Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-140

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Colon C. Settle, Q.C.**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison;** **the Appellant, [text deleted], appeared on her own behalf**
HEARING DATE:	**June 26, 2000**
ISSUE:	**(i) Whether Appellant entitled to home care assistance;** **(ii)Whether Appellant entitled to additional income replacement indemnity benefits;** **(iii) Whether Appellant entitled to ongoing treatment.**
RELEVANT SECTIONS:	**Sections 110(1)(a), 131 and 138 of the MPIC Act, and Section 2 and 8 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], sustained injuries in a motor vehicle accident on June 25, 1998. At the time of the accident, the Appellant was employed as a [text deleted] on a casual basis (two to three times weekly). The attending physician, [text deleted], documented significant limitation in function, with the Appellant unable to work. The injury was classified as a Grade II Whiplash Associated Disorder, with diagnosis of myofascial pain in the neck, shoulders, and back. Initial recommended treatment included

limiting usual activities for a period of two weeks, along with a prescription for a muscle relaxant and referral for physiotherapy.

The Appellant attended for physiotherapy treatments with [Appellant's physiotherapist #1] until late November of 1998. At that time it was felt that physiotherapy treatment had plateaued, and it was discontinued. The Appellant also attended for chiropractic treatments from August 1998 to the end of September of 1998, but discontinued this treatment due to increased pain symptoms following treatment. Additionally, she attended a massage therapist on 9 occasions from early July through early November, 1998. A report from the massage therapist, dated November 25, 1998, documented temporary relief with treatment. Ongoing symptoms included daily headaches, right and left shoulder pain and sternum pain.

In November of 1998, the Appellant was referred to [Appellant's physiotherapist #2] for a comprehensive assessment, active treatment and establishment of physical capabilities. [Appellant's physiotherapist #2] provided recommendations to help the Appellant reduce her pain, improve her function and decrease fatigue. In her report of December 4, 1998, [Appellant's physiotherapist #2] states that, "In my professional opinion, I do not feel that [the Appellant] requires further physiotherapy or treatment for her symptoms. I also feel she is demonstrating the capabilities to perform her pre-accident duties…"

The Appellant's general practitioner, [text deleted], in a report to MPIC dated December 17, 1998, stated that, "On exam I found that she had full range of motion in her back, legs, neck and shoulders. I found that her strength was normal in her shoulders, arms, legs and feet." [Appellant's doctor #1] concurred with [Appellant's physiotherapist #2's] report

and expressed the view that her own objective findings were consistent with those of [Appellant's physiotherapist #2]. However, because of continued subjective complaints, [Appellant's doctor #1] referred the Appellant to [Appellant's rehab specialist] for assessment.

The Appellant was assessed by [text deleted], consultant in physical medicine and rehabilitation, on January 5, 1999. In his medical report to MPIC of February 24, 1999, [Appellant's rehab specialist] states that the Appellant's most likely diagnosis is myofascial pain arising from the left paraspinal muscles around the T6 level. He also comments that her neck and shoulder discomfort was myofascial in origin, but there may be an underlying cervical facet syndrome. A home-stretching program was recommended to assist with the Appellant's pain and associated discomfort. He further noted that if the myofascial pain was resistant to the home-stretching program, then a trial of a trigger point injection could be tried. Having only seen the Appellant once, [Appellant's rehab specialist] stated that it was premature for him to comment on when the Appellant's pain complaints would subside.

A further opinion was then sought from MPIC's Medical Services Team regarding whether the Appellant was unable to work. [MPIC's doctor], in his report of May 10, 1999, states that "there is insufficient evidence on file to refute the opinion of [Appellant's physiotherapist #2] in December, 1998 that the patient was capable of returning to her pre-accident duties."

[Appellant's rehab specialist], in a report dated May 28, 1999, states that the Appellant obtained some relief from Xylocaine injections, by a prolotherapy technique, which was

administered on April 27, 1999. He commented that the Appellant was a good candidate for a trial of prolotherapy and he recommended a trial of this treatment for her. He further stated that the Appellant's pain prevented her from returning to work.

This report was once again reviewed by [MPIC's doctor], who comments that, "There is insufficient evidence in [Appellant's rehab specialist's] recent correspondence to refute [Appellant's physiotherapist #2's] opinion…The treatment plan [Appellant's rehab specialist] has proposed is elective, and cannot be described as a medical necessity. He states that the patient's reason for impairment and disability is her pain. As you are aware, pain is a subjective emotion, and is typically not used to define impairment and/or disability."

The Appellant then sought treatment from another general practitioner, [text deleted]. On July 12, 1999, [Appellant's doctor #2] assessed the Appellant and diagnosed disc degeneration C5-C6, degenerative changes of the thoracic spine and disc degeneration L5-S1. He described the Appellant as having full function with symptoms and being capable of working full duties. Recommended treatment included a prescription for Celebrex and a referral to physiotherapy.

Again the file was referred to [MPIC's doctor] for comment on the recent diagnoses proposed by [Appellant's doctor #2]. [MPIC's doctor], in his review, commented that there were no physical findings listed in [Appellant's doctor #2's] objective evidence which justified the diagnosis he put forward. [MPIC's doctor] concluded that the specific diagnoses listed by [Appellant's doctor #2] could not be related to the motor vehicle collision in question in a definitive fashion and the diagnoses did not change the nature of

the Appellant's case management. Further, he stated that there was insufficient evidence of improvement with physical therapy to justify the therapeutic plan as a medical necessity.

CT scans and x-rays were then undertaken by the Appellant upon referral by [Appellant's doctor #2]. The CT report relating to the Appellant's cervical and thoracic spine revealed a normal exam; the CT report relating to the Appellant's lumbar spine revealed a mild left posterolateral disc prolapse at L4-5 with a possible left L5 nerve root compression. [Appellant's doctor #2], in a report dated December 1, 1999, continued to relate the Appellant's ongoing pain to the June 25, 1998, motor vehicle accident. [MPIC's doctor], in his review of this latest medical information, concluded that the information received from [Appellant's doctor #2], including the x-rays and the CT scans, did not change his clinical opinion.

The Appellant testified that she continues to suffer ongoing headaches, low and mid-back pain, neck pain, pain in the sternum and pain in her left leg as a result of the motor vehicle accident. She is claiming ongoing assistance for housekeeping, Income Replacement Indemnity benefits from January 18, 1999, to December 31, 1999, coverage for massage therapy and ongoing treatment.

Massage Therapy

It appears, from a review of the information on file with respect to this matter, that the issue of coverage for massage therapy treatments was not a matter brought before the Internal Review Officer, as it is not addressed in her decision letter of July 15, 1999. Accordingly, it would appear that the issue was not properly before the Commission.

Nevertheless, the Commission may bring to the Appellant's attention Section 8 of Manitoba Regulation 40/94, which states that the corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist. This regulation would bind MPIC in regard to any coverage for massage therapy that the Appellant might seek.

Personal Home Assistance

Section 131 of the MPIC Act provides that, subject to the regulations, the Corporation may reimburse a victim for expenses relating to personal home assistance where the victim is unable, because of the motor vehicle accident, to care for herself or to perform the essential activities of everyday life without assistance. The applicable Manitoba regulation is 40/94. That regulation contains two evaluation grids: the one grid lists certain personal care activities such as getting up, getting dressed, washing and other bathroom activities, eating and the like; the other grid details certain home assistance requirements, such as the preparation of meals, light housekeeping, house cleaning, laundry, and the purchase of supplies. Each activity has a particular 'score' assigned to it, dependent upon whether the claimant is completely dependent on the assistance of others, only partially in need of assistance, or in no need of assistance. The points obtained on both of those grids are added together and the resultant total is applied to a chart which calculates the benefit as a percentage of the indexed maximum ($3,000 per month). In order to be entitled to any financial assistance for home care, a claimant must score a minimum of five points.

The report provided by [Appellant's physiotherapist #2] dated December 4, 1998, stated that the Appellant was capable at that time of performing her pre-accident duties and her cleaning work at home. [Appellant's doctor #1's] report of December 16, 1998, advises

that her objective findings were consistent with those of [Appellant's physiotherapist #2]. The Adjuster's decision letter of February 8, 1999, states that the Appellant advised him that she was partially in need of assistance for light housecleaning, laundry and purchase of supplies, that would give her 1.5 points—not enough to qualify her for any financial assistance under the MPIC Act. It follows, then, that this portion of [the Appellant's] appeal must be dismissed.

Income Replacement Indemnity Benefits

Neither the mechanics of her accident nor the objective findings reflected in [the Appellant's] medical records support the existence of physical injuries of the severity that would disable the Appellant from her pre-accident duties for a year and a half as submitted by the Appellant. Rather, the objective medical evidence as documented by all of the Appellant's caregivers demonstrates that the Appellant was capable of returning to her pre-accident duties as of January 17, 1999, when MPIC terminated her Income Replacement Indemnity. Accordingly, this portion of [the Appellant's] appeal must be dismissed.

Ongoing Treatment

The continuing subjective complaints of pain expressed by the Appellant suggest that there may be ongoing issues of pain management for [the Appellant]. Sections 138 and 184(1)(b) of the MPIC Act provide that:

> **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.
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> **Powers of commission on appeal**
> **184(1)** After conducting a hearing, the commission may

(b) make any decision that the corporation could have made.

Therefore, by virtue of the obligations reflected in Section 138 of the Act, and pursuant to the powers contained in Section 184(1)(b), the Commission finds that the Appellant should be referred to a qualified physiatrist for assessment and for such further treatment (if any) as that physiatrist may recommend.

Dated at Winnipeg this 20th day of July, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.