further indicated to [MPIC's Doctor] that the Appellant had indicated the restrictions he does have to his right shoulder do not appreciably impact his occupational duties as a [text deleted] but those same restrictions and pain complaints remain.

The Internal Review Officer further stated to [MPIC's Doctor] that since the Appellant returned to physiotherapy in January 2010 the Appellant had attended a total of 13 physiotherapy treatments, but it did not appear that he had seen any significant improvement as a result of the treatments and he still had the same restrictions. The Internal Review Officer again requested [MPIC's Doctor] to advise whether there was a causal connection between the Appellant's current signs and symptoms and the motor vehicle accident, and if so, whether the physiotherapy treatment he received was considered medically required for a motor vehicle accident related condition.

On July 19, 2010 [MPIC's Doctor] provided an interdepartmental memorandum to the Internal Review Officer confirming that there was no causal connection between the Appellant's current symptoms and the motor vehicle accident.

[MPIC's Doctor] stated:

“When the claimant was discharged from physiotherapy (May 7, 2008 examination), the physiotherapist noted that the claimant was doing very well noting intermittent sternoclavicular pain and stiffness, and intermittent neck stiffness. The physiotherapist referred to a return to work form and recorded that the claimant had successfully completed in-clinic testing. The physiotherapist recorded that the claimant could return to work (as a [text deleted]) with no restrictions as of May 8, 2008.

When the claimant was seen on a one time basis by sport medicine physician, [Appellant's Sports Medicine Specialist], on December 1, 2008, the physician recorded multiple objective examination findings which indicated to him rotator cuff (shoulder muscle) pathology. The physician ordered an MR investigation to determine whether the

claimant had a tear of his right rotator cuff. The claimant's March 27, 2009 right shoulder MR report is on file. The findings were significant for:

1. *"Mild – moderate glenohumeral osteoarthritis.*
2. *"No evidence for rotator cuff tendon tear".*

The claimant was indicated to have returned to work. In a June 28, 2010 memorandum, you indicated that the claimant is employed as a [text deleted] with the [text deleted]. You detailed multiple adaptations that the claimant incorporated into the physical tasks characterizing [text deleted] duties. The claimant reports persistent pain that doesn't restrict him from work and which he attributes to the motor vehicle collision.

Having had the opportunity to revisit the claimant's medical file in entirety, I find that my November 18, 2009 opinion remains unchanged. The claimant was specifically assessed for his ability to perform essential duties of a [text deleted] prior to being discharged from physiotherapy in May 2008. At the time of discharge, the claimant was not documented to complain of pain and functional limitations involving his right shoulder (glenohumeral) joint. (underlining added)

The claimant later went on to have assessment by [Appellant's Sports Medicine Specialist] and subsequently by [Appellant's Orthopaedic Surgeon]. The multiple objective findings for the claimant's right shoulder are inconsistent with the paucity of objective findings up to the time of the claimant's discharge from physiotherapy in May 2008. In my opinion, factors other than the motor vehicle collision account for the claimant's presentation to [Appellant's Sports Medicine Specialist]. [Appellant's Orthopaedic Surgeon] has opined that the claimant's current symptoms probably are collision-related. [Appellant's Orthopaedic Surgeon's] late entry into the care of the claimant's symptomatic right shoulder precludes him from providing an informed opinion on causality in my opinion.

In summary, on the balance of probabilities, the claimant's right shoulder complaints documented on October 16, 2009 by [Appellant's Physiotherapist #1], are not related to the motor vehicle collision."

Internal Review Officer's Decision:

On June 23, 2010 the Internal Review Officer held a hearing with the Appellant and issued a decision on August 6, 2010. The Internal Review Officer dismissed the Appellant's Application for Review on the grounds that there was insufficient evidence to establish a cause and effect relationship between the Appellant's current symptoms and the motor vehicle accident.

The Internal Review Officer further stated:

“You said you started physiotherapy back in January 2010. When your [text deleted] coverage ran out, you are now seeing the therapist less often.

I indicated to you that the imaging studies on your medical file identified significant arthritic changes and you do not disagree with this. However, you state that you did not have the pain in the shoulder before the accident that you experience now.

I referred your medical file back to [MPIC’s Doctor] as you had submitted two additional reports. Please find enclosed a copy of [MPIC’s Doctor’s] review dated July 19, 2010 for your perusal.

I note in the Initial reports from [Appellant’s Physiotherapist #2] and [Appellant’s Doctor #2] your primary healthcare provider, you reported pain to your right shoulder. In the Physiotherapy Discharge Report of May 7, 2008, the only symptoms noted were intermittent sternoclavicular pain.

[MPIC’s Doctor] commented the objective findings noted by [Appellant’s Sports Medicine Specialist] during his December 1, 2008 assessment were not documented during previous assessments by your physiotherapist or primary care physician. At the time you were discharged from physiotherapy on May 7, 2008, there was no documented pain or functional restrictions regarding the right shoulder joint. As such, I concur with [MPIC’s Doctor’s] opinion that it is more medically probable that your right shoulder symptoms are related to factors other than the motor vehicle accident.

Accordingly, I am upholding the case manager’s decision and dismissing your Application for Review.

The Appellant filed a Notice of Appeal from the decision of the Internal Review Officer.

Appeal:

The MPIC Act provides:

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 of Manitoba Regulation 40/94 provides:

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 Appellant testified at the hearing that:

- 1. He had received a number of injuries as a result of the motor vehicle accident including an injury that resulted in pain to his right shoulder.
- 2. He had never had pain to his right shoulder until after the motor vehicle accident.
- 3. After the motor vehicle accident he had a number of physiotherapy treatments and chiropractic treatments and continued to suffer pain.
- 4. He was able to return to work as a [text deleted], and in that capacity did have some restriction of movement in carrying out those duties due to the pain in his right shoulder.

In his testimony the Appellant further stated that:

- 1. He had arthritis and that he consulted with [Appellant's Orthopaedic Surgeon] in respect of the shoulder pain.
- 2. He was told by [Appellant's Orthopaedic Surgeon] before surgery that he should attempt to receive physiotherapy treatment to see if the pain would resolve itself.

3. He did commence to receive physiotherapy treatment and incurred an expense of approximately \$400 to \$500.
4. The physiotherapy treatments did not improve his condition and as a result he had the surgery.
5. The surgery was successful and there was a significant reduction in pain to his right shoulder.
6. The purpose of the surgery was to deal with the arthritic condition in the right shoulder.
7. He was requesting reimbursement for the physiotherapy treatments that he received as a result of the advice that he received from [Appellant's Orthopaedic Surgeon].

The Appellant therefore requested that his appeal be allowed and MPIC be directed to reimburse him for all his expenses in respect of physiotherapy treatments.

MPIC's legal counsel in her submission reviewed all of the relevant medical reports and submitted that:

1. The Commission accept the opinion of [MPIC's Doctor] that there was no causal relationship between the motor vehicle accident and the Appellant's complaints of pain to the right shoulder.
2. [MPIC's Doctor] noted that although the Appellant initially complained about pain to his right shoulder, the pain had resolved at the time he was discharged from the physiotherapy treatments on May 7, 2008.
3. The discharge report did not note any pain to the Appellant's right shoulder at that time, but did note intermittent neck stiffness.

4. [MPIC's Doctor] had indicated that the Appellant's restoration to full function which allowed him to return to his [text deleted] duties was inconsistent with any complaints about collision-related right shoulder injury.
5. The Appellant has not established on a balance of probabilities that his complaints of right shoulder injury were related to the motor vehicle accident.
6. The Commission dismisses the Appellant's appeal and confirms the Internal Review Officer's Decision dated August 6, 2010

Discussion:

The Commission finds that the Appellant was an honest and forthright witness and testified in a clear and consistent manner. In his testimony he stated that:

1. He suffered from arthritis.
2. He commenced physiotherapy treatments as a result of [Appellant's Orthopaedic Surgeon's] opinion that he should attempt these treatments and if his right shoulder pain persisted, then surgery would take place.
3. As a result the Appellant attended for physiotherapy treatments and incurred an expense of approximately \$400 to \$500 and was seeking reimbursement from MPIC for this amount.
4. The shoulder pain continued and as a result he had surgery to his right shoulder.
5. The surgery did not relate to any soft tissue injury that may have occurred as a result of the motor vehicle accident but related to an arthritic condition in his right shoulder.
6. The surgery was successful and there was a significant reduction in pain to his right shoulder.

Decision:

The onus is upon the Appellant to establish on a balance of probabilities that there was a causal relationship between the motor vehicle accident and his right shoulder pain and that it was medically necessary to have physiotherapy treatments. In his testimony the Appellant admitted that his right shoulder pain was significantly reduced as a result of surgery which was performed to deal with the arthritic condition in his right shoulder. The Appellant did not provide any medical information to establish that his arthritic condition to his right shoulder was caused by the motor vehicle accident.

The Commission notes that [MPIC's Doctor] reviewed all of the relevant medical reports and had concluded that there was no causal relationship between the motor vehicle accident and the Appellant's complaints of right shoulder pain. The Commission finds the Appellant has not produced any medical report to contradict [MPIC's Doctor's] medical opinion on the issue of causality.

In these circumstances, the Commission agrees with [MPIC's Doctor's] medical opinion on the issue of causality and finds that the Appellant has failed to establish on a balance of probabilities that there was a causal relationship between the motor vehicle accident and his right shoulder pain which required him to receive physiotherapy treatments. The Commission therefore dismisses the Appellant's appeal and confirms the Internal Review Officer's Decision dated August 6, 2010.

Dated at Winnipeg this 12th day of August, 2011.

MEL MYERS

TREVOR ANDERSON

DR. NEIL MARGOLIS