

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-15-152; AC-15-153**

PANEL: Ms Laura Diamond, Chairperson
Ms Janet Frohlich
Mr. Neil Margolis

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

HEARING DATE: December 7, 2016, with written submissions by January 6, 2017

ISSUE(S): 1. Entitlement to funding for an orthopedic bed, pillow and pyramid pillow.
2. Entitlement to funding for a second trip to [text deleted] for medical care on February 26, 2015.

RELEVANT SECTIONS: Sections 136(1) and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 10(1)(d) and 19 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 ("MVA") on December 8, 2014. In an Application for Compensation to MPIC he listed injuries to his head – neck, leg – groin and back. He was treated by physicians and received chiropractic and physiotherapy care.

On February 4, 2015, MPIC received a request from the Appellant for funding for an orthopedic bed, orthopedic pillow and pyramid pillow for his legs. He stated that due to his many car accidents his current bed was no longer comfortable and he felt the requested items would help with his recovery.

The Appellant's case manager issued a decision on February 17, 2015 indicating that the medical information on the Appellant's file indicated that an orthopedic bed, orthopedic pillow and pyramid pillow were not a medical necessity under the MPIC Act and Regulations.

The Appellant sought Internal Review of this decision. On April 28, 2015 an Internal Review Officer for MPIC noted that as of that date there was no medical information on the Appellant's file to support his claim for the orthopedic items. Therefore, the Internal Review Officer found that there was no medical information on the Appellant's file to consider funding for an orthopedic bed, orthopedic pillow and pyramid pillow and the case manager's decision was upheld.

On March 2, 2015, the Appellant submitted a travel expense claim to MPIC indicating that on February 26, 2015 he had seen a chiropractor in [text deleted] as well as a physician. He claimed two separate trips of 110 kilometers for medical care on the same day. He told his case manager that when he went to the doctor's office he forgot his Manitoba Health Services Card ("MHSC"), had to go home to retrieve it and returned to see the physician later the same day.

The Appellant was reimbursed for travel to see his chiropractor in [text deleted] for that date, but the case manager issued a decision denying his travel claim for the second trip. The Appellant filed an Application for Review and indicated to the Internal Review Officer that he had an

appointment with his chiropractor in [text deleted] and was reimbursed for the travel expense claim for this visit. He then decided to see his doctor, also in [text deleted], but when he attended that office, he was asked for his health card which he did not have. He went home, obtained his health card and returned to see his physician.

On April 28, 2015, an Internal Review Officer for MPIC found that the proximate reason for the second trip to [text deleted] was to retrieve his MHSC, a critical piece of information that should be kept on a person at all times. The Internal Review Officer found that he was not entitled to be reimbursed for his travel claim as a result.

It is from these two decisions of the Internal Review Officer, both dated April 28, 2015, that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He explained that the reason why he believed he was entitled to a new bed and pillows was that he had found a previous decision of the Commission where the Appellant had been awarded a bed, in facts similar to what he has been through. The Appellant in that case (AC-06-27) had several injuries and had received treatment from a chiropractor, physiotherapist as well as acupuncture, dry needling, trigger point injections and massage therapy. This was similar to what he has been through. He explained that the bed he has at home is horrible and since he is not working he cannot afford a new bed. Because of the decrepit bed he sleeps on, he felt that if MPIC gave him an orthopedic bed, it would help him with his recovery.

On cross-examination, he agreed that he himself had determined that he wanted a new bed based on the case law that he had reviewed and the similarities between that case and his. When asked whether any of his health care providers had written a report indicating that an orthopedic bed was required to treat his injuries in the motor vehicle accident, he indicated that they were not aware that MPIC pays for such a bed and so they had not provided such a report or prescription.

He also testified regarding his trip to the chiropractor in [text deleted]. He indicated that when he left home to go to [text deleted] that day he had no intentions of going to see the doctor. But when he was finished with his therapy, he realized that he was short on medication and so went to the doctor's office for a refill prescription. At the doctor's office he was told that he needed his medical card so he went home, got his card and went back to the doctor. He indicated that this prescription is for anxiety and that it is a difficult prescription to get. Although this doctor had previously seen him without his medical card, this time he was asked for the card.

Additional Evidence:

When asked on cross-examination about going to see the doctor for a prescription for medication, the Appellant indicated that it was for anxiety medication that MPIC had accepted and paid for before.

However, upon a review of documents on the Appellant's indexed file, neither the parties nor the panel could locate documentation regarding the resolution of the Appellant's claim for payment by MPIC for this anxiety medication, which the parties believed may have been Lorazepam.

Accordingly, counsel for MPIC undertook to review the Appellant's claim files with MPIC to determine if there was any documentation regarding this claim.

The hearing was adjourned.

On December 9, 2016, counsel for MPIC wrote to the Commission enclosing a letter from the Appellant's case manager, dated June 5, 2015. This letter enclosed a copy of notes from MPIC's Health Care Services team reviewing the Appellant's claim for payment of opiates, which was denied. Also included was correspondence from the Health Care Services consultant indicating that the prescription medication, Lorazepam, would not be medically required for treatment of the Appellant's back pain. The case manager's letter indicated that prescriptions of Rationoltec, Oxycodone, and Lorazepam were not medically required. There was no entitlement to funding of these prescription medications and this would also pertain to any travel to and from any doctor's offices for appointments regarding the prescribing of or to pick up this medication.

The Appellant sought an Internal Review of this decision and on September 4, 2015, the Internal Review Officer found that the Appellant had not provided any additional medical information to support his claim that these medications were medically required to treat his MVA injury and concurred with the consultant that the use of these medications was contra-indicated with regard to his low back condition. The case manager's decision was upheld.

The Appellant did not appeal this Internal Review decision to the Commission.

Evidence and Submission for MPIC:

Counsel for MPIC submitted that Section 10(d)(iii) of Manitoba Regulation 40/94 provides that MPIC may, at its sole discretion, reimburse a claimant for medically required beds, equipment and accessories. She submitted that no medical professional has provided a report or

prescription indicating that an orthopedic bed, pillow and pyramid pillow are medically required to treat an injury that the Appellant sustained in a motor vehicle accident. Instead, the Appellant has requested these items based on his review of a prior Commission decision, but counsel emphasized that each decision must be made on its particular facts. She submitted that the Appellant's evidence did not meet the test for reimbursement articulated by the Regulations and that this portion of the appeal should be dismissed.

Counsel also noted that Section 19 of Manitoba Regulation 40/94 provides that MPIC shall pay travel expenses incurred by a victim for the purpose of receiving care. However, the Appellant's second trip to [text deleted] on February 26, 2015 was as a result of his forgetting his health card and having to retrieve it. This trip to the doctor was not for the purpose of receiving care related treatment sustained in the motor vehicle accident and as such, these travel expenses are not reimbursable in accordance with the Regulations.

In her written submission of December 9, 2016, counsel for MPIC provided information and included advice she had received from the Benefit Administration Unit that MPIC has never reimbursed the Appellant for Lorazepam in relation to any of his three accidents. Accordingly, counsel for MPIC submitted that the Appellant was not entitled to reimbursement of travel expenses for this trip since only travel expenses incurred for the purpose of receiving care related to injuries sustained in a motor vehicle accident are reimbursable in accordance with Section 19 of Manitoba Regulation 40/94.

Appellant's Reply:

The Appellant was provided with a copy of MPIC's letter of December 9, 2016 and asked to provide any written submission which he would like to make regarding how the enclosed

information affects his position and submission regarding the claim for travel expenses to the Commission by January 6, 2017.

No response was received from the Appellant, and on January 16, 2017 he confirmed, in an email to his Appeals Officer, that he would not be providing any more information in regard to the Lorazepam and travel expense claim.

Discussion:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Manitoba Regulation 40/94 provides:

Travel and accommodation

19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- (d) reimbursement of the victim at the sole discretion of the corporation for
 - (i) wheelchairs and accessories,
 - (ii) mobility aides and accessories,
 - (iii) medically required beds, equipment and accessories,
 - (iv) specialized medical supplies,
 - (v) communication and learning aids,
 - (vi) specialized bath and hygiene equipment,
 - (vii) specialized kitchen and homemaking aides, and
 - (viii) cognitive therapy devices;

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer erred in deciding that he was not entitled to an orthopedic bed, pillow and pyramid pillow or to travel expenses for his second trip to [text deleted] on February 26, 2015.

The panel has reviewed the evidence contained in documents on the Appellant's indexed file, the testimony and submissions of the Appellant, as well as the documents provided by MPIC on December 9, 2016 and the submissions put forward by counsel for MPIC on December 7 and December 9, 2016.

Orthopedic Bed, Pillow and Pyramid Pillow:

The panel has reviewed the evidence of the Appellant and the reports on file and finds that the Appellant has not provided evidence from any of his caregivers indicating that the disputed items are medically required to treat a condition arising out of the motor vehicle accident. The Appellant based his claim for the bed and pillows on the Commission's decision in AC-06-27. However, each case depends on its particular facts and the panel notes that in that case, the panel gave particular weight to the opinion of the Appellant's physiatrist who made recommendations

for optimizing the Appellant's ergonomic environment, noting her sleep disturbance resulting from the motor vehicle pain injuries. In a report provided to the Commission, he recommended a proper mattress and a proper pillow in order to restore sleep patterns and promote sleep hygiene.

No such evidence was provided in the Appellant's case. Accordingly, the panel finds that the Appellant has failed to meet the onus upon him of showing, on a balance of probabilities, that the orthopedic bed and the pillows are medically required by the Appellant as a result of a condition arising out of the motor vehicle accident.

Travel Expenses:

The Appellant testified and argued that his second trip to [text deleted] on February 26, 2015, for which he is seeking travel expense compensation, was taken in order to see a doctor and obtain a refill prescription for a medication which he required to treat a condition arising out of the motor vehicle accident.

MPIC submits that the second trip was required only after the Appellant, after having seen his therapist, decided he wanted to also see a doctor and found he would have to make another trip in order to provide his MHSC card. Following further research into the Appellant's claim that the doctor visit was for medication required in connection with motor vehicle accident injuries, MPIC noted that the Appellant's claims for coverage of this medication had been rejected by MPIC. The Health Care Services team, case manager and Internal Review Officer had all provided him with opinions and decisions taking the position that the medication was not medically required in relation to the motor vehicle accident injuries. This Internal Review decision, dated September 4, 2015 was not appealed by the Appellant.

According to Section 136(1) of the MPIC Act and the Regulations, medical and paramedical care expenses, including transportation are reimbursed when incurred by a victim because of the accident and where the care is medically required as a result. The panel finds that the travel expenses incurred for the second trip to [text deleted] were not for care medically required as a result of the motor vehicle accident. As a result, the Commission finds that the Appellant's second visit to [text deleted] to see the doctor on February 26, 2015 was not for care required as a result of the motor vehicle accident.

Accordingly, the Internal Review decisions of April 28, 2015 are upheld and the Appellant's appeals are dismissed.

Dated at Winnipeg this 6th day of February, 2017.

LAURA DIAMOND

JANET FROHLICH

NEIL MARGOLIS