

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-182**

PANEL: Ms Jacqueline Freedman, Chairperson
Mr. Neil Cohen
Ms Irene Giesbrecht

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

HEARING DATE(S): January 16 and May 8, 2014

ISSUE(S): Whether the Appellant is entitled to funding for further physiotherapy treatment.

RELEVANT SECTIONS: Subsections 70(1) and 136(1) and section 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 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

Background:

The Appellant, [text deleted], was involved in a motor vehicle accident on May 28, 2008, in which she suffered various injuries. Following the accident, she consulted with several health care practitioners and underwent a variety of treatments, including physiotherapy. By an Internal Review decision dated November 8, 2012, MPIC advised the Appellant that additional

physiotherapy treatments would not be funded. The Appellant disagreed with this Internal Review decision and filed this appeal with the Commission.

The issue which requires determination on this appeal is whether the Appellant is entitled to funding for further physiotherapy treatment.

Decision:

For the reasons set out below, the panel finds that the Appellant is entitled to funding for further physiotherapy treatment.

Evidence of the Appellant:

The Appellant testified at the hearing into her appeal. She stated that prior to the accident she had been living a fairly healthy, active life. She often went camping, fishing, played basketball, participated in outdoor activities and was active in sports. At the time of the accident she was working part-time at [text deleted] in a sales job. The [text deleted] was located across the city from where she had been living.

She described the motor vehicle accident, which occurred when she was driving home from work. She was stopped at a red light, when she heard a loud bang. Everything went black and she lost consciousness for approximately 30 to 40 seconds. When she came to, she realized there had been an accident. She walked out of the car and her legs gave out. When she stood up, she got her identification and she phoned her boyfriend for a ride, because she didn't feel that she would be able to drive home.

The Appellant testified that the accident significantly affected her. Following the accident, she initially needed quite a bit of help. For example, she needed assistance with day-to-day things like getting groceries. She couldn't sit or stand without needing help; even having a shower and getting dressed was quite difficult. She couldn't do her job for a while and she was off work for a few months, until early September 2008. She says that she still has good and bad days. She continues to need help with basic house cleaning, and some days she needs help with everything. She indicated that it is her fiancé who helps with these things.

The Appellant indicated that she has tried various modalities to alleviate the pain and the symptoms that she has been suffering, including chiropractic treatment, physiotherapy, massage therapy and acupuncture. She has found physiotherapy and massage therapy to be most effective and these were also recommended by her family doctor. A physiotherapy treatment typically would relieve a lot of the pressure which builds up and the pain would subside for a few days after treatment. A physiotherapy session typically consists of ultrasound treatment, the TENS machine, followed by stretches on a yoga ball, movements with a padded weight bar, and finally icing of the affected areas.

After MPIC stopped funding the physiotherapy, she stopped going for a while. However, her symptoms got worse and the pain got too severe, to the point where she had to use a cane because her legs stopped functioning very well. At that point, she resumed going to physiotherapy and paid for it herself. After a month back at physiotherapy, she was able to stop using the cane. However, she has reached the point where she is unable to continue paying for the physiotherapy on her own.

She is, however, able to pay for massage therapy at this point and she goes approximately every two weeks, depending on how much she can afford to pay for. However, she feels that massage on its own is not enough to control her symptoms because it only helps for a day or two and then her symptoms return. She feels that it would be better if she could balance the massage therapy with the physiotherapy. Her physiotherapist has recommended that she come for physiotherapy once a week. She does keep active with walking, working on her exercise bike and she does home stretches as illustrated in the papers that the physiotherapist gave her to take home.

The Appellant is currently working, full-time, in a sales position. This does involve standing. She indicated that she has a very good boss who lets her go into the back to stretch. There are also stools on the floor which she is allowed to sit on if there is no one in the store. However, she indicates that she still suffers from symptoms notwithstanding these accommodations.

The Appellant's fiancé, [text deleted], also testified. He is engaged to the Appellant and has known her for eight years, including two years prior to the accident. He said that prior to the accident she was always happy and in a good mood. They would go out together for walks, bike riding and camping. Prior to the accident he does not recall her ever complaining of back or neck pain, nor did she have any episodes of anxiety or depression. He was the one who drove her to the hospital after the accident and he recalls that she was in a lot of pain. Following the accident, he describes the Appellant as being always sore, always down, no longer the same person that he met. He said it takes him a lot more to make her smile. He said that sometimes he now has to help her get undressed, getting her jacket off. He has to give her a massage when she has bad days, which is every few days. He has to do more things around the house. He had to switch jobs and look for a higher paying job. He has been able to pay for some of her treatments

and she has been able to claim some treatments under his benefit plan. However, his benefit plan doesn't cover everything. He said it is really hard to see someone you love in so much pain.

MPIC did not call any witnesses, but did cross-examine the Appellant. On cross-examination, MPIC questioned the Appellant regarding her claim about losing consciousness at the time of the accident. She indicated that she did report this to the ER as far as she recalls and is not certain whether she reported it to other health care providers although it does appear in the notes of her family doctor. She confirmed that her car was pushed forward due to the impact of the accident and that she had her foot on the brake and was looking out the window. She was also wearing her seatbelt and hit her head on the headrest. The damage repair bill was approximately \$1,000.00 and the main repairs were to the bumper of the car.

The Appellant confirmed that she did suffer some anxiety and depression at the age of [text deleted], when her parents separated. She was starting high school at a new school in a new town, and she was living with her father full-time. This caused her some anxiety and stress but she said she had recovered from that at the time of the accident. She described her pain subsequent to the accident as being in her low back as well as in her mid-back and radiating up into her neck.

Submissions of the Parties:

The parties made submissions on the initial hearing date, January 16, 2014. These submissions centred on the issue of whether the Appellant's injuries were caused by the accident. Subsequent to the hearing and during our deliberations, the panel determined that it was necessary to reconvene the hearing in order to have the parties provide the panel with additional submissions on the issue of whether physiotherapy treatments for the Appellant are medically required, either

on a regular or supportive basis. The Appeal was reconvened on May 8, 2014 for the purpose of hearing those submissions.

Initial Submission of the Appellant - Causation:

The Appellant submits that she is entitled to funding for physiotherapy treatment. Counsel for the Appellant reviewed several reports from the Appellant's caregivers which have described her symptoms and which support a causal link between those symptoms and the accident. Those reports have also recommended that the Appellant attend for further physiotherapy treatments. Counsel submitted that the Appellant testified in a frank and honest manner about the impact of the accident and about her attempts to regain her health and level of function. Her testimony is confirmed by her fiancé, who says she is not the same person, that it is harder to make her smile and that she is not as physically active. He says she complains of pain, that he has to help her, and that he had to find a better paying job to pay for treatments.

The Appellant sought various treatments, and the best treatments for her are massage and physiotherapy. Since the legislation does not fund massage therapy, she has to pay for it on her own. She feels that physiotherapy should be funded since it has helped her maintain a level of function and work full-time with accommodation. She testified that she actively works at getting better, and does home-based exercises and stretches as the physiotherapist has instructed her.

Although her condition has improved, she has limitations in what she can do at home and work, and the treatments that provide the greatest relief are massage and physiotherapy. The Appellant is working with accommodation but she said that is not enough. She is feeling worse and she would need to return to the frequency of her prior treatment to obtain her prior level of function and would go to physiotherapy if she could afford to pay for it herself.

The Appellant had been seen by her family doctor a few years prior to the accident and had a complete physical. The chart notes regarding that examination indicate that the Appellant was completely healthy. The Appellant's family doctor has extensive clinical and hands-on knowledge of her and was able to assess her as she progressed. She would have a greater knowledge than the MPIC Health Care Services physician who did only a paper review.

Additional Submission of the Appellant – Medical Requirement:

The Appellant submits that physiotherapy treatment is medically required for her on a supportive basis. There was a gap in the time period between the end of her physiotherapy treatments in 2009 and the resumption of treatment in 2012, during which her level of function decreased and her pain and symptoms increased. As a result of this gap in treatment, her condition became chronic.

Counsel for the Appellant referred the panel to several medical reports which identified the chronic nature of the Appellant's condition. [Appellant's Doctor] stated in a report dated February 26, 2013: "Gradually, the patient's back pain became chronic. She benefitted from physiotherapy". [Appellant's Doctor] had been the Appellant's family physician since September 2005. She had a good familiarity with the Appellant since prior to the motor vehicle accident.

[Appellant's Sport Medicine Specialist], in a report dated March 4, 2013, noted with respect to her diagnosis that "these conditions can be short term or chronic after MVAs". She went on to say "certainly, sacroiliac joint dysfunction should improve with manual physiotherapy but the problem can be recurrent and chronic". As well, [Appellant's Physiotherapist #1], in her report dated March 26, 2013, referred to "chronic neck/back pain".

Counsel for the Appellant submitted that due to the motor vehicle accident, the Appellant suffered from a chronic condition, possibly fibromyalgia as referred to by [Appellant's Pain & Rehab Specialist] and her physiotherapist, based on certain neurological signs and symptoms. In order for the Appellant to continue and maintain her level of function, supportive physiotherapy was required in 2012 and continues to be required.

Further, the Appellant submits that section 138 of the MPIC Act requires MPIC to contribute to the rehabilitation of the Appellant and this is certainly integral to the decision in this matter. The Appellant spoke about wanting to move on with her life and to follow in her chosen career path of photography. Ongoing supportive physiotherapy would facilitate that.

Initial Submission of MPIC - Causation:

MPIC submits that there is not a causal relationship between the Appellant's current symptoms and the accident and further, if the Commission finds such a relationship that physiotherapy treatment is not medically required.

MPIC does not deny that the Appellant has pain or that she did suffer injuries, but rather says that the Appellant did not establish on a balance of probabilities that her current condition is causally related to the accident. MPIC submits that based on the damages that appear to have been sustained by the Appellant's vehicle, there must have been only minor forces sustained by the vehicle and thus by the Appellant. MPIC also points out that there is no mention of loss of consciousness in the Emergency Room notes.

MPIC submits that its Health Care Services review identifies that none of the Appellant's health care providers have given a plausible explanation for how she could have developed this

condition from this accident based on these injuries. If her condition were confined to whiplash injuries, being her neck and cervical spine, it might be reasonable to attribute them to her accident. However, her injuries are to her entire neck, back and hips. In this case, improvement over time is normal and in fact this is what happened here. By the end of August, 2008, the Appellant's physiotherapist noted reduced pain and a return to full range of motion. The Appellant returned to work by the beginning of September, 2008 and stopped attending physiotherapy treatments. MPIC submits that in a low speed, low impact accident, changes to the lumbar spine would not be expected. Without some kind of explanation, the Appellant has not met the burden.

Further, if the Commission finds that there is a causal relationship, MPIC submits that physiotherapy is not medically required. The Appellant has said that physiotherapy should be funded because it would allow her to maintain her level of function and work with accommodation, but she is currently able to work full-time without physiotherapy.

Additional Submission of MPIC – Medical Requirement:

MPIC submits that supportive physiotherapy is not medically required. MPIC says that the test for supportive physiotherapy requires objective evidence of a decline in the Appellant's level of function in the absence of physiotherapy treatment, prior to the resumption of such treatment. The purpose of this objective evidence would be to enable a comparison to be made of the condition during treatment and the condition without treatment.

MPIC acknowledges that the Appellant does receive four to five days of reduced symptoms post-treatment, as identified in the report of the Appellant's physiotherapist dated March 26, 2013. However, counsel for MPIC submits that it is reasonable to expect that anyone would receive

some benefit after some hands-on treatment, even someone that doesn't require treatment. The question is whether the Appellant's condition deteriorated after a cessation of treatment that is longer than four to five days. Counsel submitted that the period required to be examined was after the cessation of treatment in 2009 until the resumption of treatment in 2012 and that the period immediately after the cessation of treatment in 2009 was the most important period, as this is the therapeutically relevant time frame.

MPIC submits that the first truly objective evidence of the Appellant's condition after the cessation of physiotherapy treatment in 2009 is in July or August of 2011, which is too long after treatment ended for the assessment to be reliable. Further, at that date, her symptoms were generally the same as they were in May of 2009, when physiotherapy was terminated, suggesting a lack of deterioration. Although the narrative descriptions in medical reports suggest that the Appellant suffered deterioration in her condition on withdrawal of treatment, MPIC submits that the objective measurements and the symptoms don't support that there was deterioration to the extent depicted in the narratives.

Overall, MPIC submits that the evidence of a withdrawal of care between 2009 and 2012 is unreliable and there was no further withdrawal of care between 2012 and 2013. Therefore, the Appellant has failed to prove that she is entitled to supportive care.

Reasons for Decision:

In order to qualify for entitlement to Personal Injury Protection Plan ("PIPP") benefits, the onus is on the Appellant to establish, on a balance of probabilities, that she has suffered an injury caused by an accident. Further, she must establish that the treatments that she has received or wishes to receive are medically required.

Was the Injury Caused by the Accident?

Subsection 70(1) of the MPIC Act provides in part as follows:

70(1) In this Part,

"accident" means any event in which bodily injury is caused by an automobile; ...

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile ...

The Appellant testified that prior to the accident she was in good health and was very active. This testimony was confirmed by her fiancé. The panel found both witnesses to be forthright and clear in their testimony. The Appellant attended at her family physician for a complete physical on May 16, 2005, and the chart notes from that date confirm her good state of health. They indicate in part:

“CNS [central nervous system]: No problems with vision, hearing, speech
No dizziness, loss of sensation or coordination ...
Muskulo-Skeletal (sic): No joint or back problems ...”

The Appellant’s good health changed immediately after the motor vehicle accident. Subsequent to the accident, she had the onset of symptoms which are described by various health care providers. The Primary Health Care Report of [Appellant’s Doctor], dated June 2, 2008, identifies “left shoulder strain, cervical strain, lumbar and thoracic strain and left hip strain”.

The Appellant went to see [Appellant’s Pain & Rehab Specialist], a pain and rehabilitation specialist. In a report dated May 21, 2009, he indicated that:

“Examination revealed extreme tenderness all over her back musculature, even at the lightest pressure. Very suspicious of a hysterical reaction as apposed (sic) to underlying pathology. At best, I could only say this is fibromyalgia. It is very hard for me to say that this is directly related to her injury because most people would be a lot better by

now... we will ask [Appellant's Physiotherapist #2] to continue with the physiotherapy at present, if possible."

In a further report dated July 26, 2011, [Appellant's Pain & Rehab Specialist] clarified his opinion as to causation as follows:

"In any event, I reviewed the MR that was done of this lady's back, February 1st, 2010, which shows the disc degeneration at L4, L5. I can only presume in such a young lady that the disc herniation was secondary to the motor vehicle accident of 2008, and as a result she has premature arthritis. She continues to be bothered by this pain with muscle spasm that causes her emotional distress and any comments that I directly stated about hysteria are not true; there is actual pathology here..."

[Appellant's Doctor] provided a report dated February 26, 2013. In that report, she stated:

"[The Appellant's] back pain was caused by the MVA in 2008. Additional physiotherapy treatments would improve this patient's function and level of pain."

The Appellant was also seen by [Appellant's Sport Medicine Specialist], a sport medicine specialist. In her report dated March 4, 2013, [Appellant's Sport Medicine Specialist] noted as follows:

"... I diagnosed her with post MVA chronic myofascial pain and possible bilateral sacroiliac joint dysfunction. These conditions can be short term or chronic after MVAs."

MPIC's Health Care Services (HCS) medical consultant, in a report dated September 25, 2013, disagreed with the above-quoted reports on the issue of causation. The medical consultant gives his view as to the force involved in the accident and concludes that it was a "minor motor vehicle incident" with "minimal damage", thus making it unlikely that this incident could have caused the Appellant's injuries to the extent of her current symptoms. With due respect to the consultant's medical expertise, the panel notes that he is not an expert in the area of accident reconstruction, and we note that there was no evidence before us regarding the force of the accident (although we have reviewed the photo of the vehicle and the estimate of the cost to

repair the damage). What we do have, however, is evidence from the Appellant of the impact of the accident on her.

The panel finds that the Appellant was a credible witness, and her testimony was corroborated by her fiancé, by her physicians [Appellant's Doctor], [Appellant's Pain & Rehab Specialist] and [Appellant's Sport Medicine Specialist] and by her physiotherapist [Appellant's Physiotherapist #1]. These caregivers all had an opportunity to personally examine the Appellant and were able to assess her credibility. [Appellant's Doctor] in particular has been her physician since 2005 and has had a long relationship with her.

On the other hand, the HCS medical consultant conducted only a paper review of the file and did not have the opportunity of personally examining the Appellant and testing her credibility. In these circumstances, the panel gives greater weight to the opinions of the Appellant's caregivers than it does to the opinion of the HCS medical consultant.

Based on the foregoing, the Commission finds that the Appellant has established, on a balance of probabilities, that the condition that she suffers from was caused by the accident.

Is Physiotherapy Medically Required?

Having concluded that the Appellant has established that her current symptoms and condition were caused by the accident, the issue to be decided then becomes whether further physiotherapy treatments are medically required. The relevant sections of the MPIC Act provide in part as follows:

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 ...

Corporation to assist in rehabilitation

[138](#) Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

The relevant provision of Manitoba Regulation 40/94 provides in part as follows:

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 ...

Counsel for the Appellant submits that the Appellant requires physiotherapy treatment on a supportive basis in order to maintain her health and level of function.

The onus is on the Appellant to show, on a balance of probabilities, that further physiotherapy treatment is medically required. Supportive care was described by the Commission in *[text deleted]* (AC-05-11) as follows:

“Supportive care is described in the Clinical Guidelines for Chiropractic Practice in Canada (1993) as *"Treatment for patients who have reached maximum therapeutic benefit but who have failed to sustain this benefit and progressively deteriorate when there are periodic trials of withdrawal of treatment. Supportive care follows application of active and passive care including rehabilitation and lifestyle*

modifications. It is appropriate when alternative care options including home based self care have been considered attempted".

This test has been applied not only to chiropractic treatment but also to supportive physiotherapy treatments.

In October of 2008, a discharge report was issued regarding the Appellant's initial round of physiotherapy. Her last treatment had been in August of 2008, prior to her return to work in September, 2008. In the October 27, 2008, report, the Appellant's physiotherapist at that time, [Appellant's Physiotherapist #2], in answer to the question as to the Appellant's symptoms remaining as a result of the collision, stated as follows:

“As of Aug 29 Feeling better. Taking short bike rides + some driving. Occasional spasms to L/S.”

She also noted the following objective signs:

“AROM C/S: full all movements, some pull w/ flex, RSF + LSF
AROM L/S: full flex, extn + SF. Mod pain w/ extn”

Thus it appeared at that point that although the Appellant had some moderate pain in one direction, she had full range of motion on discharge.

Seven months later, in April, 2009, the Appellant returned to see [Appellant's Physiotherapist #2]. [Appellant's Physiotherapist #2] noted in her chart on April 1, 2009:

“[The Appellant] went home due to pain. ... Pain: 6/10. Has [increased]. Aggravating: prolonged standing, prolonged sitting, lying down, bending forward. Throbbing. ... Wakes up @ night = am + pm. Getting worse. ... Re-aggravation of previous disc issue.”

[Appellant's Physiotherapist #2] wrote a letter to [Appellant's Doctor] the same day, which sets out the objective findings:

AROM L/S: flex/extn $\frac{3}{4}$ full. RR + LR full. RSF + LSF $\frac{3}{4}$ full. All provoke R sided pain except LR.

AROM C/S: full all movements. SLR: + @ 45 (degrees) R leg + @ 60 (degrees) L leg. Traction [increases] pain. Tender L/S and T/S paraspinals

It appears that after seven months without physiotherapy, the Appellant's condition had deteriorated. The panel finds that this is evidence of deterioration in the Appellant's condition after the withdrawal from physiotherapy.

The Appellant saw [Appellant's Physiotherapist #2] six times through April and early May 2009. She was paying for the treatment herself and also seeking the advice of specialists as to relief from her symptoms. [Appellant's Physiotherapist #2] report to [Appellant's Doctor] dated April 29, 2009 notes:

"[The Appellant] is trying to seek further tx through MPI ... If you see any way we may receive further coverage please advise. I do feel imaging of C/S and L/S would be of benefit. Any suggestions would be welcome."

There is no evidence that further funding was sought, however, and the last physiotherapy treatment with [Appellant's Physiotherapist #2] was on May 4, 2009. [Appellant's Physiotherapist #2] noted on that date that the Appellant had tools to manage at home and that she was to see a specialist soon. The Appellant did not further resume physiotherapy until May 10, 2012, when she saw [Appellant's Physiotherapist #1] for the first time.

In fact, the Appellant did see a specialist shortly after the cessation of physiotherapy in May of 2009. As noted above, on May 21, 2009, she saw [Appellant's Pain & Rehab Specialist], a pain and rehabilitation specialist, who noted in his letter on that date that "examination revealed

extreme tenderness all over her back musculature” and wondered whether the Appellant may have fibromyalgia. He recommended that “we will ask [Appellant’s Physiotherapist #2] to continue with the physiotherapy at present, if possible”.

The Appellant continued to be followed by [Appellant’s Pain & Rehab Specialist] in July and August of 2009. In his letter to [Appellant’s Doctor] dated July 14, 2009, [Appellant’s Pain & Rehab Specialist] noted that:

“She is still quite tender in the paraspinal muscles at about T7. Her range of motion is 80-90% normal. At times the pain is intolerable and she cannot sleep, but she is able to work in a [text deleted].”

In his letter dated August 18, 2009, [Appellant’s Pain & Rehab Specialist] states:

“Re-examination of her back reveals thoracic interscapular muscle tenderness and lumbosacral junction with slightly decreased range of motion. As her CT is now a year old I am ordering an MR on her ...”

He did order an MR. As noted above, in his letter of July 26, 2011, [Appellant’s Pain & Rehab Specialist] refers to “the MR that was done of this lady’s back, February 1st, 2010, which shows the disc degeneration at L4, L5”.

[Appellant’s Pain & Rehab Specialist] identified in May through August of 2009 that the Appellant was suffering significant pain and tenderness that had not been present previously and the panel accepts this as evidence of a deterioration in her condition subsequent to the cessation of physiotherapy in May of 2009.

The Appellant also sought other treatment modalities. In March, 2010, she began going for massage therapy treatment, which she found to be helpful. In September, 2011, she tried

chiropractic treatment; however, this was not considered to be beneficial and so was not continued. The Appellant testified that during this time she was also doing exercises at home.

It became the opinion of her health care providers that her condition was chronic, and that physiotherapy would be beneficial to the Appellant. The Appellant's physiotherapist, [Appellant's Physiotherapist #1], in her report dated March 26, 2013, states as follows:

"I have been treating [the Appellant] regularly for chronic neck/back [pain] [secondary] to MVA since May 10, 2012...

Because of the chronic nature of her [pain] & ? fibromyalgia dx, it is difficult to gauge (sic) how long tx may be required. She currently reports 4-5 days reduced symptoms post tx. This pt may require ongoing care & in the future could benefit from a reconditioning program @ 3x/wk [with] continued Tx to help with [pain] control..."

In her report dated February 26, 2013, [Appellant's Doctor] states that:

"Gradually, the patient's back pain became chronic. She benefitted from physiotherapy. ... Additional physiotherapy treatments would improve [the Appellant's] function and level of pain."

[Appellant's Sport Medicine Specialist], in her report dated March 4, 2013, discusses the treatments she recommended in April 2012 for the Appellant:

"...Manual physiotherapy is indicated to treat sacroiliac joint dysfunction and I have observed clinical improvement with some patients for hypertonicity/strain in muscles with local modalities such as intramuscular stimulation (dry muscle needling) provided by physiotherapists certified in these techniques."

Although MPIC denied funding for such treatment, the Appellant proceeded to attend at physiotherapy and pay for physiotherapy treatment herself. Upon the resumption of physiotherapy in May 2012, the Appellant was able to cease using the cane that she had begun to use. As noted above, she reports 4-5 days reduced symptoms post-treatment.

The panel finds that the evidence presented satisfies the onus upon the Appellant of showing, on a balance of probabilities, that supportive physiotherapy care is medically required within the meaning of subsection 5(a) of Manitoba Regulation 40/94. The Appellant had reached maximum therapeutic benefit in August of 2008, and then suffered a deterioration in her condition after the withdrawal of treatment. The Appellant has used other active and passive modalities, including massage therapy and home exercise, and physiotherapy has been successful in providing her relief.

The Appellant has established, on a balance of probabilities, that periodic, reasonable physiotherapy would provide her with the necessary relief to continue her activities of daily living and increase her general quality of life. We find that such treatment is necessary or advisable to contribute to the Appellant's rehabilitation and to lessen a disability resulting from bodily injury and to facilitate her return to normal life or reintegration into society or the labour market, within the meaning of section 138 of the MPIC Act. Although the Appellant is currently working full-time, we find that supportive physiotherapy treatments would allow her to do so with less pain and greater function, both at work and in her activities of daily living.

Other Matters

The panel also notes that in the course of the evidence and submissions before us, it became apparent that many of the Appellant's health care providers have identified that she has additional conditions beyond the cervical, lumbar and hip strains with which she was initially diagnosed. It is possible that these conditions may warrant treatment beyond physiotherapy. For example, as noted above, [Appellant's Pain & Rehab Specialist] and [Appellant's Physiotherapist #1] identified that the Appellant may suffer from fibromyalgia. As also noted above, [Appellant's Sport Medicine Specialist], in her report dated March 4, 2013, diagnosed

chronic myofascial pain and suggested dry muscle needling treatment. She also suggested a referral to other health care professionals (such as a physiatrist and a rheumatologist). Other treatments (such as a reconditioning program) or health care professionals may also be useful. We note that those matters are not before the Commission and we do not have the jurisdiction to deal with them in this appeal. However, having found that the Appellant's current symptoms and condition were caused by the accident, the panel notes that she is free to bring these matters and their connection to the accident before her case manager at MPIC.

Disposition:

Accordingly, based on the foregoing, the decision of the Internal Review Officer dated November 8, 2012 is rescinded and the Appellant's appeal is allowed. The Appellant shall be entitled to supportive physiotherapy treatments as recommended by her physiotherapist, as long as this continues to be prescribed by her attending physician, and she shall be assessed by the physician on an ongoing basis at six month intervals in order to determine whether there is a continuing need for such treatment.

MPIC is ordered to reimburse the Appellant with respect to physiotherapy costs that she has incurred since May 10, 2012 and interest, pursuant to Section 163 of the MPIC Act, shall be awarded upon any amounts owed to the Appellant by MPIC.

The Commission will retain jurisdiction in the event that the parties are unable to agree upon the quantum of benefits which are owing to the Appellant.

Dated at Winnipeg this 10th day of June, 2014.

JACQUELINE FREEDMAN

NEIL COHEN

IRENE GIESBRECHT