

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-06-27**

PANEL: Ms Laura Diamond, Chairperson
Mr. Les Marks
Ms Linda Newton

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

HEARING DATE: October 28, 2009

ISSUE(S): Entitlement to funding for an orthopedic bed and cervical pillow.

RELEVANT SECTIONS: Sections 136 and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 10(1) 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 injured in a motor vehicle accident on March 24, 1999. As a result of the accident, she sustained a soft tissue injury to her neck, shoulders and back, along with headaches.

On December 20, 2000, the Appellant was involved in another motor vehicle accident and aggravated the injuries sustained in her previous motor vehicle accident.

The Appellant sought a variety of treatments for her injuries, including trigger point injections from [Appellant's Doctor #1]. Entitlement to this treatment was upheld by the Commission in a previous decision in AC-04-117.

The Appellant's case manager wrote to her on December 29, 2005 denying MPIC coverage for a cervical pillow and orthopedic bed. The case manager indicated that as this was not treatment that would be considered "medically required" to address injuries sustained in either of the Appellant's motor vehicle collisions, MPIC would not consider the cost of the pillow or the bed.

The Appellant sought Internal Review of this decision. On February 8, 2006, an Internal Review Officer for MPIC found that a cervical pillow and orthopedic bed were not medically required for the management of a mild to moderate soft tissue sprain such as the Appellant's. The case manager's decision was upheld.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal, describing her motor vehicle accidents, her injuries and symptoms, and the treatment that she received. This treatment included physiotherapy, chiropractic treatment, acupuncture, dry needling, trigger point injections and massage therapy. She also described the medications which she took to control her pain.

The Appellant described certain ergonomic adjustments that MPIC had provided at her workplace (an Obus form for her work chair) as well as a cervical pillow which lasted for a couple of years. She described the problems she had with the quality of her sleep following the

motor vehicle accident and the impact she felt that her older futon-type bed had on this problem. She indicated that sleep disturbances were affecting her work and creating problems with her attendance and she began complaining about this problem to her general practitioner, [the Appellant's Doctor #2]. They discussed the benefits of a proper bed and a new cervical pillow. Following this discussion, the Appellant asked [Appellant's Doctor #2] for a prescription for these items for the purpose of submitting it to MPIC for coverage.

The Appellant described her continuing symptoms during the day and during the night, and the impact of her sleep disturbance.

She testified that in 2005, she purchased an orthopedic bed and box spring from a wholesaler, for \$500.00.

Following the purchase of the new bed, she found that her sleep improved greatly, with reduced pain and waking at night. She was sleeping for longer durations. The firm bed provided better support for her back, spine and head and she no longer needed to take medication for sleep or for pain at night. She was sleeping better and her attendance at work and general well-being improved.

The Appellant also submitted reports from her general practitioner, [Appellant's Doctor #2]. The first was in the form of a hand-written prescription dated September 12, 2005 which indicated:

“...I advised she would benefit from a cervical pillow and orthopedic bed (proper box-spring and mattress) to reduce her ongoing pain.”

[The Appellant's Doctor #2] also provided a report dated December 28, 2005 wherein she indicated:

“Because of her chronic symptoms of pain and sleep disturbance the following are medically required and should be funded by MPI:

- 1) replacement cervical pillow – her old one has worn out
- 2) an orthopedic bed (box spring and mattress) to reduce the pain she suffers at night time. Her present bed is poor quality and worsens her pain.
- 3) Trazadone – 50 mg HS – MPI is presently providing funding for this.

Just a reminder that [the Appellant] had never experienced any form of neck and back pain, nor sleep disturbance since the motor vehicle accident.”

[The Appellant's Doctor #2] provided a final report on January 20, 2009 discussing the orthopedic bed and cervical pillow.

“Basically I prescribed these items because she requested them. She had difficulties with increased pain at night and sleep disturbance and she felt they could aid her in a better night's sleep. She agreed with me that there was no other reason than that...

She tells me the bed and pillow did eventually help however and consequently with time her requirements for Flexeril, Trazadone, and trigger point injections did lessen since she had them.”

The Appellant also provided reports from [Appellant's Doctor #1] who was treating her with trigger point injections. On August 22, 2006, [Appellant's Doctor #1] recommended that the Appellant “...optimize her ergonomic environment to reduce static and dynamic strain on her neck and shoulders” while at work.

[The Appellant's Doctor #1] reported again on June 28, 2009. He described the Appellant's sleep disturbances, indicating that non-restorative sleep would aggravate her pain and reduce her energy level. He recommended that to improve her spinal neck and shoulder posture while she is sleeping she should have a proper mattress and pillow, recommending a cervical pillow and orthopedic bed.

Counsel for the Appellant submitted that the Appellant was suffering from myofascial pain syndrome resulting from her injuries in the motor vehicle accidents. She had pursued many avenues for treatment and one of the recommendations which had been made was to optimize her ergonomic environment.

As a result of her injuries, she suffered from sleep disturbances. MPIC had recognized this issue in providing her with a cervical pillow, and she sought reimbursement for the replacement of that pillow. In addition, the Appellant required an orthopedic bed to alleviate stresses on her neck and back which contributed to her pain and sleep disturbance.

Counsel for the Appellant referred to the Commission's decision in [text deleted] (AC-96-69) where the Commission found the Appellant entitled to reimbursement by MPIC for the price of a new mattress stating:

“...We are of the view that, when a qualified professional practitioner, whose services are covered by the Act, prescribes a particular kind of bedding, and if it is apparent that, in light of all the circumstances, there is a strong likelihood that the items in question will materially improve the victim's chances of recovery, then it is reasonable for the Corporation's discretion to be exercised in favour of the victim...”

Counsel submitted that as a result of the motor vehicle accident, and in spite of treatment, the Appellant suffered from myofascial pain and sleep disturbances. When her doctor recommended an orthopedic bed and new cervical pillow, these new ergonomic items assisted with these issues and helped to alleviate her pain and symptoms. She submitted that the Appellant should be entitled to reimbursement for the orthopedic bed and cervical pillow which she had purchased.

Submission for MPIC:

The Appellant's request for an orthopedic bed and cervical pillow were reviewed by [MPIC's Doctor] in a memorandum dated January 25, 2006. [MPIC's Doctor] reviewed the medical documentation on the Appellant's file and concluded:

“Supporting the claimant with either a cervical pillow or an orthopedic bed represents elective care. Neither of these orthopedic devices is a medical requirement to address healing of soft tissue injuries. Soft tissue healing would occur in the absence of either of these devices. Having revisited this claimant's submitted medical package and the two most recent submissions, I find that my opinions as expressed on October 11, 2005 remain unchanged.”

[MPIC's Doctor] also reviewed reports from [the Appellant's Doctor #2] and [the Appellant's Doctor #1] on August 6, 2009. At that time she reported:

“I could not find in the documentation from either [the Appellant's Doctor #2] or [the Appellant's Doctor #1] that either provider had recommended to the claimant that she purchase an orthopedic mattress or a cervical pillow to address her collision injuries.

It is not uncommon for a physician to support patient generated requests for devices of (sic) for medications or neutraceuticals where there is no evident harm attached to such requests. Support for same does not translate into the treatment being medically required.”

Counsel for MPIC reviewed [MPIC's Doctor's] report as well as the reports of [the Appellant's Doctor #2] and [the Appellant's Doctor #1]. She submitted that [the Appellant's Doctor #2] had only prescribed the items because the Appellant had requested them and there was no reason for the items other than to have a good night's sleep. She noted that [the Appellant's Doctor #1's] reports of August 22, 2006 and June 23, 2009 were issued a year after the Appellant had already purchased her new mattress.

Counsel also pointed to evidence from the Appellant that the futon she was sleeping on at the time was approximately 10 to 15 years old so that it would have been time to get a new mattress regardless of the soft tissue injuries sustained in the motor vehicle accident.

Counsel reviewed [MPIC's Doctor's] reports which pointed out that the mattress and cervical pillow were elective treatments and not medically required.

Counsel also reviewed previous decisions of the Commission in [text deleted] (AC-02-22), [text deleted] (AC-01-12) and [text deleted] (AC-07-86). In all of these cases, the Commission found that the evidence fell short of establishing that a new mattress and box spring would materially improve an appellant's recovery. Although a mattress might be beneficial for the Appellant, it could not be considered medically required. It would not materially improve the Appellant's condition or make a meaningful contribution to her rehabilitation.

In conclusion, Counsel for MPIC submitted that the Appellant had not proven that the mattress and cervical pillow were medically required and/or materially improved her motor vehicle related injuries and submitted that her appeal should be dismissed.

Discussion:

Sections 136(1) and 138 of the MPIC Act provide:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

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.

Section 10(1) of Manitoba Regulation 40/94 provides:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- (a) funds for an extraordinary cost required to adapt a motor vehicle for the use of the victim as a driver or passenger;
- (b) funds for an extraordinary cost required
 - (i) where the victim owns his or her principal residence, to alter the residence or, where alteration is not practical or feasible, to relocate the victim,
 - (ii) where the victim does not own his or her principal residence, to relocate the victim or, where relocation is not practical or feasible, to alter the victim's residence, or
 - (iii) to alter the plans for or construction of a residence to be built for the victim;
- (c) funds for an extraordinary cost required to alter the victim's primary residence, where the victim is moving in order to accommodate an approved academic or vocational rehabilitation plan, or the victim was a minor or dependant at the time of the accident who is moving from the family home;
- (d) reimbursement of the victim at the sole discretion of the corporation for
 - (i) wheelchairs and accessories,
 - (ii) mobility aides and accessories,
 - (iii) medically required beds, equipment and accessories,
 - (iv) specialized medical supplies,
 - (v) communication and learning aids,
 - (vi) specialized bath and hygiene equipment,
 - (vii) specialized kitchen and homemaking aides, and
 - (viii) cognitive therapy devices;
- (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

The onus is on the Appellant to establish, on a balance of probabilities, that the items in question are medically required and/or advisable for her rehabilitation.

The panel has reviewed the evidence of the Appellant and the reports on file, including reports from [MPIC's Doctor] and [the Appellant's Doctor #2]. [The Appellant's Doctor #2] prescribed a cervical pillow and orthopedic bed for the Appellant on September 12, 2005. She supported the Appellant's claim for these items in two follow-up reports, although she did acknowledge that the Appellant had requested them and that they discussed this request because the Appellant had difficulties with increased pain at night and sleep disturbance.

The Commission has also reviewed reports from [MPIC's Doctor] which note that while it is common for practitioners to support such requests by their patients, the orthopedic bed and cervical pillow were elective items and not medically required.

The panel has given particular weight to the opinion of [the Appellant's Doctor #1]. We note that [the Appellant's Doctor #1] has followed the Appellant through her diagnosis of myofascial pain syndrome and, as noted above, treated her with trigger point injections. [The Appellant's Doctor #1] made recommendations for optimizing the Appellant's ergonomic environment and made note of her sleep disturbances. He reiterated the diagnosis of sleep disturbance resulting from motor vehicle pain injuries in his report of June 28, 2009:

“...She developed headaches due to spasm and tension in the cervical and occipital group of muscles. This was further complicated by weakness of the muscles of the neck and shoulder girdle, reduced sitting/standing and working tolerance, and sleep disturbances (non-restorative sleep).”

To restore sleep patterns and promote sleep hygiene [the Appellant's Doctor #1] recommended a proper mattress and proper pillow. He noted that:

“...If the mattress is very soft and saggy and the pillow is not of a proper height and comfort, this causes some static stresses on the joints, ligaments and muscles of the neck and shoulders and leads to exacerbation of the spasms and pain, and weakness of the muscles. Non-restorative sleep also aggravates the pain and reduces energy level.”

The Commission has given significant weight to this opinion of a specialist in rehabilitation medicine (physiatrist) who has examined, assessed and treated the Appellant over a lengthy period of time. He has provided a diagnosis of sleep disturbances resulting from the motor vehicle accident injuries and an unequivocal opinion that an orthopedic bed or replacement cervical pillow are medically required to address the problem of the Appellant’s non-restorative sleep.

‘...Therefore in my opinion, a cervical pillow and orthopedic bed was medically required for treatment of the injuries that she sustained in her March 24, 1999 motor vehicle accident.’

Based upon [the Appellant’s Doctor #1’s] opinion which is consistent with the testimony of the Appellant, the Commission finds that the Appellant has met the onus of establishing, on a balance of probabilities, that the orthopedic bed and replacement cervical pillow are medically required for treatment of the Appellant’s injuries and rehabilitation of her condition.

Accordingly, the Appellant’s appeal is allowed and the Appellant shall be entitled to funding for an orthopedic bed and cervical pillow.

Dated at Winnipeg this 25th day of November, 2009.

LAURA DIAMOND

LES MARKS

LINDA NEWTON