

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-104**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Mr. Neil Margolis

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

HEARING DATE: August 13, 2014

ISSUE(S): Entitlement to reimbursement of physiotherapy treatment expenses.

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 APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on May 27, 2011, when he lost control of his vehicle and rolled the vehicle. As a result of this accident, the Appellant sustained several rib fractures and fractures of the transverse process of vertebrae T8 and T10. 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.

In an Initial Therapy Report dated February 17, 2012, [Appellant's Physiotherapist] noted that the Appellant reported pain in the shoulder/scapular area as well as mid-back pain. [Appellant's Physiotherapist] requested coverage for extended physiotherapy care under Category 2. MPIC's case manager confirmed approval for Category 2 care on April 17, 2012.

[Appellant's Physiotherapist] submitted a Therapy Discharge Report dated October 12, 2012. [Appellant's Physiotherapist] reported that the Appellant had a good range of motion with his neck and shoulders and lumbar spine. Muscle testing was reported as normal strength (5/5). [Appellant's Physiotherapist] ticked off the box corresponding to condition much improved following the Appellant's course of 42 physiotherapy treatments.

On April 15, 2013, the Appellant contacted his case manager regarding an outstanding medical expense submission. The case manager indicated that a decision had been issued regarding medication, physiotherapy and travel on October 24, 2012. The Appellant indicated that he never received that letter. The case manager resent the letter to the Appellant as a new decision dated April 15, 2013. In the decision dated April 15, 2013, MPIC's case manager indicated that the medical information on the Appellant's file did not provide any evidence that the Appellant required physiotherapy treatment at a higher level than injury Category 2.3. As treatment beyond 42 visits was not regarded as medically required, the Appellant did not qualify for coverage for further physiotherapy treatments.

The Appellant sought an Internal Review of that decision. In an Internal Review decision dated May 21, 2013, 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

Appellant was not entitled to further physiotherapy coverage as additional treatment was not medically required.

The Appellant has now appealed that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of further physiotherapy treatments.

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:

At the appeal hearing, the Appellant submitted that he continues to suffer with a great deal of pain in his scapular area. The Appellant also advised that he now has pain in his hip area as well.

The Appellant indicated that he would like to attend physiotherapy treatment in order to treat the pain in his hip and his scapular pain. The Appellant advised that since he has not been going to physiotherapy and working his shoulder muscles, he feels that the muscles have become de-conditioned and this has caused his pain to increase, particularly in his scapular area. The Appellant indicated that his scapular area had started to hurt him, particularly in the last year. He was able to live with the pain in the scapular area prior to that. He further advised that he takes pain killers in order to deal with his pain.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established that further physiotherapy treatment beyond the previously approved 42 sessions (Category 2) would be medically required in order to treat his accident related injuries. Counsel for MPIC notes that the Appellant has not submitted any additional medical information indicating that further physiotherapy treatment is medically required. Counsel for MPIC also notes that the Appellant has not attended for further physiotherapy treatment since October 2012 and has not incurred any further treatment expenses since that date. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated May 21, 2013 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 has not established, on a balance of probabilities, that further physiotherapy treatment is medically required at this time.

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 the motor vehicle accident; and
2. the treatments must be “medically required”.

The Appellant did not file any additional medical information at the hearing to establish that further physiotherapy treatment was recommended by his physician or physiotherapist. The Discharge Report from [Appellant’s Physiotherapist] dated October 12, 2012 indicated that the Appellant’s condition had improved at that time. No further medical information was provided to indicate that the Appellant’s condition had deteriorated since that time. As a result, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that further physiotherapy treatment beyond Category 2 is medically required.

The Commission finds that, based upon the Appellant’s testimony that his scapular pain has increased within the past year, the Appellant may have suffered a relapse. The Appellant also testified that he had a lot of difficulty with his hip. The Commission indicated to the Appellant that this was new information. As a result, the Appellant should contact his case manager in regard to the increase in symptoms of the scapular area in the past year and with regards to the pain in his hip area. The Appellant may wish to submit this new information to his case manager in order to determine whether he would qualify for further benefits in regards to these areas.

With respect to the current appeal, the Commission finds that the Appellant has not established that further physiotherapy care is medically required and that in any event, the Appellant has not

incurred any expenses for physiotherapy care to date. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated May 21, 2013 is confirmed.

Dated at Winnipeg this 28th day of August, 2014.

YVONNE TAVARES

MARY LYNN BROOKS

NEIL MARGOLIS