

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-194**

PANEL: Ms Laura Diamond, Chairperson
Mr. Brian Hunt
Ms Susan Sookram

APPEARANCES: The Appellant, [text deleted], participated by teleconference on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson and Ms Ashley Korsunsky

HEARING DATE: April 4, 2016

ISSUE(S): Entitlement to further acupuncture treatments.

RELEVANT SECTIONS: Section 136(1), 174(1) and 175 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

The Appellant was injured in a motor vehicle accident on April 13, 2008. As a result of the accident she sustained injuries including a soft tissue injury to the neck, back and shoulders, dental injuries and a concussion.

The Appellant was in receipt of physiotherapy treatment benefits from MPIC regarding her chronic jaw pain. Her physiotherapist was providing acupuncture treatment as a part of this treatment.

In a therapy report dated March 17, 2014, the physiotherapist requested coverage for 16 treatments for the next calendar year based upon the need for treatment in the previous calendar year. The physiotherapist indicated that the treatment would include acupuncture treatment.

The Appellant's case manager referred her file for review by a physiotherapy consultant with MPIC's Health Care Services team. The consultant opined that acupuncture treatment would not be medically required beyond a maximum of the 10 acupuncture treatments which had been provided in the "Service-Level Agreement". Additional acupuncture treatments would not be considered medically required. However, the Appellant's case manager approved coverage for physiotherapy treatment to include acupuncture treatment within this amount. A case manager's decision of August 20, 2014 indicated that there was no entitlement to further funding of acupuncture treatment effective August 14, 2014.

The Appellant sought an Internal Review of this decision. In her Application or Review she indicated that her injury is permanent and that the treatment for her jaw is manual, with acupuncture being used to treat the inflammation resulting from the manual treatment.

On November 13, 2014, an Internal Review Officer for MPIC provided a decision indicating that he was prepared to accept that the acupuncture treatment the physiotherapist was providing would be deemed medically required. Accordingly, the case manager's decision was overturned.

The Appellant was entitled to acupuncture treatment as part of the available 16 physiotherapy treatments the case manager approved for the next calendar year.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Preliminary Matters:

At the hearing into her appeal, the Appellant asked that the Commission revoke the physiotherapy treatments which had been allowed by the Internal Review Officer and redirect the funds allocated towards physiotherapy and acupuncture towards orthodontic treatment. The Commission asked the Appellant whether there was a case manager's decision and/or Internal Review decision denying orthodontic treatment and the Appellant indicated that no such decisions had been issued.

The panel inquired as to whether the Appellant took the position that the Commission had the jurisdiction to hear the question of orthodontic treatment when there was no existing case manager's or Internal Review decision on this issue. She indicated that she should be able to choose any modality of treatment and that orthodontic treatment was better at alleviating her symptoms and fixing the problem.

Counsel for MPIC took the position that the Commission did not have jurisdiction to hear the Appellant's request for orthodontic treatment, as no case manager's or Internal Review decision had been issued in this regard. While the Appellant was certainly entitled to seek any treatment she wishes, the issue as to whether MPIC would pay for such treatment modality needs to be considered by a case manager, and in this case that had not occurred. Without an Internal

Review decision from a case manager's decision, the Commission had no jurisdiction to hear the Appellant's request for orthodontic treatment benefits.

In the alternative, the Appellant requested that the Commission order a lifetime of physiotherapy treatment. She would then reallocate this funding towards orthodontic treatment.

Jurisdiction:

The panel agrees with counsel for MPIC that it does not have jurisdiction in the appeal before it to consider the Appellant's request for funding for orthodontic treatment.

Section 174(1) of the MPIC Act provides that a claimant may appeal a review decision to the Commission:

Appeal from review decision

174(1) A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

The Commission then hears the appeals from the review decision, pursuant to Section 175 of the MPIC Act.

Automobile Injury Compensation Appeal Commission established

175 The Automobile Injury Compensation Appeal Commission is established as a specialist tribunal to hear appeals under this Part.

In this case, counsel for MPIC is correct in noting that there is no Internal Review decision on the issue of orthodontic treatment for the Appellant to appeal. Accordingly, the Commission does not have jurisdiction to hear the Appellant's request for orthodontic treatment at this time.

The panel proceeded to consider the Appellant's appeal regarding acupuncture treatment.

Evidence and Submission for the Appellant:

The Appellant indicated that she had been receiving physiotherapy treatment for the misalignment of her jaw, which caused inflammation. Therefore, the physiotherapist was also administering acupuncture treatment to reduce this inflammation.

However, in December of 2015, the Appellant decided to start treatment with Invisalign braces, a form of orthodontic treatment. It then became difficult for the physiotherapist to get inside her mouth to perform treatment, due to the hooks and the braces. Therefore, the Appellant had declined to attend for further physiotherapy treatment. She did not use up all of the allotted physiotherapy treatments provided by MPIC's funding. She indicated that the braces were a better alternative which helped to keep her jaw in line and muscles relaxed, providing better treatment and relief than physiotherapy. She submitted that the idea that the remaining nine physiotherapy treatments was going to fix her jaw was unreasonable, since it was hard for anyone to go into her mouth with their hands with her braces on and the treatment was not working for her. Therefore she was seeking funding for orthodontic treatment. She did not like the way that MPIC had dealt with her past healthcare providers. She did not want to request funding for orthodontic treatment from her case manager because she wanted to avoid the investigation and requests for information from her healthcare provider which would follow her request for treatment.

Therefore, in the alternative, she requested that the Commission order physiotherapy treatment “for life”. She submitted that physiotherapy reports, examination findings and chart notes on her indexed file indicated that her condition was chronic and ongoing. It was not going to resolve with the amount of physiotherapy which was allowed to her by MPIC. Instead, she believed that she should be allowed physiotherapy treatment for life so that she could take the money allotted for the physiotherapy and acupuncture and redirect it towards the smarter alternative of orthodontic treatment.

Evidence and Submission for MPIC:

Counsel for MPIC recognized the Commission’s decision of September 14, 2011 which found that the Appellant had established a permanent impairment to her temporal mandibular joint as a result of the accident of April 13, 2008. The impairment was assessed and the Appellant paid the corresponding permanent impairment award. MPIC also paid for a number of physiotherapy treatments (comprised of manual therapy and acupuncture) in relation to the Appellant’s TMJ dysfunction.

The treating physiotherapist provided MPIC with a report dated March 17, 2014 requesting funding for 16 treatments for the next calendar year based upon the Appellant’s attendance in the last calendar year. MPIC’s physiotherapy consultant reviewed the treating physiotherapist’s request for these treatments and, in a review dated August 5, 2014, indicated that physiotherapy treatment was medically required. The case manager then issued a decision dated August 20, 2014 allowing for the funding of physiotherapy treatment. The Internal Review decision dated November 13, 2014, which is the subject of the current appeal, approved the funding of 16

physiotherapy treatments and indicated that acupuncture could continue to form part of these treatments.

In November 2014, the Appellant's physiotherapist reported that since March 2014 the Appellant had attended for only 6 of these treatments.

The consultant provided another report dated January 13, 2015, indicating that it would be reasonable to review the file again in August 2015 to determine the ongoing requirement for physiotherapy treatment. The physiotherapist then submitted two subsequent therapy reports dated February 18, 2015 and September 2, 2015. The September report indicated that the Appellant continued to manage well at home and had not attended for treatment for the prior five months.

In a report dated October 15, 2015, the consultant noted that there were still 9 of the approved 16 physiotherapy treatments available to the Appellant for management of her TMJ symptoms. The consultant noted that there was essentially no change in physical findings or outcome measure scores and that the Appellant seemed to be self-managing her symptoms.

There was no request for further treatment funding.

Counsel for MPIC submitted that there are still nine physiotherapy/acupuncture treatments available to the Appellant and that no further treatment has been requested by the treating physiotherapist.

Counsel further indicated that should the Appellant request funding for orthodontic treatment, this could then be considered by her case manager and, if necessary, MPIC's Health Care Services team. However, no such request had been made to the case manager. Rather, MPIC has funded all physiotherapy treatments which have been requested to date by the Appellant's treating physiotherapist. Should the Appellant use those nine outstanding treatments and should a healthcare practitioner submit a request for further treatment funding, that request would be dealt with upon receipt.

Accordingly, MPIC submitted that the appeal should be dismissed and the decision of the Internal Review Officer dated November 13, 2014 be upheld.

Discussion:

The MPIC Act provides:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94 provides:

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;

The onus is on the Appellant to show, on a balance of probabilities, that the decision of the Internal Review Officer is in error and that she should be entitled to further medically required treatment benefits. As noted above, the Commission does not have the jurisdiction to consider the Appellant's request for orthodontic treatment, which has not yet been the subject of a case manager or Internal Review decision.

In regard to the Appellant's request for lifetime physiotherapy treatment, the panel finds that the Appellant has failed to establish any further entitlement to physiotherapy treatment beyond what has already been provided by MPIC in the Internal Review decision under consideration.

Although the Appellant asked for lifetime physiotherapy treatment, she indicated in her evidence that she doesn't really want them because they are not working for her. She had sought acupuncture treatment to reduce the inflammation arising out of physiotherapy treatments, but she is no longer going for physiotherapy treatments and does not really want any further physiotherapy or acupuncture treatment at this time.

The evidence established that the Appellant had not received physiotherapy or acupuncture treatments since well before September 2015. She still has nine outstanding physiotherapy/acupuncture treatments which she has not yet utilized. Her position really is that

she wants to reallocate any funds that might have gone towards physiotherapy and acupuncture towards orthodontic treatment. However, the Commission does not have jurisdiction to consider coverage for orthodontic treatment at this time and we agree with counsel for MPIC that the Appellant has been provided with coverage for all the physiotherapy/acupuncture treatment which she and her therapist have requested to date. She is not entitled to funding for further physiotherapy/acupuncture treatment at this time.

Accordingly, the Internal Review decision of November 13, 2014 is upheld and the Appellant's appeal dismissed.

Dated at Winnipeg this 29th day of April, 2016.

LAURA DIAMOND

BRIAN HUNT

SUSAN SOOKRAM