

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-130**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Nikki Kagan
Mr. Neil Margolis

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Phil Lancaster of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: February 3, 2014

ISSUE(S): Reimbursement of expenses for athletic therapy treatments.

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 facts relating to this appeal may be briefly stated as follows:

1. On August 25, 1998, the Appellant was the driver of a vehicle that was stopped and waiting to make a left turn on Highway [text deleted], when another motorist rear-ended her vehicle at highway speed. As a result of this accident, the Appellant sustained soft tissue strains and sprains affecting her entire back, neck and right sacroiliac joint.
2. Following the accident, the Appellant attended physiotherapy treatment in [text deleted], approximately once a week. She was provided with TENS, massage, acupuncture and

traction. In general, she benefitted from physiotherapy treatment, however, she had ongoing pain in her sacroiliac joint area which did not respond to treatment. She reached a plateau and was only experiencing temporary relief with physiotherapy treatment in late fall of 2000.

3. The Appellant subsequently attended [Rehabilitation (Rehab) Facility]. In the Intake Assessment dated December 20, 2000, [Rehab Facility's Doctor] provided his recommendation for a structured back stabilization program which was to include education with respect to "hurt vs. harm" and was to provide her with a home exercise program. [Rehab Facility's Doctor] also suggested that the Appellant be provided with passive modalities for her pain symptomatology, as well as trigger point injections. The focus of her rehabilitation included postural re-education, endurance, flexibility and training. The Appellant attended [Rehab Facility] for her rehabilitation program from December 2000 to May 2001. A report from [Rehab Facility's Doctor] dated June 6, 2001 noted that the Appellant had reached maximum medical improvement from a physical point of view. Further rehabilitation interventions were not indicated.
4. In November 2001, the Appellant relocated to [Alberta]. She returned to [Manitoba] in the fall of 2002.
5. The Appellant returned for physiotherapy treatment on September 20, 2002 with [Appellant's Physiotherapist]. At that time, he documented her right-sided, lower lumbar pain which she reported as radiating into her buttock and hip. On January 31, 2003, MPIC's case manager spoke to [Appellant's Physiotherapist] regarding the Appellant's ongoing in-clinic care. [Appellant's Physiotherapist] confirmed that there was nothing more that physiotherapy treatment could offer the Appellant. [Appellant's Physiotherapist] suggested attendance of an additional four sessions to help wean the Appellant from in-clinic care and ensure her success in a home exercise program. There

was no further activity on the Appellant's injury file for approximately three years following her discharge from physiotherapy treatment.

6. The Appellant was involved in another motor vehicle accident on July 26, 2006. On this date, the Appellant was boarding a transit bus and was caught between the doors that suddenly closed in her path. As a result of the bus accident, the Appellant reported injuries to her head, neck, shoulders and upper back.
7. The Appellant attended to physiotherapy treatment following that accident and presented with headaches, dizziness, nausea, vision disturbances, and soft tissue complaints affecting her neck and shoulders. The Appellant was discharged from physiotherapy on November 11, 2007, following 26 physiotherapy sessions.
8. Along with physiotherapy treatments, the Appellant also attended for athletic therapy beginning March 21, 2007. The athletic therapist, [text deleted], provided an Initial Therapy Report listing the Appellant's subjective complaints as neck and shoulder pain with stiffness, constant headaches, night pain, upper back pain and fatigue with extended sitting and standing. The athletic therapist provided the Appellant with massage and stretching exercises, as well as strengthening and postural exercises. The athletic therapist forecasted the duration of the Appellant's in-clinic care to extend 16 to 18 weeks based on weekly visits.
9. Approximately five months later, [Appellant's Athletic Therapist] provided a subsequent report dated August 20, 2007. She noted an approximate resolution of 90% of the Appellant's myofascial pain and an approximate 60% reduction in shoulder pain. Her strength and posture had improved and she was experiencing less frequent headaches. The athletic therapist suggested an additional eight treatment sessions to resolve the remaining injury.

10. On December 5, 2007, [Appellant's Athletic Therapist] provided a report to the Appellant's initial injury file noting her hip and sacroiliac joint strengths. At this time, the Appellant was reporting bilateral hip pain and a "lump" on her left sacroiliac joint. The athletic therapist noted the cause of the Appellant's symptoms as related to the motor vehicle accident of August 25, 1998. She requested treatment funding of weekly therapy for 20 – 24 weeks to address the Appellant's symptoms.
11. With respect to the Appellant's bus accident injuries, [Appellant's Athletic Therapist] provided a report dated March 3, 2008 and advised that the Appellant was making good progress up to the end of November 2007. However, in January 2008, the Appellant's right shoulder range of motion began to decrease and she developed a general feeling of "tightness" in the shoulders and an increase in headaches, as well as recent dizziness and nausea. The athletic therapist suggested that therapy to her upper body continue on a weekly basis in order to resolve the Appellant's symptoms.
12. On April 2, 2008, MPIC's case manager issued a decision that continued athletic therapy was not medically required as it related to the Appellant's accident injuries following her July 26, 2006 accident.
13. On June 17, 2008, MPIC's case manager issued a decision denying athletic therapy treatment for the Appellant's injuries arising out of the accident of August 25, 1998 as athletic therapy was not medically required for treatment of those injuries.
14. The Appellant sought an Internal Review of both of those decisions. In a decision dated November 20, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decisions of April 2, 2008 and June 17, 2008. The Internal Review Officer found that the Appellant's claim file lacked medical evidence to support that ongoing athletic therapy was a medical requirement to address the Appellant's residual symptoms from either accident.

The Appellant has now appealed that Internal Review decision to the Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of her ongoing expenses for athletic therapy treatment.

Appellant's Submission:

The Claimant Adviser submits that the Appellant is seeking reimbursement of her athletic therapy treatments. He argues that athletic therapy is the only modality of care which offers lasting relief for the Appellant and which provided an improvement in her level of function and levels of pain. The Claimant Adviser, on behalf of the Appellant, claims that the Appellant sustained a significant injury in her first motor vehicle accident which left her with persistent sacroiliac joint problems. Then, in her second accident, the Appellant sustained significant injuries to her neck and shoulders. The Claimant Adviser maintains that even though time has lapsed, the Appellant's symptoms and discomfort from the accidents have remained.

In support of his position, the Claimant Adviser relies on the report of [Appellant's Athletic Therapist] dated October 9, 2012, wherein [Appellant's Athletic Therapist] notes that:

I would recommend supportive treatments for this patient, at 1-2 times per month in order to maintain her range of motion, control her pain, and allow her better function. Alternative treatment (physiotherapy) has been attempted for the first two motor vehicle accidents (until the end of December 2006), which she did not find helpful. [The Appellant] has repeatedly stated that Athletic Therapy has been the only treatment that has helped her.

He maintains that the Appellant's symptoms and discomforts from the accident have continued. The withdrawal of athletic treatment resulted in the Appellant's function decreasing and her pain levels increasing. She is seeking reimbursement of the expenses which she has incurred for athletic therapy and is requesting an ongoing regime of supportive care.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's ongoing low back symptoms are not related to the motor vehicle accident of August 25, 1998. He submits that the Appellant did not seek care from 2003 until 2008 for any low back symptoms. Counsel for MPIC maintains that there was a change in the Appellant's presentation in 2008 which resulted in her seeking athletic therapy for low back problems. In 2008, the Appellant presented quite differently – notably with unremitting constant severe pain. Counsel for MPIC argues that the nature of the Appellant's 2008 pain presentation could not be explained on the basis of the motor vehicle accident of August 25, 1998. As a result, counsel for MPIC submits that the Appellant's low back problems are not connected to the motor vehicle accident.

Alternatively, counsel for MPIC submits that ongoing athletic therapy treatment was not medically required for the Appellant. Counsel for MPIC submits that the Appellant has had extensive athletic therapy treatment since 2007 without a resolution of her ongoing symptoms. As a result, counsel for MPIC submits that athletic therapy cannot be deemed medically required. Additionally, counsel for MPIC submits that the Appellant has not established a requirement for athletic therapy treatment on a supportive basis. He maintains that there is no deterioration in her condition in the absence of athletic therapy treatment. Relying on the documentary evidence, counsel for MPIC submits that the Appellant's condition does not deteriorate in the absence of treatment, rather it is a regression to a base line level. Therefore, counsel for MPIC submits that the Appellant has not demonstrated a deterioration in her condition in the absence of treatment which would require ongoing supportive care. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision of November 20, 2008 should be confirmed.

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;

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 Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for athletic therapy treatments.

Reasons for Decision:

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

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

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing athletic therapy treatment was medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. Based upon the Appellant's testimony and the athletic therapy reports on the file, we find it most likely that the Appellant has reached maximum therapeutic benefit from athletic therapy treatment. Additionally, the panel finds that the evidence before the Commission did not establish that ongoing athletic therapy would provide further sustainable improvement with respect to the Appellant's motor vehicle collision related injuries. We find that there is no significant deterioration in the Appellant's condition in the absence of treatment. Rather, it appears that she regresses to a base line level which demonstrates a short term benefit from the athletic therapy treatment. As a result, we were unable to conclude that ongoing athletic therapy treatment was medically required for the Appellant.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of her expenses for athletic therapy treatment. As a result, the Appellant's appeal is dismissed and the Internal Review decision of November 20, 2008 is confirmed.

Dated at Winnipeg this 13th day of March, 2014.

YVONNE TAVARES

NIKKI KAGAN

NEIL MARGOLIS