



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-85

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Barbara Miller
The Honourable Mr. Wilfred DeGraves

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

HEARING DATE: December 9, 2004.

ISSUE(S): Entitlement to reimbursement of travel expenses.

RELEVANT SECTIONS: Subsection 136(1)(d) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Sections 19 and 20 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 on May 4, 2003, wherein he sustained certain injuries. As a result of those injuries, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The Appellant attended upon a chiropractor for treatment of his accident-related injuries. The Appellant resides near the community of [text deleted], Manitoba, [text deleted]. He chose to attend a chiropractor

in [text deleted], Manitoba, for the chiropractic care and claimed the related travel expenses for his attendances from MPIC.

In a letter dated March 31, 2004, MPIC's case manager advised the Appellant as follows:

Manitoba Public Insurance will consider reimbursement of your travel expenses as outlined in Section 19 and 20(1) of Manitoba Regulation 40/94, outlined as follows:

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.

Expenses beyond 100 km from victim's residence

20(1) Where a victim incurs an expense for travel or accommodation for the purpose of receiving care at a distance of more than 100 km from the victim's residence when the care is available within 100 km of the victim's residence, the corporation shall pay only the expenses for travel or accommodation that would have been incurred by the victim if the care had been received within the 100 km.

In your submission for travel expenses you are claiming 476 kms round trip to see your chiropractor on Pembina Highway. As chiropractic care is available within 100 kms of your home, Manitoba Public Insurance will consider reimbursement of travel for the purpose of receiving care up to 100 kms one way.

The Appellant sought an Internal Review of that decision. In her decision dated April 23, 2004, the Internal Review Officer amended the case manager's decision and allowed the Appellant additional reimbursement for travel expenses between the dates November 3, 2003 to March 26, 2004. The Internal Review Officer noted the following reasons for her decision:

According to Section 20(1) of Manitoba Regulation 40/94, where a victim obtains treatment more than 100 kilometres from their residence, but treatment is available within 100 kilometres of their residence, they are only entitled to a maximum of the 100 kilometres reimbursement.

We have confirmed that chiropractic care is available in the community of [text deleted], one day per week. The distance to [text deleted] is calculated at approximately 20 kilometres south of your mailing address of [text deleted], Manitoba. This is well within the 100 kilometre radius of your residence. Had you

chosen to attend the chiropractic facility in [text deleted] for treatment, you would have received reimbursement of approximately 40 kilometres for each chiropractic visit. Confirmation has also been received indicating there is no practicing chiropractor in the communities of [text deleted] or [text deleted].

With the exception of one day per week, the nearest chiropractic care provider to your home residence is in [text deleted]. Therefore, to ensure you receive the frequency of medical care as recommended by your chiropractor, you were required to travel to [text deleted] for this service. You chose to attend for chiropractic treatment with [Appellant's chiropractor] in [text deleted]. During the period of November 3, 2003 - March 26, 2004, you attended for chiropractic treatment once a week with the following exceptions:

- November 2 to 8, 2003 - 2 chiropractic treatments
- November 9 to 15, 2003 - 2 chiropractic treatments
- November 16 to 22, 2003 - 2 chiropractic treatments
- November 30 to December 5, 2003 - 2 chiropractic treatments

As you chose to attend for chiropractic treatment in [text deleted], even though chiropractic service was provided once a week within the 100 kilometre radius of your residence, your travel was reimbursed accordingly. You were compensated for 200 kilometres round trip for the first chiropractic visit each week between November 3, 2003 - March 26, 2004.

Additional chiropractic service is not available within the parameters of your service area (100 kms.) as the local care provider operates out of [text deleted] for the balance of the week. Therefore, the second chiropractic visit in the weeks previously noted will be reimbursed at 476 kilometres per visit as provided by your Record of Travel Expenses. When your treatment needs are reduced to one treatment per week or less, you will be reimbursed for 200 kilometres per visit.

The Appellant has now appealed the Internal Review decision dated April 23, 2004 to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to additional reimbursement of the travel expenses incurred for attending upon a chiropractor in [text deleted] for the period November 3, 2003 - March 26, 2004.

The Internal Review decision recognized that, because of the frequency of treatment required by the Appellant, he would not be able to attend all of his required chiropractic treatments with the

chiropractor in the Town of [text deleted] (which is within the 100 km service area). As a result, the Internal Review Officer agreed to reimbursement of the Appellant's travel expenses for those weeks when he required a second chiropractic treatment, since travel to [text deleted] for that treatment was necessary. The Commission finds that the effect of such a decision would require the Appellant to attend upon two separate chiropractors for chiropractic treatment (in order to be fully reimbursed for his related travel expenses). We are not persuaded that this constitutes adequate chiropractic treatment in the circumstances of this case. We find that the continuity of care, which is important in the healing process, would have been adversely affected by an ongoing requirement to seek treatment from two different chiropractors.

Counsel for MPIC submitted that the Appellant was only required to seek a second chiropractic treatment in [text deleted] on four occasions during the period November 2nd to December 5th, 2003, and that four visits to a second chiropractor was not unreasonable. The Commission finds however, that this fails to recognize that the Appellant was receiving chiropractic care from the outset of his claim (i.e. May 2003) at a frequency of more than once per week. To have required the Appellant to seek chiropractic treatment from two separate chiropractors (in order to be fully reimbursed for his related travel expenses) throughout the duration of his treatment (May 2003 – March 2004) would have adversely impacted upon the level of his care.

As a result, the Commission finds that in the circumstances of this case, since the frequency of chiropractic care as recommended by the Appellant's chiropractor required that he attend for chiropractic treatments more frequently than once per week, it would be unreasonable to require the Appellant to attend upon two separate chiropractors throughout the duration of his treatment.

Therefore, the Commission finds that the Appellant is entitled to reimbursement of his full travel expenses to attend for chiropractic treatment in [text deleted]. The Appellant shall also be entitled to interest upon such amount in accordance with Section 163 of the MPIC Act.

Accordingly, the Appellant's appeal is allowed and the Internal Review decision dated April 23, 2004 is therefore rescinded.

Dated at Winnipeg this 10th day of January, 2005.

YVONNE TAVARES

BARBARA MILLER

HONOURABLE WILFRED DEGRAVES