

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-79**

PANEL: Mr. Mel Myers, Chairperson
Ms Carole Wylie
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Bob Tyre of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: November 6, 2007 and May 23, 2008

ISSUE(S): Entitlement to reimbursement of expenses associated with out of Province medical consultation

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(b) of Manitoba Regulation 40/94

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on June 18, 1999. As a result of the injuries she sustained in that accident the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The issue which arises in this appeal is whether the Appellant is entitled to reimbursement for the expenses incurred in connection with out of Province medical consultation in respect of obtaining an MRI in [Text deleted], Alberta.

As a result of the motor vehicle accident the Appellant suffered soft tissue injuries to her left shoulder, which caused pain and stiffness to the left shoulder radiating to her neck, as well as multiple body contusions and a left tender bicep. She was treated by [Appellant's Doctor #1] initially and was referred for physiotherapy treatment in respect of her soft tissue injury, which treatments were funded by MPIC.

On January 6, 2000 MPIC's case manager wrote to [text deleted] Physiotherapy confirming that the Appellant had been discharged from treatment, with her last visit taking place November 23, 1999. A discharge note from her physiotherapist stated that the Appellant was discharged on a home program and that her symptoms had plateaued.

On November 26, 1999 the Appellant visited the office of [Appellant's Doctor #2] who provided a Health Care Provider Progress Report to MPIC dated February 1, 2000. In this report [Appellant's Doctor #2] stated the Appellant was complaining about pain to her left shoulder and that the Appellant had full function with symptoms. The Appellant testified at the appeal hearing that, notwithstanding the physiotherapy treatment, she continued to have pain and discomfort in her left shoulder and was not able to do everything she used to do such as lifting groceries, or her grandchild.

On February 4, 2000 the Appellant attended at the Emergency Department of the [Text deleted] Hospital complaining of pressure and swelling to the left shoulder and arm. The report from the [Text deleted] Hospital stated that:

... there was no swelling, there was full range of motion, no neurological compromise, full objective movement and full function of that arm.

On February 5th, 2000 the Appellant attended at the [Text deleted] Hospital again complaining of swelling to the left shoulder.

“In the functional inquiry, she stated that she had no weakness and no numbness and that she had made an appointment to see a specialist in the U.S.A. on the 24th of February while she was on a trip there.” The objective findings of the Emergency Physician stated that “moves about easily including taking gown off each shoulder with full range of motion of Lt shoulder and Lt elbow; there was no neurovascular compromise of that extremity.” Discharge instructions were to follow up with own doctor. No tests were ordered or entertained. No prescriptions were written.

In a letter to MPIC dated May 5, 2000 [Appellant’s Doctor #2] indicated that:

1. she last saw the Appellant on January 25, 2000 who requested a “seat-belt exemption”.
2. she had informed the Appellant that such exemptions are rarely, if ever, granted.
3. the Appellant was not pleased with her reply.
4. she (believed) that the Appellant indicated she was going to contact the College of Physicians and Surgeons.
5. the Appellant requested what right did she have to deny her this request.

[Appellant’s Doctor #2] further reported in her letter that she saw the Appellant on February 1, 2000 and stated:

1. The Appellant advised her she was “definitely not happy with her progress but that nobody was willing to refer her to [Appellant’s Physiatrist].”
2. I do not know what other health care professionals she was referring to. We briefly discussed her request and I stated that perhaps nobody was willing to abide by her request because perhaps it was an inappropriate one. I reminded her that her physiotherapist had already written a discharge report in which she had firmly stated that her symptoms had reached a plateau.
3. She advised the Appellant that she had no problem in referring her to [Appellant’s Physiatrist].

[Appellant's Doctor #2] further stated in her letter that she received a report from the [Text deleted] Hospital in respect of the Appellant's attendance at the Emergency Ward on February 4, 2000 and a report from the [Text deleted] Hospital indicating that the Appellant attended on the Emergency Ward on February 5, 2000. In each case [Appellant's Doctor #2] reports that in both hospitals the Appellant had complained of swelling to the left shoulder and full examinations at both hospitals indicated that the Appellant was discharged with no medications and no follow-up.

On February 24, 2000 the Appellant attended the University of [Text deleted], [Text deleted], Department of Physical Medicine and Rehabilitation, for a consultation in respect of her complaints of chronic pain to her left shoulder. [Appellant's Doctor #3] provided a report to the Appellant and to [Appellant's Physiatrist] dated February 24, 2000 indicating a diagnosis of:

1. Myofascial pain syndrome.
2. Left shoulder impingement syndrome, rule out calcific tendinitis.
3. Left medial epicondylitis elbow.

In addition, [Appellant's Doctor #3] recommended that x-rays be taken of the Appellant's left shoulder and left elbow.

In a Note to File dated March 13, 2000 the case manager reported a telephone call from [Appellant's Doctor #2], on March 10, 2000, who stated:

... she is concerned about continuation of subjective complaints by claimant including a recent trip to [Text deleted] to obtain a 2nd opinion along with prescription for Celebrex. This despite a recent examination at [Text deleted] Emergency where claimant was given a clean bill of health. [The Appellant's Doctor #2] was also asked by claimant to refer her to [Appellant's Physiatrist] at [Text deleted] Hospital. I will write to [Appellant's Doctor #2] to request updated info.

[Appellant's Doctor #2] did refer the Appellant to [Appellant's Physiatrist] for assessment. [Appellant's Physiatrist] provided a narrative report to MPIC dated September 3, 2002. In this report [Appellant's Physiatrist] indicated that he initially saw the Appellant on April 10, 2000 and treated her on May 16, July 26, August 23, and December 6, 2000. [Appellant's Physiatrist] further indicated he last saw the Appellant on May 8, 2001 and reported that at that time he did not carry out any treatment but advised the Appellant to continue with self stretching exercises as her main treatment.

[Appellant's Doctor #2], in a letter to the MPIC's case manager dated September 10, 2001, stated that the Appellant attended her office on June 21, 2001 and reported:

[The Appellant] came to me on the 21st of June to let me know that she was not happy with the progress that she had had so far with respect to her accident.

She stated that all the specialists had told her that "there was nothing else they could do for her" but that she was still hurting and that there was "something that wasn't right".

At this visit, she asked me if I would refer her to another physician out of province. I did not quite agree with it, but after a short discussion I agreed that it might not be such a bad idea given that fact that we were revolving around the same specialists.

I did tell her however, that such procedures usually take time and that I personally did not even know who to refer her to.

She let me know that the opportunity that was presented to her, could not wait for "paperworl"(sic) and what did I think of an MRI. I did not think it was a bad idea, but I felt powerless, as I can not order MRI's in this province (it is restricted to specialists).

In short you could say that I was aware and that I approved of such steps.

I do not know what your internal policies are. Nevertheless I hope this letter clarifies come (sic) confusion.

The Appellant attended the [Text deleted] in [Text deleted], Alberta where an MRI was conducted on July 17, 2001. In a report dated July 19, 2001 [Appellant's Doctor #4] stated:

Findings suspicious for a SLAP tear, possibly extending into the origin of the long head of the biceps tendon. A MR arthrogram would be useful for confirmation and to more accurately characterize potential labral pathology.

The Appellant made Application for Compensation from MPIC in respect of the cost of the MRI obtained in [Text deleted].

Case Manager's Decision

The case manager wrote to the Appellant on August 10, 2001 and stated;

I reviewed your letter dated August 3, 2001 requesting reimbursement for the cost of an MRI performed in [Text deleted]. I am unable to consider reimbursement for this and have outlined the reasons below.

In order for MPI to consider the cost of any medical treatment the following must be in place:

- “ It must be prescribed by the appropriate health care professional,
- “ It must be warranted based on some objective evidence,
- “ It must be related to the motor vehicle accident.

I am not in receipt of any medical information that recommended you under go an MRI examination. The report from [Appellant's Doctor #2] dated May 5/00 indicated that no further treatment or examinations were required as a result of any injuries sustained in the motor vehicle accident.

Also, if an MRI had been recommended it could have been performed here in Manitoba. As I had not provided you with any authorization prior to you proceeding with the MRI in [Text deleted], I cannot consider your request.

I have attached copies of all the information used in making this decision.

The Appellant submitted an Application for Review of the case manager's decision on September 27, 2001.

[Appellant's Physiatrist], in a letter to MPIC dated September 3, 2002, reported that he did not see the Appellant after May 8, 2001 but received a letter from [Appellant's Doctor #2] dated August 23, 2001 in which she enclosed a copy of the MRI scan report performed in [Text

deleted] which indicated a suspicion of a SLAP tear. [Appellant's Physiatrist] indicated that he advised [Appellant's Doctor #2] to refer the Appellant to an orthopedic surgeon for further evaluation in respect of the findings on the MRI scan. [Appellant's Physiatrist] further stated:

It is my opinion that her symptoms of left sided neck and upper trapezius to shoulder pain was the direct result of the motor vehicle accident of June 18, 1999. She initially suffered soft tissue injury with acute muscle strain and subsequent development of myofascial trigger points involving left trapezius, sternomastoid, splenius cervicis and levator scapula muscles. My treatment was based on this diagnosis and she responded to treatment with some residual symptoms as documented in the text on my report. Range of motion of the left shoulder was normal and I did not suspect any intrinsic shoulder disorder. (Underlining added)

[Appellant's Doctor #2] did refer the Appellant to [Appellant's Orthopedic Surgeon].

On November 5, 2001 MPIC's case manager wrote to [Appellant's Orthopedic Surgeon] providing him with the Appellant's medical reports that MPIC had on file, including the [Text deleted] MRI report dated July 19, 2001. The case manager requested that [Appellant's Orthopedic Surgeon] examine the Appellant, review the medical file and provide an assessment in respect of a number of matters, including:

- What were your objective findings at the time of your examination?
- Have you or will you be referring [the Appellant] for an MR arthrogram? If yes, when is the date of the appointment and when can we expect the results of that test?

On November 15, 2001 [Appellant's Orthopedic Surgeon] provided a report to MPIC and stated;

1. **OBJECTIVE FINDINGS**

Patient is a right hand dominant [text deleted] who, on physical exam, had a number of abnormal findings of the left shoulder. These include evidence of pain arising from the AC joint, the biceps tendon region, and she also has positive impingement signs. She has posterior shoulder pain, tenderness, and symptoms which may be best referred to as a posterior shoulder myofascial pain syndrome.

2. An MR arthrogram of the left shoulder has been requisitioned. Waiting time for this test is frequently around six weeks. If MPI has block time for tests at

[Text deleted] Hospital, you may be able to move up the date she would otherwise receive.

...

6. This has clearly been a troublesome case from many aspects, including the long duration of symptoms, the lack of response to treatment, the chronic syndrome developing, and the seeking of a more specific diagnosis. Will report to you following the MRI arthrogram.

On December 17, 2001 the Internal Review Officer referred the Appellant's medical file and the [Text deleted] MRI report, together with [Appellant's Orthopedic Surgeon's] report dated November 15, 2001, to its medical consultant, [MPIC's Physiatrist], for his assessment, and stated:

The only issue under Review at the moment is the one arising from [text deleted] decision dated August 10, 2001. This is whether MPI will pay for the MRI performed in [Text deleted]. I would certainly welcome any comments that you might have on that issue, but the purpose of this referral to HCST is much broader than that. Would you also please comment on the other issues raised by the MRI report and by [Appellant's Orthopedic Surgeon's] report:

1. Does the possible SLAP tear disclosed by the MRI probably result from the MVA?
2. Do the other findings disclosed on the MRI report and also in [Appellant's Orthopedic Surgeon's] report probably result from the MVA?
3. If so, what sort of treatment regime should MPI be supporting for this claimant?
4. If so, is a Permanent Impairment benefit appropriate?
5. Are any further diagnostic or assessment procedures warranted? If so, would you please comment on what those would be.

In response, [MPIC's Physiatrist] provided a report to the Internal Review Officer dated January 30, 2002 and stated:

... Based on the information on file, a SLAP tear would be considered a possibility and further evaluation is required. Specific comments on causation of a possible SLAP lesion would require further information, including confirmation that the lesion is present. However, based on the medical information on file, it is my opinion that the mechanism of injury sustained could result in left shoulder symptoms ...

In my opinion, there is no information on file that indicates that an emergent MR arthrogram was required. ...

Treatment support from MPI should be based on recommendations from the treating practitioners. The family physician indicated that the shoulder problem was being properly evaluated. The orthopedic surgeon suggested an injection, but that would be a decision between [the Appellant] and the surgeon. There are comments that [the Appellant] had “an abundance of conservative treatment”. At this point in time, I do not have any specific therapeutic recommendations, but consideration should be given to medically reasonable therapeutic recommendations made by her treating practitioners. (Underlining added)

Internal Review Officer’s Decision

The Internal Review Officer wrote to the Appellant February 6, 2002, dismissing the Appellant’s Application for Review and confirming the case manager’s decision of August 10, 2001. In arriving at this decision the Internal Review Officer stated:

On February 4, 2002, I received a copy of [MPIC’s Physiatrist’s] opinion of January 30, 2002. A copy of that is attached. [MPIC’s Physiatrist] says, concerning the issue on this Review, “In my opinion, there is no information on file that indicates that an emergent MR arthrogram was required.” As [MPIC’s Physiatrist] notes, in Manitoba access to MRIs for MPI claimants is arranged through Manitoba Health.

Section 5 of Regulation 40/94 provides that the Corporation will pay an expense for medical or paramedical care when it is “medically required”. [MPIC’s Physiatrist] accepts that the medical evidence is “suspicious for a SLAP tear” in your shoulder, and that it is possible that a lesion of that sort could have resulted from your motor vehicle accident. (It is important to note that these are not firm conclusions at this point. They are mere possibilities, which will be subject to further investigation and analysis.) Although [MPIC’s Physiatrist] does not specifically address the question, it does not appear that it was unreasonable for you to undergo an MRI test. As I understand [MPIC’s Physiatrist’s] assessment, however, there was no need to have the test done on an emergency basis. It follows that there was no need to go to Alberta to have it done. Accordingly, there was no *medical requirement* for you to incur the additional expense of undergoing an MRI in Alberta. I must conclude, therefore, that the expense is outside of the coverage established by Section 5(b).

The Appellant filed a Notice of Appeal dated March 26, 2002 indicating that the [Text deleted] MRI scan was medically necessary and requesting reimbursement of the sum of \$775.00.

On June 19, 2002 [Appellant's Orthopedic Surgeon] wrote to MPIC and advised that the MRI arthrogram, which was performed on March 19, 2002, showed no significant internal derangement to the shoulder and provided a copy of the MRI report to MPIC . The MRI arthrogram report indicated that "there is no evidence of a rotator cuff or SLAP tear." A copy of this letter was forwarded by [Appellant's Orthopedic Surgeon] to the Appellant.

[Appellant's Orthopedic Surgeon] wrote to MPIC on August 10, 2002 indicating that he had reviewed the Appellant on August 5, 2002 and recommended she undergo a decompression, arthroscopically, of the rotator cuff and AC joint. He requested that the Appellant notify him in due course as to whether she would agree to this surgical approach.

MPIC requested [MPIC's Physiatrist] to provide a medical opinion in respect of physiotherapy treatments and the application and potential permanent impairment benefits. [MPIC's Physiatrist] was provided with the entire MPIC file including [Appellant's Orthopedic Surgeon's] reports and the MRI arthrogram. [MPIC's Physiatrist], in his report dated November 12, 2002, comments on [Appellant's Physiatrist's] report as follows:

There are reports on file that [the Appellant's] cervical range of motion was full. The relatively recent report from the treating physiatrist referred to near full cervical range of motion with an associated diagnosis of "Myofascial Pain Syndrome". The physiatrist stated that with direct treatment from him there was improvement in range of motion and symptoms. The physiatrist also stated that "range of motion of the left shoulder was normal and [he] did not suspect any intrinsic shoulder disorder." This statement is consistent with other medical reports and the results of the MRI arthrogram. The impression was that [the Appellant] sustained soft tissue injuries as a result of the motor vehicle collision. (Underlining added)

The Appellant agreed to have the surgery performed by [Appellant's Orthopedic Surgeon] and the surgery was performed on February 28, 2003. The Operative Report disclosed a basic Type 1 SLAP lesion with degenerative changes at the biceps anchor.

On May 4, 2003 [Appellant's Orthopedic Surgeon] provided a report to this Commission and stated;

My own clinical impression was of multiple factors generating pain around the left shoulder, including pain arising from the acromioclavicular joint, the biceps tendon, as well as positive impingement signs, and evidence of what is discussed in the rehab literature as myofascial pain syndrome, involving the left upper extremity.

The enclosed operative report showed a basic Type I Slap lesion, as well as the other typical findings in this situation of subacromial impingement and degenerative wear around the AC joint.

...
In summary, she has presented with a clinical picture not uncommonly seen after motor vehicle accidents in terms of injuries to the rotator cuff and AC joint around the left shoulder. These appear to have been ongoing problems, not resolved conservatively, and leading to surgery which I suspect will help her moderately.

She also demonstrates, as is often seen after motor vehicle accidents, a situation of some degree of chronic pain and pain amplification. There is also a greater degree than usually seen, of dealing with the system, and this in itself would take a further toll.

In these complex pain syndromes, objective evidence is often somewhat lacking and this case, to a degree, is no exception. (Underlining added)

The Appellant received a letter from the Federal Minister of Health dated November 19, 2002, who stated:

MRI services are considered to be insured health services under the *Canada Health Act* when they are medically necessary for the purpose of maintaining health, preventing disease, or diagnosing or treating an injury, illness or disability, and are provided in a hospital or in a facility providing hospital care. However, since you chose to travel from Manitoba to Alberta to obtain this service at a private clinic, it is important that I clarify the portability criterion of the Act.

The portability criterion of the *Canada Health Act* requires that the provincial and territorial health insurance plans provide portability of coverage for emergency insured hospital and physician services when one is outside one's home province or territory. The portability criterion does not entitle one to seek services in another province or country, but is intended to entitle one to receive necessary services in relation to an urgent or emergent need when one is absent on a temporary basis, such as on business or vacation.

Provincial and territorial health insurance plans may require prior approval for elective (non-emergency) services sought by their residents out-of-province when

the services are available on a substantially similar basis in the home province. If prior approval is not received from the health insurance plan, the individual concerned may be required to bear the cost of the services received. In view of the provincial jurisdiction in such matters, you may wish to write to the Minister of Health of Manitoba at the following address: (Underlining added)

Room 302, Legislative Building
405 Broadway
Winnipeg, Manitoba R3C 0V8

Appeal

The relevant provisions of the MPIC Act and Regulations in this appeal are:

Section 136(1)(a) 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(b) of Manitoba 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:

...

- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The Appellant testified at the appeal hearing and stated that:

1. The motor vehicle accident injury to her left shoulder caused her persistent pain which was not alleviated by the physiotherapy treatments.

2. As a result, she testified that she was unable to carry out many of her daily activities such as picking up groceries or a grandchild.
3. She saw [Appellant's Doctor #2], who referred her to [Appellant's Physiatrist], a rehabilitation physiatrist, who commenced treatment of the Appellant.
4. On a trip to [Text deleted] she had the opportunity of obtaining an MRI in respect of her left shoulder at a cost of \$775.00.
5. The report of the MRI centre in [Text deleted] indicated a suspicion of a SLAP tear and recommended that an MRI arthrogram would be useful for confirmation.
6. Her Application for Compensation for the cost of the [Text deleted] MRI was rejected by MPIC and, as a result, she has appealed to the Commission.

At the conclusion of her evidence the Claimant Adviser representative indicated that the Appellant did not intend to call any further witnesses. The Commission adjourned the hearing for a short period of time and, on reconvening, requested that MPIC's legal counsel arrange for [Appellant's Doctor #2] to appear before the Commission. A new date for the hearing was set for May 23, 2008.

On January 7, 2008 MPIC's legal counsel provided the Commission with a report from [Appellant's Doctor #2] dated December 18, 2007 which stated:

Apparently [the Appellant] would like reimbursement for cost incurred in having an Out of Province MRI.

Prior to her going for this MRI, she had seen numerous specialists, none of which had requested an MRI. She came to me with the idea that "the opportunity had presented itself" for her to have an MRI in [Text deleted] in July 2001.

Up to this point I can't say (based on all the information that I had so far) that that particular diagnostic test was medically necessary.

In reviewing prior documentation, this particular test had not been warranted based on objective evidence.

I would not have prescribed it myself, even if I would have been able to do so at that time (again based on the information on hand at that time).

The Commission provided the Claimant Adviser Officer with a copy of [Appellant's Doctor #2's] letter. Upon review of this letter the Claimant Adviser Officer advised the Commission that it wished [Appellant's Doctor #2] to be called as a witness in the hearing. The Commission requested MPIC's legal counsel to make the necessary arrangements to have [Appellant's Doctor #2] be called as a witness at the appeal hearing, which was set to reconvene on Friday, May 23, 2008.

[Appellant's Doctor #2] testified at the appeal hearing and stated:

1. In order for an MRI to be obtained there must be a referral from a specialist such as an orthopedic surgeon and approval by Manitoba Health.
2. She did not have the authority to arrange for the Appellant to have an MRI since she was not a specialist.
3. She never authorized the Appellant to obtain an MRI from out of Province.
4. However if the Appellant wished to obtain an MRI out of the Province, she had no objections to this taking place.
5. She didn't agree that an MRI was medically necessary.
6. She didn't disagree with what the patient thought would be helpful to the patient, if the patient wanted to undertake an alternative form of treatment such as chiropractic care or holistic medical treatment.
7. She might not agree to such treatment but she would have no objection if the patient wished to proceed in this fashion.

She further testified that:

1. There was no objective basis for the Appellant at that time to obtain an MRI since her examination of the Appellant did not indicate that an MRI was medically necessary.
2. Her opinion was corroborated by:
 - a) The physiotherapist's report which indicated that the Appellant's symptoms had plateaued and that the Appellant was discharged from any further treatment.
 - b) Reports from both of the Emergency Wards at the [Text deleted] Hospital and [Text deleted] Hospital which indicated the Appellant had been discharged without any medication being provided.
3. She had referred the Appellant to [Appellant's Physiatrist], who had undertaken to treat her by trigger point injections, but he had not required the Appellant to obtain an MRI.
4. When she received the [Text deleted] MRI report she referred that report to [Appellant's Physiatrist] who informed her to refer the Appellant to a specialist.
5. As a result, she referred the Appellant to [Appellant's Orthopedic Surgeon].

Submissions

The Claimant Adviser Officer submitted that the Appellant was an innocent party who was injured in a motor vehicle accident. As a result of her persistent pain to her shoulder, and the treatments provided by the physiotherapist, by [Appellant's Doctor #2], and by [Appellant's Physiatrist], these did not resolve her medical problems. In frustration the Appellant, while on a visit to [Text deleted], had an opportunity in obtaining an MRI which indicated that the

Appellant's left shoulder might have a SLAP tear. The Claimant Adviser Officer indicated that, as a result of the Appellant obtaining the [Text deleted] MRI, the Appellant was referred to [Appellant's Orthopedic Surgeon] who successfully performed a shoulder operation on the Appellant which alleviated a great deal of her shoulder pain.

The Claimant Adviser Officer further submitted that the Appellant was not served well by the health care system and that the Commission should interpret the words "medically required" in Section 5(b) of Manitoba Regulation 40/94 in a large and liberal manner in order that the Appellant be compensated for the cost of obtaining the [Text deleted] MRI.

The Claimant Adviser Officer also submitted that but for the [Text deleted] MRI the Appellant would not have been referred to the orthopedic surgeon who, as a result of his discussions with the Appellant and his examination of her, recommended the orthoscopic surgery procedure which alleviated her pain to a great extent. The Claimant Adviser Officer asserted that the Appellant had established, on a balance of probabilities, that it was medically necessary she obtain the [Text deleted] MRI and that the Appellant be should reimbursed for the cost thereof.

MPIC's legal counsel argued that [Appellant's Doctor #2] was correct in concluding, upon her objective examination of the Appellant and her discussions with the Appellant, that it was not medically necessary for her to refer the Appellant to a specialist to obtain an MRI. [Appellant's Doctor #2's] assessment was corroborated by:

1. The physiotherapy reports which had determined that the Appellant's symptoms in respect of her shoulder had plateaued and the Appellant was discharged from any further treatment.

2. The two (2) reports from the Emergency Wards of the [Text deleted] Hospital and the [Text deleted] Hospital which indicated that their respective medical examinations found nothing wrong with the Appellant's shoulder and she was discharged without even being provided with any medication.

MPIC's legal counsel further submitted that when [Appellant's Doctor #2] was unable to resolve the Appellant's concerns she referred the Appellant to [Appellant's Physiatrist] who did not recommend an MRI but treated the Appellant with trigger point injections and stretching exercises. [Appellant's Physiatrist], in his report to MPIC dated September 3, 2002, indicated that based on her symptoms and signs, his diagnosis was of a myofascial pain syndrome involving the left shoulder and he did not feel that there was any further investigation or intervention that was required in order to treat the Appellant. [Appellant's Physiatrist] as a result of his examination and treatment, did not suspect the Appellant had any intrinsic shoulder disorder.

[MPIC's Physiatrist], a Physiatrist, in his report of January 30, 2002, after viewing the [Text deleted] MRI which indicated the possibility of a SLAP tear, indicated that in his opinion there was no information on the medical file that indicated an emergent MRI arthrogram was required. [MPIC's Physiatrist] in this report further stated that [Appellant's Doctor #2] had properly evaluated the Appellant's shoulder problem and that [Appellant's Orthopedic Surgeon] initially suggested the Appellant be treated with an injection to her shoulder.

[MPIC's Physiatrist] also stated that [Appellant's Physiatrist], in his report dated August 8, 2002, indicated that:

1. The Appellant suffered a soft tissue injury, acute muscle strain and subsequent development of myofascial trigger points in the left shoulder area.
2. His treatment was based on his diagnosis.
3. The range of motion of the left shoulder was normal and he did not suspect any intrinsic shoulder disorder.

MPIC's legal counsel therefore submitted, having regard to the medical reports and testimony of [Appellant's Doctor #2], the medical reports of [MPIC's Psychiatrist] and [Appellant's Psychiatrist], that the Appellant has not established that it was an emergency that required the Appellant to attend [Text deleted] to obtain an MRI. MPIC's legal counsel further stated that for the Appellant to obtain an MRI in Manitoba the Appellant required a referral from a specialist such as an orthopedic surgeon and approval from Manitoba Health and the Appellant had failed to obtain either the referral or the approval.

MPIC's legal counsel therefore submitted the Appellant has not established, on a balance of probabilities, that it was not a medical necessity, pursuant to Section 5(b) of Manitoba Regulation 40/94, to obtain an MRI in [Text deleted] and, as a result, there is no obligation on MPIC to reimburse the Appellant for the cost of this MRI. MPIC's legal counsel therefore submitted that the Commission confirm the Internal Review Officer's decision dated February 6, 2002 and dismiss the Appellant's appeal.

Decision

Upon careful review of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant is not entitled to reimbursement of her expenses associated with the out of Province MRI arthrogram in [Text deleted]. The Appellant was frustrated with

the ability of the public health system to provide her with the reduction of the pain in her left shoulder and, as a result, she felt compelled to seek an alternative option and on two (2) occasions obtained MRIs both in [Text deleted] and [Text deleted], Alberta.

While the Appellant's frustration with the public health system was understandable, the out of Province MRI was not medically required pursuant to Section 5(b) of Manitoba Regulation 40/94. [Appellant's Doctor #2's] medical opinion that there was no objective basis for having the MRI procedure carried out was corroborated by:

- 1 The physiotherapist's report which indicated that the Appellant's symptoms had plateaued and she was discharged from any further physiotherapy treatments.
- 2 The reports from the Emergency Wards of [Text deleted] Hospital and [Text deleted] Hospital which confirmed that the Appellant had no problem with her right shoulder and she was discharged from both hospitals with no medication and no indication that any further treatment was required.
- 3 [Appellant's Physiatrist] upon examination, did not suspect any "*intrinsic*" shoulder disorder and therefore did not recommend initially that the Appellant be referred to an orthopedic surgeon for evaluation or for an MRI but instead treated the Appellant with trigger point injections.
- 4 [MPIC's Physiatrist], who reviewed all the relevant medical reports, was of the view that [Appellant's Doctor #2] had properly evaluated the Appellant's shoulder problem and that there was no information on the medical file that would indicate an emergent MRI arthrogram was required.

For these reasons the Commission finds that there was no need for the MRI test to be done on an emergency basis. While we find the Appellant chose to avail herself of the option to have an

MRI test done in [Text deleted], Alberta, and while that choice was understandable and reasonable in her circumstances, we do not find, on a balance of probabilities, that the MRI test was medically required within the meaning of Section 5(b) of Manitoba Regulation 40/94. As a result, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated February 6, 2002.

Dated at Winnipeg this 21st day of July, 2008.

MEL MYERS

CAROLE WYLE

SANDRA OAKLEY