

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-202**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Jean Moor

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

HEARING DATE: March 17, 2010

ISSUE(S):

1. Entitlement to reimbursement for expenses related to clothing alteration.
2. Entitlement to Income Replacement Indemnity benefits.
3. Entitlement to reimbursement of the cost of a mattress.
4. Entitlement to reimbursement of the cost of trigger point injections.
5. Entitlement to Income Replacement Indemnity benefits while attending and recovering from trigger point injections.

RELEVANT SECTIONS: Sections 81(1), 136(1) and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act').

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, [text deleted], was involved in a motor vehicle accident on May 22, 2003, when her vehicle was rear-ended. 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 is appealing the Internal Review Decision dated August 24, 2005 with respect to the following issues:

1. entitlement to reimbursement for expenses related to clothing alteration;
2. entitlement to income replacement indemnity benefits;
3. entitlement to reimbursement of the cost of a mattress.
4. entitlement to reimbursement of the cost of trigger point injections.
5. entitlement to income replacement indemnity benefits while attending and recovering from trigger point injections.

1. Entitlement to reimbursement for expenses related to clothing alteration

The Internal Review Decision of August 24, 2005 confirmed the case manager's decision of November 12, 2004 and dismissed the Appellant's Application for Review with respect to her claim for reimbursement of expenses for clothing alteration. The Internal Review Officer found that PIPP does not extend coverage for the alteration of clothing.

At the hearing of this matter, the Appellant was not able to cite any provision in the MPIC Act which would provide coverage for the expenses related to alteration of her clothing. The Appellant advised that the alterations were necessary due to her weight loss following the accident. She advised that her weight loss was as a result of an injury to the right side of her neck which made it difficult to swallow and therefore difficult to consume food. Counsel for MPIC submitted that the expenses incurred by the Appellant for alteration of her clothing did not qualify as medical expenses pursuant to Section 136(1) of the MPIC Act, nor as a rehabilitation expense pursuant to Section 138 of the MPIC Act. Further, counsel for MPIC maintained that the Appellant's difficulties with swallowing had not been causally connected to the motor vehicle accident of May 22, 2003. Therefore, counsel for MPIC argued that the Appellant's appeal should be dismissed.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that the expenses incurred for the alteration of her clothing qualified either as a medical expense or as a rehabilitation expense pursuant to the MPIC Act. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated August 24, 2005 is confirmed with respect to this issue.

2. Entitlement to Income Replacement Indemnity ("IRI") Benefits

At the time of the motor vehicle accident, the Appellant was employed as a vice-principal at [text deleted]. Following the motor vehicle accident, and given that it was near the end of the school year, the Appellant refused to be absent from work. As such, she completed the remainder of the school year, with a few absences due to her complaints of pain.

The Appellant was able to return to work on a half-time basis from late August 2003 until January 14, 2004, despite her ongoing experience of extreme pain in her neck, chest and back. On January 14, 2004, her symptoms deteriorated to the point where she was precluded from being able to carry out the essential duties of her job as a vice-principal. As a result of her inability to hold the employment which she held at the time of the motor vehicle accident, she became entitled to IRI benefits.

The Appellant returned to work on a full-time basis as a vice-principal on September 6, 2004. In a letter dated December 31, 2004, MPIC's case manager confirmed that the Appellant's entitlement to further IRI benefits had ceased based upon the medical information on her file which demonstrated that she was functionally capable of performing her job full-time without restrictions. The Appellant's IRI benefits were terminated in accordance with Section 110(1)(a)

of the MPIC Act on the basis that she did in fact return to her job as a vice-principal as of September 6, 2004.

A subsequent case manager's decision dated April 15, 2005 confirmed that there were no objective findings supporting an impairment of function related to the motor vehicle accident that would preclude the Appellant from performing her regular full-time occupational duties. This conclusion was based upon a job description provided by her employer. This decision confirmed the previous decision of December 31, 2004 terminating the Appellant's IRI benefits as of September 6, 2004.

The Appellant sought an Internal Review of this decision. The Internal Review Officer in her decision dated August 24, 2005 dismissed the Application for Review and confirmed the case manager's decision of April 15, 2005. The Internal Review Officer found that Section 110(1)(a) of the MPIC Act had been properly applied to terminate the Appellant's entitlement to IRI as of September 6, 2004, when the Appellant returned to full-time employment as a vice-principal. The Internal Review Officer found that the documentation on the Appellant's file, including a job description of the duties of a vice-principal provided by her employer, supported the position that she was able to perform the essential duties of her employment when the school year began in September 2004. In light of the totality of the medical information on the Appellant's file, the Internal Review Officer was satisfied that the case manager had correctly applied Section 110(1)(a) of the MPIC Act.

At the appeal hearing, the Appellant submitted that she has never been able to return to her employment as a vice-principal without restrictions. She noted that her restrictions included limited range of motion, inability to carry many educational resources, lifting, restraining

students, bending beside desks, sitting at meetings and remaining in any position for an extended period of time. Counsel for MPIC submitted that the documentation on the file does not provide any evidence of an impairment of function that precludes the Appellant from working full-time as a vice-principal. In fact, counsel for MPIC contended that the Appellant returned to work on a full-time basis as of September 6, 2004 and remained working full-time until June 2009. Accordingly, counsel for MPIC maintains that the decision to terminate the Appellant's IRI benefits as of September 6, 2004 was appropriate. The Appellant returned to work and was able to carry out the essential duties of her employment as a vice-principal, even with her perceived limitations.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that her IRI benefits were improperly terminated effective September 6, 2004. Rather, the evidence before the Commission established that the Appellant returned to work as of September 6, 2004 and was able to carry out her duties as a vice-principal even with any limitations which she may have had. Further, the Appellant submitted no documentation to establish that she suffered any lost wages beyond September 6, 2004 as a result of the injuries sustained in the motor vehicle accident of May 22, 2003. There was simply no evidence tendered to the Commission to document time missed from work in order to establish a claim for wage loss.

As a result, the Appellant's appeal with respect to this issue is dismissed and the Internal Review Decision dated August 24, 2005 is therefore confirmed.

It should be noted that following her submission with respect to the foregoing two issues, the Appellant chose to leave the appeal hearing. The Appellant was advised that the hearing would continue in her absence. The Commission proceeded to hear from counsel for MPIC and adjourned the hearing at the conclusion of his submission.

3. Entitlement to Reimbursement for the Cost of a Mattress:

On or about January 12, 2005, the Appellant submitted a prescription from her family physician supporting the purchase of a new mattress and a receipt relating to the purchase of the new mattress. In support of her claim for reimbursement of the cost of the mattress, the Appellant advised that she purchased the new mattress in order to try to sleep better. The case manager's decision of April 15, 2005 determined that a condition related to the motor vehicle accident in question was not identified that would support a special mattress as being medically required. As a result, MPIC would not reimburse the Appellant for the expense incurred for the purchase of a new mattress.

The Appellant sought an Internal Review of this decision. In her decision dated August 24, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of April 15, 2005. The Internal Review Officer determined that a new mattress was not "medically required" in the management of the Appellant's soft tissue injuries.

Upon a review of all of the documentary evidence made available to it, the Commission finds that the Appellant has not established, on a balance of probabilities, that a mattress was medically required in the management of her soft tissue injuries arising from the accident of May 22, 2003. Although she provided a brief "prescription" for a mattress from her family physician,

the Commission finds that the “prescription” provided in this case merely endorsed the Appellant’s mattress purchase as an advisable attempt to help her symptoms. Stronger evidence is required from a physician in order to support the purchase of a mattress as medically required. As noted by [MPIC’s Doctor] of MPIC’s Health Care Services Team, there is no documentation in the file indicating that the Appellant developed a medical condition from the motor vehicle accident of May 22, 2003 that would require a special mattress in order to address a mild to moderate soft tissue injury involving the spine. Rather, the Commission finds that the mattress must be considered an elective treatment strategy and not a medical requirement.

Accordingly, the Appellant’s appeal is dismissed and the Internal Review Decision dated August 24, 2005 is therefore confirmed with regards to this issue.

4. Entitlement to Funding for the Cost of Trigger Point Injections:

The case manager’s decision of April 15, 2005 determined that myofascial trigger point injections were not a medically recognized treatment intervention which was considered medically required in the management of a musculoskeletal condition. As a result, the case manager found that the Appellant was not entitled to reimbursement of her expenses for trigger point injection therapy.

The Appellant sought an Internal Review of that decision. In her decision dated August 24, 2005, the Internal Review Officer found that trigger point injections could not be supported as a medical necessity in the management of musculoskeletal conditions. She further noted that this modality of treatment was elective and therefore not considered “medically required”. As a result, the Appellant’s Application for Review was dismissed and the case manager’s decision was confirmed.

Two conditions must be met in order for an Appellant to become entitled to reimbursement of medical expenses:

1. the expenses must have been incurred in order to treat injuries sustained in a motor vehicle accident on or after March 1, 1994; and
2. the treatments must be “medically required”.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that trigger point injections satisfy either of these two conditions. The documentary evidence filed with the Commission contained no medical report from [Appellant’s Doctor], the medical provider of the trigger point injections. Further, there was no information filed with the Commission documenting the expenses incurred by the Appellant for the injections. As a result, the Commission finds that the Appellant did not provide sufficient information to establish that:

1. the trigger point injections were related to injuries sustained in the motor vehicle accident of May 22, 2003;
2. trigger point injections were medically required in order to treat accident-related injuries, and
3. she incurred any expenses for the trigger point injections.

As a result, the Appellant’s appeal of the Internal Review Decision dated August 24, 2005 is dismissed and the Internal Review Decision dated August 24, 2005 is therefore confirmed with respect to this issue.

5. Entitlement to Income Replacement Indemnity Benefits for Attending and Recovering from Trigger Point Injections:

The case manager's decision of April 15, 2005 determined that the Appellant was not entitled to IRI benefits for time off of work in order to recover from or attend trigger point injections as the trigger point injections were not considered medically required.

The Appellant sought an Internal Review of this decision. In a decision dated August 24, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of April 15, 2005. The Internal Review Officer found that the PIPP does not extend IRI benefits relating to the attendance for medical appointments. Further, as trigger point injections are not medically required within the meaning of the PIPP legislation, MPIC would not consider IRI benefits for the days following a treatment to allow time for the Appellant to recover from the effects of the treatment.

Upon a review of all of the documentary evidence made available to it, the Commission finds that the MPIC Act does not provide IRI benefits for time taken off work to attend medical appointments. Additionally, the Commission finds that the Appellant has failed to establish that trigger point injections were related to injuries sustained in the motor vehicle accident of May 22, 2003 or that trigger point injections were medically required in order to treat accident-related injuries. Further, there were no particulars provided to the Commission regarding the amount of time off required from work in order to recover from the effects of the treatment. As a result, there was insufficient information presented to the Commission. Accordingly, the Commission finds that the Appellant has failed to establish an entitlement to IRI benefits for any time taken off work to recover from trigger point injections.

As a result, the Appellant's appeal of the Internal Review Decision dated August 24, 2005 is dismissed and the Internal Review Decision dated August 24, 2005 is therefore confirmed.

Dated at Winnipeg this 19th day of May, 2010.

YVONNE TAVARES

LEONA BARRETT

JEAN MOOR