



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-136

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Ms. Mary Lynn Brooks

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Jim Shaw.

HEARING DATE: January 10, 2005

ISSUE(S): Entitlement to reimbursement of remedial massage therapy
treatment.

RELEVANT SECTIONS: Section 136 (1) (d) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 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] was involved in a motor vehicle accident on May 12, 2004 and as a result thereof suffered a soft tissue injury to her neck, shoulder and back. The Appellant attended at her doctor on May 12, 2004 who prescribed anti-inflammatory muscle relaxation medications. Her doctor also referred her for both physiotherapy treatment and remedial message therapy. Prior to the motor vehicle accident, the Appellant had two previous back surgeries and, as a result, on a monthly basis received massage therapy to her back.

On June 25, 2004 the Appellant received a letter from the case manager rejecting the Appellant's request for reimbursement of the cost of massage therapy for the following reasons:

Message Therapy is covered when prescribed by a physician, chiropractor, certified physiotherapist or an accredited athletic therapist (sic) and dispensed by a physician (sic), chiropractor, certified physiotherapist or an accredited athletic therapist.

You enquired whether coverage would be provided under the Personal Injury Protection Plan (PIPP) for treatment dispensed by a Remedial Massage Therapist. Under PIPP, there is no entitlement for reimbursement of massage therapy expenses dispensed by a Remedial Massage Therapist.

I refer you to Section 8 of the Manitoba Public Insurance Corporation Act which reads as follows:

Message Therapy

(8) 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.

Upon receipt of this letter the Appellant made an Application for Review of the case manager's decision. In this application the Appellant requested that she be reimbursed for her costs of receiving remedial message therapy treatments until she was medically fully recovered from the injuries sustained in the motor vehicle accident. She further asserted in this application that she was not informed by her case manager at the time of the initial interview that she would not be covered for this treatment by MPIC.

IRI Decision

The Internal Review Officer wrote to the Appellant on July 21, 2004 confirming the case manager's decision to dismiss the Appellant's Application for Review. In her decision the Internal Review Officer stated that having regard to the provisions of Section 136 (1) of the MPIC Act and Section 8 of the Manitoba Regulation 40/94, MPIC would not pay an expense incurred for massage therapy unless it is dispensed by a physician, chiropractor, physiotherapist or athletic therapist. The Internal Review Officer further stated that :

Your Application points out the content of professional university training for massage therapists, comprised of academic and clinical experience. The qualifications of your massage therapist are not in dispute. There are simply no provisions legislated for the reimbursement of this expense when treatment is provided by a massage therapist.

The decision under review is correct when it observes that there is no entitlement to massage therapy expenses unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist. Accordingly, this review will confirm the June 25, 2004 decision.

The Appellant filed a Notice of Appeal dated August 4, 2004.

Appeal

The relevant provisions of the MPIC Act in respect of the appeal are Sections 136 (1) (d) and Section 8 of Manitoba Regulation 40/94

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:

...

(d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94

Message Therapy

8 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.

The Appellant testified at the appeal hearing and stated that:

- 1) on May 13, 2004 she reported her accident to MPIC and was subsequently referred to a case manager on May 19, 2004. She had seen her personal physician and had commenced receiving physiotherapy treatments and remedial massage therapy after the motor vehicle accident.
- 2) Her case manager did not inform her at the time that she made her initial bodily injury

claim that MPIC did not provide coverage for massage therapy.

- 3) She continued to receive remedial massage therapy which was covered by [text deleted] until that coverage expired.
- 4) She had not received any reimbursement from MPIC in respect to remedial massage therapy since the motor vehicle accident.
- 5) In the circumstances she was entitled to receive such reimbursement.

MPIC's legal counsel submitted that MPIC was not required to reimburse the Appellant for the cost of massage therapy for the following reasons:

- 1) Provisions set out in Section 8 of Manitoba Regulation 40/94 prohibited MPIC from paying the cost of the massage therapy administered by the Appellant's massage therapist because she was not a physician, chiropractor, physiotherapist or athletic therapist.
- 2) Having regard to the Appellant's testimony, she had not established an estoppel in respect of the failure of the case manager to inform her as to the non-coverage by MPIC of massage therapy administered by a person not covered under Section 8 of Manitoba Regulation 40/94.

Decision

The Commission was quite moved by the Appellant's submission in respect to the history of her back problems, the recovery that she had made with respect to her back problems prior to the motor vehicle accident, and the exacerbation of the Appellant's back problems subsequent to the motor vehicle accident. The Appellant was a candid witness and testified that the massage therapy was extremely beneficial in assisting her to maintain her quality of life in order to carry out her activities at home and at work.

The Commission recognizes that the Appellant, after making a slow but steady recovery from her back surgeries prior to the motor vehicle accident, suffered a traumatic experience as a result of the motor vehicle accident on May 12, 2004. However, the Commission finds that the failure of the case manager to inform the Appellant at the time of the initial interview that she was not entitled to any coverage for massage therapy does not establish an estoppel against MPIC applying Section 8 of Manitoba Regulation 40/94. The Appellant testified that even if she had been informed by the case manager that MPIC did not pay for the cost of the massage treatments, she would have continued with these treatments because it was in her view a medical necessity. As a result, the Appellant was not induced by the silence of the case manager to continue with massage therapy and there was no detrimental reliance established by the Appellant in respect of the case manager's conduct

The Commission further finds that the Internal Review Officer was correct in determining that the provisions of Section 8 of Manitoba Regulation 40/94 did not permit MPIC to reimburse the Appellant for massage therapy because the massage therapy was not dispensed by a physician, chiropractor, physiotherapist or athletic therapist. In order for the Commission to grant the Appellant's remedy, the Commission would be required to amend Section 8 of Manitoba Regulation 40/94 and, as a result, the Commission would have exceeded its statutory jurisdiction.

The Commission therefore finds that the Appellant failed to establish that MPIC was required to reimburse her for the cost of massage therapy and, as a result, the Commission confirms the decision of the Internal Review Office dated July 21, 2004 and dismisses the Appellant's appeal.

Dated at Winnipeg this 27th day of January, 2005.

MEL MYERS, Q. C.

DR. PATRICK DOYLE

MARY LYNN BROOKS