

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-51**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Laura Diamond
Ms. Deborah Stewart

APPEARANCES: The Appellant, [text deleted], represented himself, assisted by his wife, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: October 10, 2001

ISSUE(S): (i) Termination of Income Replacement Indemnity benefits;
(ii) Termination of coverage for treatment expenses.

RELEVANT SECTIONS: Sections 110(1)(a) and 136 of *The Manitoba Public Insurance Corporation Act* (the "MPIC Act") and Section 5 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 a motor vehicle accident ('MVA') on August 14, 1999. He was positioned stationary in a boat which had been parked alongside the highway when it was struck by a moving vehicle. The Appellant was thrown from the boat as the car collided with the rear end of the boat. The Appellant sustained bilateral lower extremity bruising overlying both feet and an open wound to his left ankle and a concussion. Additionally, he sustained cuts and scrapes to his buttocks, right elbow and both forearms, including the palms of his hands.

The Appellant was treated on an emergency basis at the [hospital] where he was admitted and watched overnight. He was discharged to the care of his general practitioner, [text deleted]. The Appellant was initially followed by [Appellant's doctor #1], and then referred to [Appellant's doctor #2] at the [text deleted] due to continued pain of the left foot and ankle area. The Appellant was unable to weight bear as a consequence of pain symptoms in his ankle and lower leg area. [Appellant's doctor #2] referred the Appellant to physiotherapy and recommended medication to assist the Appellant in developing full range of motion and weight-bearing.

As the Appellant's complaints with his ankle and lower leg began to subside, it appears that pain in his lower back began to flare up. In January 2000, [Appellant's doctor #2] recommended that the Appellant undergo a four-week reconditioning program for his back before he could return to work. This program was supervised by [text deleted], an athletic therapist at the [text deleted]. Throughout the reconditioning program it was determined that [the Appellant's] overall flexibility, strength and tolerance levels improved to the point that he could return to work on a gradual basis with medical approval. On May 10, 2000, [Appellant's doctor #2] indicated that the client was capable of participating in a gradual return to work program whereby lifting requirements could be increased gradually over a 6-week period.

In June 2000, a graduated return-to-work program was implemented under the supervision of [text deleted], an occupational therapist, which allowed the Appellant to gradually reintegrate into his pre-MVA position as a health care aide at [text deleted]. [The Appellant] commenced the seven-week graduated return-to-work program on June 12, 2000. He was expected to be back at full-time employment on July 26, 2000. However, a follow-up visit with [Appellant's doctor #2] on July 20, 2000, indicated that the Appellant was not ready to return to full-time employment.

[Appellant's doctor #2] suggested an extension of the graduated return-to-work program over another four-week period. The Appellant was to complete all his required duties during the extension; however, he was required to limit the number of transfers and lifts completed over this four-week period. During this continued return-to-work plan, the Appellant continued to work seven hours per shift.

During the course of the gradual return-to-work program, the Appellant had been provided with a six-month gym membership in order to allow him to independently maintain his physical status. During the extension of the gradual return-to-work program, [the Appellant] continued his rehabilitation independently with a gym membership. Throughout this extended return-to-work program, [the Appellant] complained of constant lower extremity pain overlying both adductor muscles and some lower back pain described as an aching sensation. As a result of his continued complaints, the occupational therapist arranged for five hours of one-on-one exercise coaching to make sure he was performing his exercises effectively in order to assist with reducing his continued complaints of lower back pain and leg pain.

The Appellant was reassessed by [Appellant's doctor #2] on August 29, 2000. At that time, [Appellant's doctor #2] indicated that the Appellant's back pain was variable, but persistent enough to limit physical function, i.e., pain exacerbated by prolonged sitting and lifting/carrying activities. [Appellant's doctor #2] arranged to do a trigger-point injection on September 7, 2000 for the Appellant and then to reassess his ability to perform full duties in mid-September, 2000. Unfortunately, the trigger-point injection performed by [Appellant's doctor #2] on September 7, 2000 apparently aggravated [the Appellant's] pain complaints and further delayed his recovery.

[Text deleted], an exercise coach, saw [the Appellant] at the end of August 2000. [Appellant's exercise coach] indicated that [the Appellant] was suffering from very hyper-tonic erector spinae muscles that put him at risk for injury in the future. Therefore, [Appellant's exercise coach] indicated that he could not do any physical exercises with the client until the hypertonicity of the muscles was resolved. He suggested that the hypertonicity could be resolved with deep tissue massage treatment over the course of several sessions or possibly through trigger point injections. The Appellant then commenced massage therapy treatments on September 25, 2000. At the suggestion of his massage therapist, [the Appellant] then began to attend a chiropractor, [text deleted], for chiropractic treatments to assist with his lower back pain.

In a report to MPIC dated December 5, 2000, [Appellant's doctor #2] commented that:

Therefore in summary this patient continues to experience low back symptoms which were consequence to his motor vehicle accident and by subjective complaints creates limitation in his capacity for lifting and bending. Objective signs include paravertebral tenderness of the musculature and limited forward flexion.

The file was then referred by the MPIC Case Manager to [text deleted], medical consultant to the Health Care Services Team of MPIC for review. In his Inter-departmental Memorandum dated December 22, 2000, [MPIC's doctor] notes the following:

FURTHER REVIEW

I reviewed [Appellant's doctor #2's] December 5, 2000 report. It is noted in the report that [the Appellant] reported to [Appellant's doctor #2] that he had injured his back in the motor vehicle collision that occurred on the above date. It is documented that [Appellant's doctor #2] injected [the Appellant's] symptomatic region and encouraged him to continue with a graduated exercise program. It is noted that [the Appellant's] subjective complaints created a limitation in his capacity for lifting and bending. [Appellant's doctor #2's] objective findings were in the form of tenderness on palpation of the paravertebral muscles and limited forward flexion.

Comments

In the report there is no documentation of [Appellant's doctor #2] advising [the Appellant] not to return to his occupational duties. The only objective finding [Appellant's doctor #2] identified was limited forward flexion. This by itself would not

equate to an impairment of physical function that in turn would prevent [the Appellant] from performing his occupational duties.

[Appellant's doctor #2] did not provide any objective medical evidence that would establish a cause/effect relationship between [the Appellant's] lower back symptoms and the collision in question. It is noted that [the Appellant] reported an injury occurring to his back in the motor vehicle collision but based on my review of the other documents contained in his file, symptoms involving the back were not identified until three months after the collision in question. This would weaken the possibility of a cause/effect relationship existing between [the Appellant's] back symptoms and the collision in question.

CONCLUSION

Based on my review of [Appellant's doctor #2's] report, it is my opinion that there is insufficient objective medical evidence identifying a condition arising from the collision in question that would result in an impairment of physical function to a level where [the Appellant] would be unable to perform all his occupational duties on a full-time basis.

Based on [MPIC's doctor's] opinion, the Case Manager wrote to the Appellant on January 25, 2001, to inform him that he was no longer entitled to receive any further income replacement indemnity benefits based on the following reasons:

1. The medical information does not provide objective medical evidence identifying a condition that would result in an impairment of function to a level that would prevent you from working your occupational duties on a full-time basis. This decision is in accordance with Section 110(1)(a) of The Manitoba Public Insurance Corporation Act.
2. Your lower back symptoms are not as a result of your motor vehicle accident of August 14, 1999.

The letter from the Case Manager went on to advise [the Appellant] that:

Your Income Replacement Indemnity benefits will cease as of February 16, 2001. Your chiropractic treatment as well will cease as of February 16, 2001. Your acupuncture treatment with [Appellant's doctor #2] will cease after six sessions. Lastly, you are no longer entitled to any other forms of medical treatment and any other benefits under the Personal Injury Protection Plan.

[The Appellant] filed an Application for Review of that decision on February 5, 2001. In his decision dated April 5, 2001, the Internal Review Officer upheld the claims decision of January 25, 2001. It is from this latter decision that [the Appellant] now appeals.

Applicable Sections of the MPIC Act

Section 110(1)(a) of the MPIC Act provides that:

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

- (a) the victim is able to hold the employment that he or she held at the time of the accident.

Section 136 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 of 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 as prescribed by a physician;

Discussion

With regard to the issue of whether or not [the Appellant] was capable of returning to full-time employment, the Commission has considered the totality of medical evidence before us, and we note the following:

1. the discharge athletic therapy report from the [text deleted] dated October 3, 2000, which related to [the Appellant's] discharge on June 15, 2000. The discharge report noted that

[the Appellant's] lumbar range of motion was full on discharge (meets job demands). The report also found that his strength meets job demands at discharge.

2. The progress report No. 1 dated September 25, 2000, from [text deleted] which noted that [the Appellant] had no limitations with sitting or standing tolerance observed or reported. He was able to manage all physical job demands throughout the initial gradual return-to-work program. No limitations were observed or reported with walking tolerance. Full shoulder range of motion bilaterally, trunk bending, able to touch toes with some complaints of pulling in the lower back. The occupational therapist also noted that [the Appellant] was then able to ambulate independently without the use of a cane and able to manage the physical demands of his position except for heavy lifting.

Having regard to the fact that the Appellant was able to complete a graduated return-to-work program for an 11-week period from June 12, 2000 to July 20, 2000, this Commission finds, on a balance of probabilities, that certainly by January 25, 2001, the Appellant was no longer suffering from an impairment of function to a level that would prevent him from pursuing his occupational duties on a full-time basis. Although the Appellant noted that his pain prevented him from performing any heavy lifting and repetitive bending, there is little objective evidence to validate his ongoing complaints. The pain must be such as to prevent the sufferer from regularly pursuing a substantially gainful occupation. In our respectful view, [the Appellant's] evidence and that of all of his medical and paramedical caregivers, taken as a whole, falls short of meeting that criterion.

With respect to [the Appellant's] claim for ongoing treatment expenses, we accept the position of MPIC that there is no new information on the file which identifies that either physiotherapy or chiropractic treatment is a medical necessity at this time.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date April 5, 2001.

Dated at Winnipeg this 20th day of November, 2001.

YVONNE TAVARES

LAURA DIAMOND

DEBORAH STEWART