

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-064**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Mr. Les Marks

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

HEARING DATE: September 8, 2011

ISSUE(S):

- 1. Entitlement to reimbursement of physiotherapy treatment expenses.**
- 2. Entitlement to reimbursement of personal care assistance expenses.**

RELEVANT SECTIONS: Section 131 and 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) 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, [text deleted], was involved in a motor vehicle accident on February 13, 2007 when his vehicle was rear-ended. As a result of that accident, the Appellant complained of neck and back pain. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing two Internal Review Decisions as follows:

1. Internal Review Decision dated March 27, 2008, with respect to whether the Appellant is entitled to reimbursement of expenses for physiotherapy treatments; and
2. Internal Review Decision dated November 26, 2008, with respect to whether the Appellant is entitled to reimbursement of expenses for personal care assistance.

1. Entitlement to reimbursement of physiotherapy expenses:

On October 2, 2007, MPIC's case manager issued a decision which advised as follows:

This letter will confirm your entitlement to funding of further physiotherapy treatment as requested by [Appellant's Physiotherapist] in his report of September 7, 2007.

To qualify for benefits under the Personal Injury Protection Plan (PIPP), the medical information must support a causal relationship between the motor vehicle accident and the right shoulder condition.

A review of the medical information on file, and the report from [Appellant's Physiotherapist], does not support a causal relationship between the motor vehicle accident and the right shoulder condition. Therefore, there is no entitlement to benefits under the Personal Injury Protection Plan (PIPP) for your right shoulder.

The Appellant sought an Internal Review of that decision. In a decision dated March 27, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical evidence on the Appellant's file did not establish a causal relationship between the Appellant's right shoulder condition and the motor vehicle accident of February 13, 2007.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of his outstanding expenses for physiotherapy treatment.

Relevant Legislation:

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(a) 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:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Appellant's Submission:

The Appellant submits that his shoulder condition was caused by the motor vehicle accident of February 13, 2007 and he required physiotherapy treatment in order to treat the frozen shoulder. The Appellant contends that immediately following the accident the pain in his back and neck was the most severe. Accordingly his focus was on treating his neck and back. The Appellant testified that he did start complaining of shoulder pain as early as May 2007, but that actual treatment for the shoulder condition did not commence until August of 2007, when the condition progressively worsened.

The Appellant maintains that he did report shoulder symptoms to his physiotherapist and this was documented in the report from his physiotherapist dated September 7, 2007, wherein the physiotherapist noted that:

[The Appellant] has been attending physiotherapy treatment mainly for low back pain and neck pain stemming from a motor vehicle accident on February 13, 2007. He also complained of right shoulder pain a while back but this was not treated since his low back and neck symptoms were the most prevalent. This has mainly resolved but his right shoulder pain persists and is worsening these past few weeks.

[The Appellant] had his right shoulder assessed on August 20, 2007. Subjectively, he complains of pain to the top of his shoulder and proximal humerus. It was worse with reaching behind his back and during the evening.

The Appellant also relies upon the medical opinion of [Appellant's Doctor] who saw the Appellant for treatment of his shoulder condition. In his report dated February 25, 2008, [Appellant's Doctor] opines that:

Through questioning of [the Appellant] considering his previous health prior to his stated motor vehicle accident, it would be within medical reason to assume that the trauma associated with this motor vehicle accident could have been an exacerbating factor to his shoulder such that it spurred the development of his adhesive capsulitis. Although I am not able to conclude this due to the nature of the condition, it has been my experience that some mild to moderate trauma will often precede the ongoing development of an adhesive capsulitis and it would appear that this may well be the case for [the Appellant].

In conclusion, the Appellant submits that the medical evidence supports his position that his frozen shoulder condition was related to the motor vehicle accident of February 13, 2007. He maintains that the frozen shoulder condition evolved slowly from that accident and that the evidence on the file corroborates his position. As a result, the Appellant submits that he is entitled to reimbursement of his physiotherapy expenses for treatment of the frozen shoulder condition.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established, on a balance of probabilities, that his right and left shoulder problems are related to the motor vehicle accident of February 13, 2007. Counsel for MPIC argues that there was an absence of trauma to the right shoulder during the accident of February 13, 2007. Further, counsel for MPIC maintains that the Appellant did not report any injury to the right shoulder for at least three months (if the notation on the pain diagram of May 21, 2007 is accepted as referencing the right shoulder. However, counsel for MPIC notes that there was no other reference at the time to pain at the top of the right shoulder).

Counsel for MPIC submits that the reports from the Appellant's treating practitioners are insufficient to establish that the frozen shoulder condition was related to the motor vehicle accident of February 13, 2007. He also notes that according to the physiotherapy report of June 20, 2007, the Appellant's neck pain was resolving, yet there was no reference to the shoulder problem in that report. Counsel for MPIC contends that this is inconsistent with the Appellant's explanation that the shoulder pain was always there.

In summary, counsel for MPIC submits that the Appellant has not established that there is a connection between the shoulder condition and the motor vehicle accident on a balance of probabilities. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for physiotherapy treatment. He submits that the Appellant's appeal should be dismissed and the Internal Review Decision of March 27, 2008 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal,

and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for physiotherapy treatment.

Reasons for Decision:

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

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident;
2. the treatments must be “medically required”.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that the frozen shoulder condition was caused by the motor vehicle accident of February 13, 2007. Upon weighing all of the evidence before us, we find it more likely than not, that the shoulder condition was not caused by the motor vehicle accident. The absence of documented complaints relating to the shoulder condition leads us to the conclusion that the symptoms involving the Appellant’s right shoulder are not causally related to the motor vehicle accident of February 13, 2007, based upon the balance of probabilities. We note that, absent the one possible reference to right shoulder pain in the disability questionnaire of May 21, 2007, there are no other documented complaints of right shoulder pain until approximately August 2007. Based upon the lapse of time from the motor vehicle accident, the Commission finds that, on a balance of probabilities, the shoulder condition is not related to the motor vehicle accident. As a result, we are unable to conclude that there was a causal relationship between the Appellant’s shoulder symptoms and the motor vehicle accident of February 13, 2007.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for physiotherapy treatment. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated March 27, 2008 is confirmed.

2. Entitlement to Reimbursement of Personal Care Assistance Expenses:

The Internal Review Decision of November 26, 2008, found that the medical documentation on the Appellant's file does not support a causal relationship between his right shoulder symptoms and the motor vehicle accident of February 13, 2007. In order for the Appellant to be entitled to PIPP benefits, including personal care assistance, a causal relationship must exist between the right shoulder symptoms and the motor vehicle accident of February 13, 2007. The Internal Review Officer found that no new evidence was available to confirm such a relationship and therefore she found that there was no entitlement to reimbursement of personal care assistance expenses as it related to the Appellant's right shoulder condition.

As the Commission has determined that the Appellant has not established, on a balance of probabilities, that his right shoulder condition was related to the motor vehicle of February 13, 2007, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for personal care assistance relating to the right shoulder condition.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated November 26, 2008 is confirmed.

Dated at Winnipeg this 11th day of October, 2011.

YVONNE TAVARES

NEIL COHEN

LES MARKS