

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-13-057**

**PANEL:** Ms Jacqueline Freedman, Chairperson  
Dr. Sharon Macdonald  
Ms Linda Newton

**APPEARANCES:** The Appellant, [text deleted], was not present at the appeal hearing;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

**HEARING DATE:** May 5, 2015

**ISSUE(S):** Entitlement to physiotherapy treatment.

**RELEVANT SECTIONS:** Subsections 70(1) and 136(1) and section 184.1 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 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**

**Background:**

The Appellant, [text deleted], was involved in a motor vehicle accident on March 21, 2006, in which he suffered various injuries. Following the accident, he consulted with health care practitioners and underwent a variety of treatments, including physiotherapy. MPIC funded such physiotherapy treatments. The Appellant was discharged from physiotherapy on July 28, 2006. On May 31, 2012, the Appellant contacted his case manager to inquire about funding for

additional physiotherapy treatments. The case manager's decision dated October 5, 2012, MPIC denied funding for such treatments. That case manager's decision was confirmed by an Internal Review Decision dated February 12, 2013. The Appellant disagreed with that 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 has not met the onus of establishing, on a balance of probabilities, that he is entitled to funding for further physiotherapy treatment.

**Preliminary and Procedural Matters:**

The Appellant's appeal was scheduled for hearing on May 5, 2015, at 9:30 a.m., with the Appellant to participate via teleconference. Notice of the hearing was sent to the Appellant by regular mail and Xpresspost, to the address provided by the Appellant in his Notice of Appeal. The Notice of Hearing sent by Xpresspost was accepted and signed by "[text deleted]" on April 9, 2015. The Notice of Hearing sent by regular mail was not returned to the Commission. Section 184.1 of the MPIC Act provides how Notices may be given to the Appellant. It provides as follows:

**How notices and orders may be given to appellant**

**184.1(1)** Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

**When mailed notice received**

**184.1(2)** A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

On May 5, 2015, the hearing of the Appellant's appeal was convened at 9:30 a.m. with counsel for MPIC present. The Chair dialed the telephone number which had been provided by the Appellant to the Commission in his Notice of Appeal. The Appellant did not answer the telephone. A second telephone call was made by the Chair at 9:35 a.m. and a voicemail message was left indicating that the Appellant could contact the Commission if he wished to participate in his appeal.

The Commission's Notice of Hearing provided that the time and date of the hearing are firm and that postponements will only be granted under extraordinary circumstances. The Notice also provided that should either party fail to attend the hearing, the Commission may proceed with the hearing and may issue its final decision either granting or dismissing the appeal in whole or in part.

Accordingly, the appeal hearing proceeded at 9:40 a.m. and the panel heard the submissions from counsel for MPIC. After submissions were completed, the panel advised counsel for MPIC that the panel would, as is the normal course, adjourn to deliberate and advise the parties of its decision in due course, by providing a written decision. The hearing then adjourned and counsel for MPIC was dismissed.

Following the termination of the hearing, the Appellant telephoned the Commission and advised that he wished to participate in the hearing of his appeal. Although the hearing was concluded at that point, the panel was involved in deliberations and the Appellant requested to speak with the panel in order to request an opportunity to make submissions. The panel agreed to hear his request. The Appellant advised the panel that he was aware of the date and time of the appeal hearing. He indicated that although he was aware that the hearing was convened for 9:30 a.m., he had to go out due to being involved in the rental of a vehicle. He thought he could return home in time. He wished, however, now to have an opportunity to make submissions even though the hearing had already concluded. The panel advised the Appellant that the Commission would contact counsel for MPIC in order to obtain MPIC's position on the possibility of reconvening the appeal hearing, as the hearing had already been concluded.

The Commission contacted counsel for MPIC and requested MPIC's position on the matter of reconvening the hearing. However, before any response could be provided by counsel for MPIC, the Appellant again contacted the Commission and indicated that he had to attend an appointment within 15 minutes and would no longer be available to participate unless his participation could be achieved immediately. The panel indicated that the Commission had not yet had an opportunity to receive a response from counsel for MPIC. The Appellant indicated that he was not prepared to miss his scheduled appointment. The Commission indicated that if the Appellant would not be available to provide submissions, it would not be possible to reconvene the hearing. The Appellant acknowledged this.

Accordingly, the hearing was not reconvened and the panel proceeded to render its decision on the basis of the material contained in the indexed file as well as the submission made by counsel for MPIC during the hearing.

**Submission for the Appellant:**

Although the Appellant did not participate in the hearing of his appeal on May 5, 2015, the Appellant did provide the following reasons for his appeal in his Notice of Appeal, which was filed on June 4, 2013:

“Hip & back damage caused by the accident resulting with osteoarthritis setting in to both. If I never suffered trauma in the accident my hip & back would not be a concern now.”

The Appellant’s Application for Review dated October 9, 2012, filed in response to the case manager’s decision, stated as follows:

“I am not making a claim for my back or spine.

I am making a claim for injuries to my right hip. Due to auto accident.”

The Appellant advised MPIC that his physician, [Appellant’s doctor], recommended physiotherapy treatment. [Appellant’s doctor] provided a report dated August 23, 2012 in which he stated:

“I think he would benefit from intermittent use of anti-inflammatories and pain killers as well as physiotherapy. ...”

As noted above, the Appellant’s position is that his need for physiotherapy is connected to his 2006 motor vehicle accident (“MVA”).

**Submission for MPIC:**

Counsel for MPIC submitted that the issue is whether the Appellant’s current symptoms are causally related to the MVA of 2006. MPIC accepts that the injuries and treatment that the Appellant received in 2006 were related to the MVA of 2006. MPIC paid for the treatment that the Appellant received at that time. However, counsel for MPIC submitted that at the relevant time, 2012, which is six years later, it is difficult to establish that these symptoms are still

causally related to the MVA, notwithstanding that the pain is in similar areas. In 2006, the Appellant suffered pain in his neck, back and right hip. In 2012, the Appellant also suffered pain in his hip and was advised that he may need hip surgery. However, MPIC argued that pain in similar areas does not establish causation.

Counsel referred to a report from [Appellant's doctor], dated May 17, 2012. In that report, [Appellant's doctor] stated as follows:

“In conclusion, this gentleman has right lower back pain. Radiologically, he has osteoarthritis of the right hip, but I am not sure that the source of his pain is because of his right hip arthritis. I think it seems to be mostly mechanical lower back pain. ...”

As referred to above, [Appellant's doctor] provided a further report dated August 23, 2012. In that report he noted that the Appellant had x-rays of his lower back which showed “early degenerative changes”. Counsel for MPIC noted that in both of [Appellant's doctor's] reports, there was no mention of the 2006 MVA.

MPIC's Health Care Services' physiotherapy consultant reviewed the issue of whether the Appellant would be entitled to funding for physiotherapy treatment and provided a report dated October 4, 2012. In that report, the consultant provides the following opinion:

“Mechanical low back pain is a common condition in the generally (sic) population. It is not clear how the claimant's clinical presentation directly relates to the motor vehicle accident of March 21, 2006. ...

The claimant's physician clinical chart notes were obtained dating back to 2005. There is no documentation that the claimant's low back complaints have been on (sic) ongoing issue over the past six years. As such, it is my opinion that the medical information does not support that, on balance, the claimant's current complaints are directly related to the motor vehicle accident of March 21, 2006.”

Counsel for MPIC submitted that the Appellant has not provided any solid medical information for the six years between the MVA and [Appellant's doctor's] first report, and anything that does

exist on the indexed file is hard to draw conclusions from. [Appellant's doctor's] first report, in fact, is slightly confusing, in that it refers to a motor vehicle accident from "two years ago" which would suggest an MVA that occurred in 2010. Counsel pointed out that the Appellant never made an MPI claim with respect to an alleged MVA in 2010.

In the case manager's note from August 29, 2012, the case manager states "He said he has not seen any care provider since 2006 for his hip. He said he did speak with his MD but that was it".

Counsel for MPIC noted that the only documentation on the indexed file with respect to the period from 2007 to 2012 relates to foot pain, imaging for brain study, cardiovascular issues and a suspected minor stroke. Counsel suggested that the point to be taken is that we know he was under the care of medical professionals in the intervening years, we have their records, and yet there are no records of complaints of pain in the Appellant's hip or need for treatment. Counsel suggested that overall, the only evidence that we have is that of [Appellant's doctor], who concluded that the pain in his hip was likely the result of degenerative changes. In addition, there is the conclusion of the consultant with Health Care Services that there is no causal connection between the MVA and the Appellant's symptoms. Further, there is no evidence in the intervening years of ongoing or increasing symptoms.

Therefore, counsel for MPIC submitted that the evidence on the file does not support that the Appellant's current symptoms are causally connected to the MVA and counsel submitted that the appeal should be dismissed.

**Discussion:**

The onus is on the Appellant to show, on a balance of probabilities, that he has suffered an injury

caused by an accident. Further, the Appellant must establish that the treatments that he wishes to receive are medically required, thereby entitling him to Personal Injury Protection Plan (“PIPP”) benefits. The MPIC Act provides as follows:

70(1) In this Part,

**"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 ...

### **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; ...

Manitoba Regulation 40/94 provides 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant; ...

MPIC has acknowledged that the Appellant suffered injuries in the 2006 MVA. He received physiotherapy treatment at that time, which was funded by MPIC. In the physiotherapy discharge report, dated July 28, 2006, physiotherapist [text deleted] noted that the Appellant’s status at discharge was “Condition much improved”. The Appellant also attended for chiropractic treatments at that time.



Based on the material on the indexed file, it appears that MPIC did not hear from the Appellant again regarding his 2006 MVA injuries until May 31, 2012, when he contacted his case manager to inquire about additional physiotherapy treatments. The case manager's note from that date states as follows:

"I advised that his last tx date was May 2, 2006 and as such we would need to review to see if the injuries he is being treated for now relate to the MVA. The first step is to go to his PT and get an initial Assessment and Report completed (which MPI will cover) and they will wait to see if further treatments are approved ..."

The Appellant did get an initial assessment from his physiotherapist, [text deleted]. In her report, which is dated September 4, 2012, she notes the Appellant's symptoms to be:

"Pain in low back radiating down [left] leg. Paresthesia with walking greater than 10 minutes. Pain has been worsening in past 6 months. Prior to this pain was relatively unchanged since accident."

There is no evidence before the panel that the Appellant sought out any medical treatment regarding pain in his hip between 2006 and 2012. The case manager's note of August 29, 2012, states "He said he has not seen any care provider since 2006 for his hip. He said he did speak to his MD but that was it." There is no evidence on the indexed file of such a conversation between the Appellant and his physician. Rather, there is evidence on the indexed file that the Appellant did seek medical care during the intervening years in respect of other medical conditions. This leads to the inference that if the Appellant did suffer from hip pain during this time, it was not to such a degree as to cause him to seek medical treatment.

The only medical report in support of the Appellant's position is the report of [Appellant's doctor] dated August 23, 2012, in which he recommends physiotherapy treatment for the Appellant. However, in that report, [Appellant's doctor] does not indicate that the need for such treatment is in any way connected to the 2006 MVA. Rather, in his report of May 17, 2012,

[Appellant's doctor] had indicated:

“... I am not sure that the source of his pain is because of his right hip arthritis. I think it seems to be mostly mechanical lower back pain. ...”

MPIC's Health Care Services consultant, in a report dated October 4, 2012, was of the opinion that mechanical low back pain is common in the general population and no causal connection to the MVA could be supported.

After a careful review of all the reports and documentary evidence filed in connection with this appeal and after a consideration of the submissions of the Appellant and counsel for MPIC and taking into account the provisions of the relevant legislation, the panel finds that the Appellant has not met the onus of establishing, on a balance of probabilities, a causal connection between the Appellant's current complaint of hip pain and the injuries sustained in or caused by the MVA of 2006. On that basis, physiotherapy treatments for the Appellant cannot be considered to be medically required.

**Disposition:**

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated February 12, 2013, is upheld.

Dated at Winnipeg this 19<sup>th</sup> day of August, 2015.

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**JACQUELINE FREEDMAN**

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**DR. SHARON MACDONALD**

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**LINDA NEWTON**