

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-98-112**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey; the Appellant, [text deleted], appeared on her own behalf

HEARING DATE: February 21st, 2000

ISSUE(S): Whether MPIC justified in discontinuing Home Care assistance.

RELEVANT SECTIONS: Section 131 of the MPIC Act; Section 2 and Schedule 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 two motor vehicle accidents: in the first, on December 20th, 1996, her vehicle was rear-ended, causing her to hit her chest on the steering wheel and the back of her head on the headrest but causing no damage to her vehicle and minimal, if any, damage to the other car; the second, on February 22nd, 1997, resulted from a collision of the front of her vehicle with the centre of the left side of another car which was crossing an intersection at right angles to her path. No part of [the Appellant's] body appears to have been in contact with any part of the interior of her car as a result of this second collision.

The sole issue before this Commission is whether MPIC, having funded a measure of home care assistance for [the Appellant] from shortly after her second accident, was justified in discontinuing that assistance on December 2nd, 1997. That issue may be stated in another way: did [the Appellant] qualify for continued home care assistance after December 2nd, 1997?

It seems very clear from the evidence that, in her second accident, [the Appellant] sustained a Grade 2 Whiplash Associated Disorder and, as well, lumbosacral sprain which, superimposed on pre-existing degenerative changes, necessitated her absence from the workplace until May 1st, 1997. She received Income Replacement Indemnity from the eighth day following her second accident up to and including April 30th, 1997. [The Appellant] has been able to fulfil all the demands of her employment since May 1st, 1997. She testified that although, being the sole financial support for herself and her daughter, she has remained at work full-time, when she got home she was totally exhausted, unable to keep her home clean, cut the grass or shovel the snow and, often, unable to make meals properly. “We ate a lot of canned meals and my daughter got sick from eating hamburgers. Either I haven’t food in the house because I’ve been too sick to buy food, or I would be too totally exhausted and in pain.” [The Appellant] testified that, even by the date when her appeal was heard by this Commission on February 21st, 2000, she needs help with some of her heavier domestic duties, such as vacuuming and yardwork.

The relevant section of the MPIC Act is No. 131, which reads:

Subject to the regulations, the Corporation may reimburse a victim for expenses of not more than \$3,000 per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

The relevant regulation is Manitoba Regulation 40/94, of which section 2 provides for MPIC to reimburse a victim for expenses incurred for personal home assistance in accordance with Schedule A to that regulation. Schedule A contains three forms of grid. Grid A relates to personal care assistance needs, including such matters as arising from bed, dressing, washing, toilet use, eating and so on; Grid B relates to home assistance requirements in the areas of meal preparation, light housekeeping, general house cleaning, laundry and the like; Grid C relates to neurological factors requiring supervision of the victim, none of which is applicable here. Each task described in those grids is assigned a number, dependent upon the extent of the victim's needs. For example, if a victim is completely dependent upon others in the context of light housekeeping, a score of one is assigned; if the victim is only partially dependent on others for light housekeeping, the score becomes 0.5. In order to qualify for financial assistance for home care, a victim must be able to score a minimum of five points; the amount of assistance, up to the statutory maximum of \$3,000, will depend upon the number of points thus scored. In any event, the victim must be able to establish that the need for home care assistance has its origins in the motor vehicle accident.

Since the date of her first accident, [the Appellant] has been treated by her chiropractor, [text deleted]; since the second accident, in addition to [Appellant's chiropractor], [the Appellant] has been assessed and, in some instances, treated by [text deleted], specialist in otolaryngology, [text deleted], family physician, [text deleted], clinical psychologist, [text deleted], specialist in neuro-ophthalmology and neurology, [text deleted], neurologist, [text deleted], certified athletic therapist, and [text deleted], psychiatrist.

[Appellant's neurologist] and [Appellant's neuro-ophthalmologist] both report entirely normal results from their respective examinations of [the Appellant], which included a magnetic

resonance imaging of [the Appellant's] head, as well as an electroencephalogram, neither of which disclosed any intracranial abnormality. [Appellant's otolaryngologist] was unable to identify any specific vestibular pathology to account for [the Appellant's] persistent complaints of dizziness and nausea. [Appellant's chiropractor] describes a multiplicity of physical problems, both subjective and objective, none of which describes any physical impairment likely to render [the Appellant] incapable of performing activities around her home without assistance.

[Appellant's athletic therapist's] findings were consistent with scapulothoracic dysfunction and movement imbalances of the cervical spine. However, when he tested [the Appellant's] vertebral artery, she apparently saw "black bars," causing him to stop that aspect of his examination. He recommended a program aimed at stabilizing her scapulothoracic musculature and her lower lumbar spine, although those recommendations do not appear ever to have been pursued.

There are a number of reports from [Appellant's psychologist] on [the Appellant's] file, although none since May 10th, 1998. In that report, [Appellant's psychologist], while noting that [the Appellant's] profile was consistent with an anxiety disorder, with possible depressive features and somatization, and that the majority of her complaints were related to symptoms not measure by neuropsychological tests, nevertheless felt that there was no reason to doubt the validity of [the Appellant's] complaints. In her then present state, he recommended continuing some support for her in her home, provided it was combined with active treatment for her anxiety, her depressive symptoms, pain management and stress management. [Appellant's psychologist] expressed the view that "overloading ([the Appellant's]) limited psychological resources by discontinuing support would likely result in deterioration from a psychological point of view. With appropriate treatment, home supports could be reduced and eventually discontinued." That

view was supported by [Appellant's chiropractor] and, more recently in a letter dated March 22nd, 2000, by [Appellant's psychiatrist] who continues to treat [the Appellant] on a monthly basis.

We have also had the benefit of opinions from [text deleted] and [text deleted], medical consultant and psychological consultant respectively with MPIC's Claims Services Department, each of whom has reviewed the entire file without, of course, having personally assessed [the Appellant]. [MPIC's psychologist] offers the opinion, based in large measure upon the views of [Appellant's psychologist] and [Appellant's psychiatrist], that a component of [the Appellant's] current psychological status may be associated with her motor vehicle accidents. [Appellant's psychiatrist] had expressed the opinion that it was "not an unreasonable hypothesis to suggest that ([the Appellant's]) present condition has its origins in the two motor vehicle accidents that occurred in 1996 and 1997" and had given a working diagnosis of "anxiety disorder with a differential diagnosis of post-traumatic disorder."

[MPIC's doctor] was less willing to accept either the causal connection between [the Appellant's] motor vehicle accidents and her current condition, or her continued need for assistance after December 1997. He felt that there was an absence of objective evidence identifying either a physical or psychological impairment of function that would account for the level of compromise of [the Appellant's] ability to perform her day-to-day and household activities.

[The Appellant's] evidence was that, in the months following her second evidence, her brother was going to her home once a week to empty litter boxes, clean the floors and bathrooms, clean mirrored doors and look after snow removal and grass cutting. He had reduced that frequency to

about twice per month until December 1998, and thereafter at one visit per month until April 1999. In May and June 1999, she had had no help with cleaning her house at all. In July and August she was on vacation and therefore able to do some of that work herself; in September through November 1999, she had essentially no cleaning of her home, until she hired an outside cleaner, twice in December 1999, and once in each of January and February 2000.

In a very comprehensive report bearing date January 25th, 1998, [Appellant's psychologist] recommended:

...the numerous problems and symptoms she has reported clearly have an impact on her ability to both do a good job at her work and maintain other normal activities of living...she is clearly having significant difficulty managing all the activities in her day....To her credit, she has managed to maintain her performance at work, perhaps at the expense of other daily activities. I am hesitant at this point to suggest that she does require home and personal assistance. Certainly from a cognitive intellectual level she is capable of managing her day, however, the symptoms which she reports are serious and, according to her, are significantly impacting on her ability to maintain activities at home. I would suggest that assistance be continued at home until the etiology of her other reported symptoms can be better established.

[Appellant's psychologist] pointed out that any home assessment should take into account the fact that, when well rested, [the Appellant] would probably perform at a much higher level than would be the case at the end of a typical working day. That recommendation, along with a recommendation from [Appellant's athletic therapist] for a stabilization program, both appear to have been ignored.

Of further concern to us is the fact that no one appears ever to have conducted a home assessment of [the Appellant]—not even originally, when the decision was made to start reimbursing her for home care assistance in or about the middle of March 1997. True, Grids A and B were completed then by the Appellant's adjuster during a meeting that took place in the adjuster's office on March 14th, 1997, although we have some difficulty understanding why [the

Appellant] was then given a score of 17 under Grid B when the points awarded only add up to 8.5. More important, however, is the fact that no subsequent assessment seems to have taken place, either before or after the decision was made to terminate her benefits. The absence of a reassessment presents this Commission with the task of trying to determine now, more than two years after termination of that benefit, whether MPIC's decision to do so was premature.

Unfortunately, our discretion is limited by the grids contained in Schedule A to Regulation 40/94. It may well be argued that certain aspects of those grids are inadequate and that other aspects are disproportionate. We would not disagree with such a submission, but it is not within our mandate either to amend or to ignore the present regulations. The only activities for which [the Appellant] could properly claim to have needed assistance on the home front related to light housekeeping and house cleaning, and if she had been completely dependent on help from others with both of those activities, her maximum score would have been two. Therefore, while we are prepared to find that her physical and emotional conditions described by her care-givers were, on a strong balance of probabilities, attributable to her motor vehicle accident, we are obliged to find that she does not qualify now and did not qualify on December 2nd, 1997, for continued home care assistance. While we do not doubt that, in her bona fide view, she needed occasional assistance and did, in fact, pay for it, but not to the extent that would give rise to a score of five or more on the grid system prescribed by regulation and, therefore, not to the extent that would require reimbursement by MPIC. It follows, therefore, that [the Appellant's] appeal must fail.

Dated at Winnipeg this 2nd day of May, 2000.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED