Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-107

PANEL:	**Ms. Yvonne Tavares, Chairperson** **Ms. Sandra Oakley** **Ms. Lorna Turnbull**
APPEARANCES:	**The Appellant, [text deleted], was represented by [text deleted];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Lori LaBine.**
HEARING DATE:	**November 20, 2008**
ISSUE(S):	**Entitlement to reimbursement of physiotherapy treatment expenses**
RELEVANT SECTIONS:	**Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and subsection 5(a) 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 October 9, 1996, when her vehicle was rearended. As a result of this motor vehicle collision, the Appellant sustained an acute musculoskeletal strain of her neck, shoulders and lower back. Due to the bodily injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant undertook treatment to increase range of motion of the cervical spine and to decrease pain in the cervical spine and shoulder. [Appellant's orthopedic surgeon] saw the Appellant on December 16, 1996 on referral from her family physician. His objective findings included posterior neck tenderness in the paraspinal and trapezius muscles on the left with full flexion and extension. He noted her cervical spine range of motion to be reduced in lateral bending and in rotation, left worse than right. He also noted tenderness to palpation of the left acromioclavicular joint and greater tuberosity. Her left shoulder range of motion was 120° in elevation actively and a passive range of motion beyond this. There was pain on stressing the AC joint and positive impingement signs. [Appellant's orthopedic surgeon] reviewed an x-ray of the Appellant's left shoulder which noted degenerative change of the left AC joint. She was scheduled for an arthrogram to rule out any full thickness rotator cuff tear. [Appellant's orthopedic surgeon's] correspondence of January 21, 1997 reported this arthrogram to be negative. Other objective findings in his January 21, 1997 correspondence indicated that neck range of motion was back to normal and that her left shoulder symptoms had improved but that she still had positive impingement signs.

Correspondence from [Appellant's orthopedic surgeon] dated April 27, 1997 indicated that surgery was being considered for sometime later in the year if the Appellant did not improve with a non-operative rehabilitation plan. His working diagnosis was rotator cuff, subacromial and AC joint contusion and associated AC joint arthritis. [Appellant's orthopedic surgeon] noted that the degenerative changes of the AC joint were likely pre-existing, although based on information available to him, the area was asymptomatic prior to the motor vehicle collision.

The Appellant saw [Appellant's doctor] on September 11, 1997. He noted objective findings of impingement pain with cross body adduction and rhomboid atrophy. His diagnosis was rotator

cuff tendonitis and AC joint arthrosis which he attributed to the motor vehicle collision. He recommended that the Appellant proceed with surgery as per [Appellant's orthopedic surgeon's] recommendation, noting that she may require further physiotherapy to improve her general conditioning post-operatively.

On September 11, 1998, the Appellant underwent a left shoulder arthroscopy with labral debridement, acromioplasty and distal clavical excision. Post-operatively the Appellant underwent a subsequent course of physiotherapy to improve range of motion and strength of the left shoulder.

On April 19, 2000, the Appellant saw [Appellant's neurologist] and had a neurological examination, MRI of the cervical spine and EMG testing. [Appellant's neurologist] concluded that there were mild degenerative changes in the cervical spine, no root compression and EMG evidence of a mild left carpal tunnel syndrome. [Appellant's neurologist] felt that her symptoms were most likely related to her left shoulder and deferred to [Appellant's orthopedic surgeon] for further management of this problem.

[Appellant's orthopedic surgeon] reviewed the Appellant on September 20, 2000 and noted a moderately severe restriction of active range of motion of the shoulder with only slight improvement passively. He felt this represented deterioration from the previous range of motion, although he did not identify a specific cause for this. He recommended that the Appellant engage in more active reconditioning and did not feel that any further surgery would help her.

In correspondence dated December 1, 2001, [Appellant's orthopedic surgeon] stated that the Appellant might benefit from repeat shoulder arthroscopy. He also noted that he could not

account for her continued deterioration in range of motion of her left shoulder. On May 17, 2002, the Appellant underwent arthroscopy, bursectomy, labral debridement, biceps release and manipulation of her left shoulder by [Appellant's orthopedic surgeon]. Post-operatively she underwent a course of physiotherapy under the care of [Appellant's physiotherapist]. On March 23, 2004, the Appellant saw [Appellant's orthopedic surgeon]. Objective findings of her left shoulder included restricted range of motion. He also noted rotator cuff power to be 4+/5. [Appellant's orthopedic surgeon] listed diagnoses as chronic biceps tendinitis, labral degeneration, glenohumeral contracture, glenohumeral arthrofibrosis and subacromial arthrofibrosis. He attributed these diagnoses to the motor vehicle collision of October 6, 1996. He also listed associated diagnoses of previous distal clavicle excision, acromioplasty for chronic impingement and arthritic changes to the AC joint. He noted that there was superimposed diffuse shoulder muscular atrophy and chronic pain syndrome. He recommended sedentary to light physical work with the avoidance of lifting, reaching, pushing, pulling and overhead work. He also recommended general maintenance of exercises of the shoulder, general fitness and rehabilitation attempts and lifestyle adaptation to the shoulder limitations imposed.

On or about June 2, 2006, the Appellant contacted her case manager and advised that she had reinjured her shoulder while reaching for a pot in her kitchen. She indicated that she would like to attend for a further course of physiotherapy in order to treat the shoulder injury. On September 11, 2006, MPIC's case manager wrote to the Appellant to advise her that based upon the information on the file there was insufficient evidence to support a causal link between the motor vehicle accident of October 9, 1996 and the Appellant's current left shoulder condition. Since no direct cause and effect relationship could be established, MPIC would not consider reimbursement of physiotherapy expenses related to the Appellant's left shoulder.

The Appellant sought an Internal Review of the case manager's decision. In a decision dated June 15, 2007, the Internal Review Officer confirmed the case manager's decision of September 11, 2006 and dismissed the Appellant's Application for Review. The Internal Review Officer relied upon [MPIC's doctor's] review of the file and his opinion dated October 14, 2006. [MPIC's doctor] opined that if the Appellant's diagnosis was adhesive capsulitis, then it was not medically and probably linked to the motor vehicle accident. He also stated that the temporal relationship between the reaching incident and her new symptoms were not medically probably causally linked to the motor vehicle accident. As a result, the Internal Review Officer concluded that there was insufficient evidence to support a causal link between the motor vehicle collision and the Appellant's current left shoulder condition.

The Appellant has appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to reimbursement of the physiotherapy expenses to treat her shoulder condition which developed in June 2006.

At the hearing of her appeal, the Appellant's representative argued that the motor vehicle accident of October 9, 1996 left the Appellant with a permanently weakened left shoulder. He submitted that the reaching incident in June 2006 caused her to hurt her shoulder because her shoulder was already weakened by the effects of the motor vehicle accident. He further advised that the Appellant did not have adhesive capsulitis; that she had undergone a course of physiotherapy treatments following the re-injury to her left shoulder and that these physiotherapy treatments had resolved the Appellant's left shoulder re-injury. Accordingly, he maintained that the Appellant was entitled to reimbursement of her physiotherapy treatment expenses since they were related to the motor vehicle accident of October 9, 1996.

Counsel for MPIC submitted that the shoulder complaints in June 2006 were not caused by the motor vehicle accident of October 9, 1996. She maintained that there was insufficient evidence to link the Appellant's shoulder injury in June 2006 to the motor vehicle accident of October 9, 1996 and accordingly MPIC was not obligated to reimburse the Appellant for the cost of the physiotherapy treatments to treat the shoulder injury.

DISPOSITION:

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant's representative and by counsel on behalf of MPIC, the Commission finds that the Appellant's left shoulder complaints in June 2006, were, on a balance of probabilities, related to the injuries she sustained in the motor vehicle accident of October 9, 1996. As a result, the cost of the physiotherapy treatments, which the Appellant undertook to relieve the left shoulder complaints, and travel expenses incurred in attending those physiotherapy treatments should be reimbursed to the Appellant, together with interest in accordance with Section 163 of the MPIC Act.

As noted in [Appellant's orthopedic surgeon's] report of April 8, 2004, restrictions remained in place for the Appellant against lifting, reaching, pushing and pulling. We find that the reaching incident in June 2006 was beyond the restrictions placed upon the Appellant and resulted in a recurrence of her previous shoulder pain. We also find that [MPIC's doctor's] opinion was based on incorrect assumptions from the physiotherapist's report. The diagnosis of adhesive capsulitis had never been made for this Appellant. The case manager should have obtained further information from the Appellant's treating physiotherapist rather than relying upon a physiotherapist report which was difficult to read and provided inadequate information. The case manager should also have obtained further information from the Appellant's family

physician in order to make a more informed decision respecting the Appellant's need for physiotherapy treatment. As a result, we find that the Appellant's shoulder pain in June 2006 was a recurrence of her previous shoulder pain which resulted from the motor vehicle accident of October 9, 1996. We also find that the physiotherapy treatments were medically required in order to treat the Appellant's shoulder pain symptoms and in fact, the course of physiotherapy treatments did relieve the Appellant's shoulder symptoms. Therefore, the Commission finds that the Appellant shall have her physiotherapy treatment expenses reimbursed by MPIC.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated June 15, 2007 is therefore rescinded.

Dated at Winnipeg this 15th day of January, 2009.

Ms. Yvonne Tavares

Ms. Sandra Oakley

Ms. Lorna Turnbull