

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-091**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Mr. Wilf DeGraves

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 Cynthia Lau.

HEARING DATE: September 18, 2012

ISSUE(S): Entitlement to reimbursement of physiotherapy treatments.

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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], has filed an appeal to the Commission from a decision of the Internal Review Officer dated June 21, 2010.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On July 23, 2009, while operating his vehicle, the Appellant was struck by another vehicle proceeding through a red light. The Appellant was then rear ended by a

second vehicle, causing him to spin around where he was again struck by a third vehicle.

2. Among numerous soft tissue injuries, the Appellant sustained a fracture at C7, a herniated disk at C4-C5, and bilateral Carpel Tunnel Syndrome.
3. Although his physiotherapist requested a complex care category of physiotherapy treatment, MPIC's case manager issued a decision that he was entitled to Category 1 physiotherapy coverage only (maximum of 24 physiotherapy visits). The Appellant filed an Application for Review of that decision. The Internal Review Officer overturned the case manager's decision and allowed funding under Category 2.
4. Subsequently, the Appellant's physiotherapist submitted another report requesting additional treatment beyond Category 2. The case manager issued a decision on February 3, 2010 stating that the physiotherapist report was not considered new information. The Appellant sought an Internal Review of that decision. The Appellant argued that his physiotherapist, general practitioner and neurosurgeon supported his need for continued physiotherapy treatment.
5. The Internal Review Officer in a decision dated June 21, 2010 dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer found that:

You indicated that you are making improvement, albeit slowly. I note in the [text deleted] Hospital Physiotherapist's report of May 17, 2010, you have been treated since April 22, 2010 and the

therapist wrote that you were “showing v. [very] slight improvement in the last week of treatment”. MPI has funded 42 physiotherapy treatments and you are continuing to see a physiotherapist. Additionally, you are receiving chiropractic treatment which is currently funded through PIPP. You continue to have restrictions and pain complaints which prevent you from returning to work after 10 months of near continuous treatment. I concur with [MPIC’s Doctor’s] statement that you do not require further physiotherapy treatments in the management of a medical condition arising from this accident. Perhaps there may be other causes for your complaints that need to be further investigated by your health care providers. You mentioned in your letter that MPI is currently funding chiropractic treatment, however as this is a different treatment modality, no inference can be made for the need for ongoing physiotherapy treatment.

6. As noted above, the Appellant disagreed with the Internal Review Decision and appealed that decision to this Commission. The issue which requires determination before the Commission is whether the Appellant is entitled to reimbursement of further physiotherapy treatments beyond February 23, 2010.

Relevant Legislation:

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(a) 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:

(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;

Appellant's Submission:

The Claimant Adviser submits that as a result of the injuries which the Appellant sustained in the motor vehicle accident of July 23, 2009, he has continued to require physiotherapy treatment since funding was terminated by MPIC. The Claimant Adviser argues that even though time has elapsed, the Appellant's symptoms and discomfort have remained. She notes that even though funding was terminated by MPIC, the Appellant has continued on his own for further care at his own expense. She submits that physiotherapy treatment has helped his condition continue to improve. She maintains that without the ongoing physiotherapy treatment, the Appellant's condition will deteriorate and his symptoms will increase. The Claimant Adviser also argues that the ongoing physiotherapy treatments have been successful in allowing the Appellant to re-enter the workforce. Accordingly, the Claimant Adviser submits that the Appellant meets the criteria for ongoing supportive physiotherapy care and that his appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that ongoing physiotherapy care (beyond Category 2) is not medically required for the Appellant. Counsel for MPIC argues that the Appellant has received education on a home program by both his physiotherapist and chiropractor and that he should be independent in performing home based exercises to maintain his function and manage his symptoms. Counsel for MPIC argues that there is insufficient evidence to support that further supervised physiotherapy care is medically required at this time. Further, she argues that the Appellant has been provided with entitlement for funding for further chiropractic treatment to

August 1, 2014. She maintains that the ongoing chiropractic treatments address the same symptoms as does the physiotherapy treatment. Counsel for MPIC argues that the reports from the Appellant's chiropractor do not demonstrate a worsening of his condition with a withdrawal of physiotherapy care. Accordingly, she maintains that the Appellant has not established that ongoing physiotherapy care was medically required beyond February 2010. As a result she submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated June 21, 2010 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for physiotherapy treatment beyond February 10, 2010.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for physiotherapy treatment:

1. The expenses must have been incurred to treat injuries sustained in a motor vehicle accident; and
2. The treatments must be "medically required".

In this case, the Commission found that the issue was not simply limited to whether or not the Appellant required ongoing physiotherapy care beyond February 10, 2010. Rather, the issue to be considered by the Commission was whether concurrent physiotherapy and chiropractic care

were medically required for the Appellant. The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing physiotherapy treatment concurrently with supportive chiropractic care, for essentially the same soft tissue injuries, was medically required beyond February 2010. The evidence before the Commission did not establish that ongoing physiotherapy care would provide further sustainable improvement with respect to the Appellant's motor vehicle collision related injuries in addition to the ongoing supportive chiropractic care that he has received. There simply was no evidence presented to the Commission to support that the concurrent modalities were medically required.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of expenses for physiotherapy care. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated June 21, 2010 is confirmed.

Dated at Winnipeg this 5th day of November, 2012.

YVONNE TAVARES

NEIL COHEN

WILF DEGRAVES