

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-53

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Linda Newton

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

HEARING DATE: December 20, 2010

ISSUE(S): 1. Entitlement to physiotherapy treatments.
2. Whether right shoulder injury was caused by the motor
vehicle accident of January 26, 2009.

RELEVANT SECTIONS: Section 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 January 26, 2009. As a result of that accident, the Appellant complained of neck pain, upper back pain and daily headaches. 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 the Internal Review Decision dated January 13, 2010, with respect to:

1. his entitlement to further physiotherapy treatment; and

2. whether his right shoulder injury was caused by the motor vehicle accident of January 26, 2009.

On October 29, 2009, MPIC's case manager issued a decision which advised as follows:

Physiotherapy Treatment

An Initial Therapy Report was received from [Appellant's Physiotherapist] dated September 16, 2009. That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information on file indicates that you have received sufficient supervised care to address the conditions arising from the accident and therefore physiotherapy treatment is not a "medical necessity". Therefore, in accordance with Section 5(a) of Manitoba Regulation 40/94, Manitoba Public Insurance will not consider the cost of physiotherapy treatment.

Right Shoulder Injury

The medical information on file was also reviewed with respect to the causal relationship of your right shoulder injury to the motor vehicle accident of January 26, 2009. The medical information reviewed does not establish a cause/effect relationship between the motor vehicle accident and the diagnosed abnormalities involving your right shoulder. Therefore, you are not entitled to Personal Injury Protection Plan (PIPP) benefits with respect to your right shoulder injury.

The Appellant sought an Internal Review of that decision. In a decision dated January 13, 2010, 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 injury to the Appellant's right shoulder was not causally related to the motor vehicle accident of January 26, 2009 and that further physiotherapy treatments were not medically required pursuant to the MPIC Act.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are:

1. whether the Appellant is entitled to further physiotherapy treatments; and
2. whether the Appellant's right shoulder injury is causally related to the motor vehicle accident of January 26, 2009.

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 as a result of the injuries he sustained in the motor vehicle accident of January 26, 2009, he continues to require physiotherapy treatment to address those injuries.

The Appellant confirmed that following the motor vehicle accident he attended for chiropractic treatment. He then attended a six week work hardening program through [Rehabilitation (Rehab) Facility] from which he was discharged on August 28, 2009. Following the completion of this work hardening program [Appellant's Physiotherapist] submitted an Initial Therapy Report dated September 16, 2009 indicating a need for him to receive training in neutral spine positioning and core strengthening. At the hearing, the Appellant advised that he did not proceed

with the physiotherapy treatment with [Appellant's Physiotherapist], when MPIC denied funding for that treatment. Instead he participated in an at-home exercise program to address his ongoing concerns.

With respect to his right shoulder injury, the Appellant confirms that he had a pre-existing right shoulder injury, however the Appellant maintains that his right shoulder injury was aggravated or reinjured as a result of the motor vehicle accident of January 26, 2009. The Appellant testified at the appeal hearing that his shoulder snapped as a result of the seat belt restraint. The Appellant maintains that his right shoulder was worse after the motor vehicle accident and he attributes the increased pain in his right shoulder directly to the motor vehicle accident.

In further support of his position, the Appellant relies on [Appellant's Doctor]. In a report dated October 7, 2009, [Appellant's Doctor] advised that:

Seems like right rotor cuff injury due to belt and chronic neck strain due to fluxion external injury and aggravated by need to use BiPAP machine nightly. Advise continued heat in the morning, and ice in the afternoon. Needs pool pass. Any further concerns, please contact me.

As a result, the Appellant maintains that his right shoulder injury was aggravated by the motor vehicle accident of January 26, 2009, that he should be entitled to further physiotherapy treatment and that his appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's injury to his right shoulder is not connected to the motor vehicle accident of January 26, 2009. Further she submits that the Appellant does not require any further physiotherapy treatment to address any motor vehicle accident related injuries. In support of her position, counsel for MPIC relies upon the interdepartmental

memorandum of [MPIC's Doctor], Medical Consultant to MPIC's Health Care Services Team.

In his memorandum dated October 20, 2009, [MPIC's Doctor] opines that:

The medical evidence does not establish a cause/effect relationship between the incident in question and the diagnosed abnormalities involving his right shoulder. Information obtained from [the Appellant's] August 14, 2009 Level of Function Report indicates he was experiencing limitations as a result of neck and back pain. There is no documentation of any problems with his shoulder.

Additionally, counsel for MPIC relies upon the independent examination report of [Independent Doctor] dated February 20, 2010. In that report, [Independent Doctor] opines as follows:

In regards to the right shoulder, the diagnosis was most consistent with a right rotator cuff tendonopathy. The noted small supraspinatus tear on MRI was likely incidental given 5/5 strength of the supraspinatus muscle on clinical examination. Given the mechanism of injury, it is not likely that the noted mechanism of injury during the collision in question would be causally related to the rotator cuff tendonopathy as rotator cuff injuries typically involve forceful contraction of specific rotator cuff musculature against resistance or forceful traction along the length of the musculature. The reported documented mechanism of injury as related to the collision in question does not appear to involve such mechanisms.

Based upon the medical reports from [MPIC's Doctor] and [Independent Doctor], counsel for MPIC argues that the Appellant's right shoulder injury is not related to the motor vehicle accident of January 26, 2009 on a balance of probabilities. Rather, she maintains that the Appellant's version of events and the history which he has related to his caregivers has resulted in [Appellant's Doctor] providing an opinion that the right shoulder injury was connected to the motor vehicle collision. Counsel for MPIC further argues that the Appellant has had sufficient supervised treatment for his motor vehicle accident injuries and there is no medical requirement for further physiotherapy treatments. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated January 13, 2010 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:

1. the Appellant is not entitled to further physiotherapy treatment; and
2. the Appellant's right shoulder injury is not causally related to the motor vehicle accident of January 26, 2009.

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 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 further physiotherapy treatment was medically required. The Commission finds that the Appellant had received sufficient supervised care to address the conditions arising from the motor vehicle accident of January 26, 2009. Further physiotherapy treatment as recommended by [Appellant's Physiotherapist] on September 16, 2009 was not medically required to treat injuries arising from the motor vehicle accident. Additionally, the Commission notes that the Appellant did not in fact incur any expenses for physiotherapy treatment, not having undergone the program recommended by [Appellant's Physiotherapist] in September 2009. There was no evidence presented to the Commission at the hearing of this appeal on December 20, 2010 that further physiotherapy treatment continued to be required as of the date of the appeal hearing to

treat medical conditions arising from the motor vehicle accident in question. Accordingly, the Commission finds that the Appellant is not entitled to further physiotherapy treatment arising from the January 26, 2009 motor vehicle collision.

With regard to the Appellant's right shoulder pain, the Commission notes that the first mention of right shoulder pain in the Appellant's file following the motor vehicle accident of January 26, 2009 was the Multi-disciplinary Assessment completed by [Rehab Facility] on July 3, 2009. The Multi-Disciplinary Assessment notes that "[the Appellant] states that the right arm has nothing to do with the injury. The primary concern from the injury is his neck followed by headaches and his lower back." At that time, the Appellant did not relate any aggravation in his right shoulder pain to the motor vehicle accident. The Commission finds that based on this significant gap in the documentary information, it is not possible to causally relate the right shoulder injury to the motor vehicle accident of January 26, 2009. Further there was no documentation of any increased shoulder symptoms consistent with an aggravation or re-injury of the shoulder immediately following the motor vehicle accident. As a result, the Commission finds that there is insufficient evidence to relate any aggravation of the shoulder injury to the motor vehicle accident of January 26, 2009. Accordingly, the Commission finds that the right shoulder injury is not causally related to the motor vehicle accident of January 26, 2009.

As a result the Appellant's appeal is dismissed and the Internal Review Decision dated January 13, 2010 is confirmed.

Dated at Winnipeg this 19th day of January, 2011.

YVONNE TAVARES

LEONA BARRETT

LINDA NEWTON