

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-01-77**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Wilson MacLennan

**APPEARANCES:** The Appellant, [text deleted], appeared on her own behalf, assisted by her daughter, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

**HEARING DATE:** January 8, 2002

**ISSUE(S):** Whether Appellant is entitled to further physiotherapy treatment benefits.

**RELEVANT SECTIONS:** Section 136(1)(a) of the Manitoba Public Insurance Corporation Act (the '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**

On December 23, 1999, the Appellant was operating a [text deleted] northbound on Highway [text deleted] when a southbound vehicle entered the Appellant's lane of traffic, striking her vehicle and causing it to spin and collide with a vehicle travelling behind it. The Appellant's vehicle was a total loss as a result of the accident.

As a result of the motor vehicle accident, the Appellant suffered injuries. The Initial Health Care Report (undated) provided by the Appellant's physician, [text deleted], based on an examination of January 14, 2000, indicates that the Appellant had suffered symptoms of pain to her shoulder/chest/hips and low back with associated dizziness and nausea. This report also indicates that the Appellant had objective signs consisting of bruising to the face, right breast and hips. [Appellant's doctor] prescribed certain medication and referred the Appellant for physiotherapy.

The Appellant commenced receiving physiotherapy from [text deleted], a physiotherapist at [text deleted] Physiotherapy in [text deleted], on December 30, 1999. [Appellant's physiotherapist #1's] report, based on her examination of the Appellant on December 30, 1999, sets out a list of relevant physical findings which were to the cervical spine (with headaches), shoulder pain, and upper trapezius. The physiotherapist's report indicates that the Appellant would require two to three treatments per week for approximately four weeks, followed by one or two treatments per week for a further three weeks. It was expected that the Appellant would then be discharged with a home exercise program.

The Appellant received 19 physiotherapy treatments between December 30, 1999, and April 13, 2000, at which time the physiotherapy treatments ceased. The case manager's memo to file, dated April 18, 2000, described a telephone discussion between the case manager and the Appellant. The Appellant advised the case manager that she was taking a break from the physiotherapy treatments. The physiotherapist had advised the Appellant "to see how it goes for the next 3 weeks and if any ongoing problems for her to return. [The Appellant] advised she is feeling pretty good and feels she will not need to go back."

On June 14, 2000, there was a memo to file from the case manager wherein he refers to the discussion he had with the Appellant on April 18, 2000, as follows: “spoke to clmt Apr. 18/00 at which time she indicated she was feeling pretty good and felt she would not need further tx’s. she has submitted her travel expense which has been paid. All tx billings have also been paid. Will delete reserves and close the file.”

The Appellant did not contact the case manager within three weeks following their discussion of April 18, 2000. As a result, the case manager assumed that the Appellant’s claim had been resolved and prepared a memo to file dated June 14, 2000, wherein the case manager closed the Appellant’s file. Between April 18, 2000, and June 14, 2000, the case manager did not communicate with the Appellant to confirm that her injuries had resolved themselves and that she no longer required physiotherapy treatments.

The Appellant, who had not received any physiotherapy treatments since the month of April 2000, returned to [text deleted] Physiotherapy for physiotherapy treatments on January 10, 2001. The physiotherapist who examined the Appellant was [Appellant’s physiotherapist #2], not [Appellant’s physiotherapist #1] who had previously provided physiotherapy to the Appellant.

At the request of MPIC, [Appellant’s physiotherapist #2] prepared a treatment plan in respect of physiotherapy and provided same to MPIC in a report dated January 13, 2001. In this report, [Appellant’s physiotherapist #2] indicates that the Appellant was discharged after full resolution of her signs and symptoms and continuation of the Appellant’s home exercises in April 2000. [Appellant’s physiotherapist #2] further indicates in her report that the Appellant complained about her symptoms of neck pain, nausea, dizziness and headaches, and [Appellant’s physiotherapist #2] suggested a further course of physiotherapy treatment of four to six weeks.

Upon receipt of this physiotherapy report, the case manager referred the file to MPIC medical consultant, [text deleted], who provided an inter-departmental memo dated January 29, 2000. In that report, [MPIC's doctor] indicated the opinion that:

Given the January 10, 2001 documentation indicating resolution of signs and symptoms associated with the motor vehicle collision, it is medically improbable that the claimant's current symptom complaints are related to the motor vehicle collision. Further physiotherapy treatment is not recommended.

Upon receipt of [MPIC's doctor's] report, the case manager wrote to the Appellant by letter dated January 31, 2001, and stated:

Upon review of your file your physiotherapy treatments concluded on April 1, 2000. At the time of discharge it was noted that you recovered with full resolution of signs and symptoms, plus you were educated in a home exercise program.

Based on the medical information, there is no causal link of your current symptoms to the motor vehicle accident on the above noted date. Therefore, Manitoba Public Insurance will not consider funding for further physiotherapy treatments, as there is no medical information to support your claim that your current symptoms are accident related.

In a memo to file dated March 1, 2001, the case manager describes a telephone discussion with the Appellant who informed the case manager that, as a result of a recurrence of the neck pain and headaches, she attended at her physician, [text deleted], who referred her for physiotherapy. The Appellant further advised the case manager in their telephone discussion that she must have stopped going to physiotherapy too soon, before she had completely recovered.

In a letter dated March 13, 2001, to MPIC, [Appellant's doctor] states:

The above named patient has asked me to write to you re my assessment of her continued neck and shoulder pain. Following the accident she was seen by me (initial health care report you have) and subsequently by physiotherapy (you have the reports). Her neck pain and right shoulder pain eventually became asymptomatic and gained good range of movement by April 2000. Unfortunately she developed the same symptoms and

disability again in January 2001. I saw her on January 4, 2001 and determined that the symptoms she had on January 4 were similar to her symptoms in early 2000 following accident. I am of the opinion that her disability now is related to her injury in December 1999, as in my records she has had no previous neck or shoulder injuries.

*(underlining added)*

As a result of [Appellant's doctor's] medical report, the Internal Review Officer sent this report to [MPIC's doctor] and requested whether [Appellant's doctor's] report changed her previously expressed opinion. In an inter-departmental memorandum dated May 10, 2001, [MPIC's doctor] states:

This reviewer has found no medical literature that supports an increased predisposition to recurrence of cervicothoracic (neck and shoulder girdle) pain and dysfunction, following resolution of pain and dysfunction as a result of an initial injury to these regions. The fact that the claimant's soft tissue injuries were relatively minor in nature supports the documented occurrence of complete resolution of symptoms and restoration of function. There is no documentation of pre-existing pathology or other medical history on the claimant to support that normal healing of soft tissue would occur without permanent sequelae. It is noted that approximately nine months elapsed from the time that the claimant was reported to be asymptomatic and to have demonstrated good range of movement to the time that she reported a flare-up of symptoms. Thus no temporal relationship is evident. On the balance of probabilities, the recurrence of symptoms in the region associated with injuries associated with injuries sustained in the motor vehicle collision, are due to factors unrelated to the motor vehicle collision.

The Appellant made application for review of the case manager's decision by letter dated February 26, 2001. Unfortunately, the Appellant chose not to meet with the Internal Review Officer when he was considering her Application for Review and, as a result, he did not have the opportunity to learn from her the reasons why she did not continue with her physiotherapy treatments.

The Internal Review Officer, in a written decision to the Appellant dated May 22, 2001, rejecting the Appellant's Application for Review, states:

As you may be aware, the Personal Injury Protection Plan, which came into effect March 1, 1994, is a creation of statute, in that the terms, conditions and provisions are set out in The Manitoba Public Insurance Corporation Act and Regulations thereunder. In particular Section 136(1) of the Act provides for reimbursement of various expenses as provided for in the Regulations. Section 5(a) of Manitoba Regulation 40/94 states:

**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.

In my view, it has not been established, on a balance of probabilities, that further physiotherapy treatments are medically required on account of injuries arising out of your motor vehicle accident of December 23, 1999. The Case Manager, in arriving at her decision, relied upon the opinion of [MPIC's doctor] which was reinforced by her further review of the file. Under these circumstance *[sic]* I am unable to conclude that the Case Manager erred in arriving at her decision and accordingly I am upholding same and dismissing your Application for Review.

The Appellant, upon receipt of the Internal Review Officer's decision, appealed that decision to this Commission by Notice of Appeal dated July 23, 2001.

At the appeal hearing, the Appellant testified as to the following reasons for her discontinuing her physiotherapy treatments in the month of April 2000:

1. that the accident-related symptoms had not, in fact, been completely resolved in the month of April 2000 but had increased in severity thereafter;
2. that at the time she discontinued physiotherapy in the month of April 2000, she had been grieving over the death of her mother-in-law, which had occurred in the previous year;
3. that shortly after discontinuing her physiotherapy in April 2000, her father passed away, and this was an extremely traumatic experience which caused a great deal of emotional turmoil in her life;

4. that shortly after her father's death, and while she was still grieving his loss, she was required to commence the planning and preparation of her daughter's wedding;
5. that although the wedding preparations were a happy event, the pressure of planning and preparing her daughter's wedding, coupled with the death of her father, overwhelmed her and rendered her unable to cope effectively with her accident-related injuries. The Appellant also testified that, during this time, she was unable, physically and emotionally, to drive a motor vehicle from [text deleted] to attend physiotherapy treatments in [text deleted];
6. that the accident-related symptoms increased in severity, and she attempted to seek relief solely through the home exercise program. However, she testified that this program, which she faithfully followed, did not provide her with any satisfactory relief from the headaches, neck pain, nausea and dizziness;
7. that it was only when the symptoms became extremely severe and nearly overwhelmed her that she forced herself to resume the physiotherapy treatments in January 2001.

In summary, the Appellant testified:

1. that she discontinued her physiotherapy treatments due to a crisis in her personal life, and not because the accident-related symptoms had resolved themselves;
2. the accident-related symptoms never ceased but increased in severity up to the month of December 2000 and, as a result, she felt compelled to seek a resumption of the physiotherapy treatments in the month of January 2001.

The Internal Review Officer, in rejecting the Appellant's claim for reimbursement in respect of physiotherapy treatments from January 10, 2001, relied on the following evidence:

1. The case manager's memoranda to file dated April 18, 2000, and June 14, 2000.
2. The physiotherapy report from [Appellant's physiotherapist #2], dated January 13, 2001.

3. The two medical reports from [MPIC's doctor] dated January 29, 2001, and May 10, 2001.

The Appellant's testimony at the appeal hearing is consistent with the statement she made in her Application for Review, wherein she stated:

I ask the Corporation to review the decision of January 31<sup>st</sup>, 2001 because I believe that physiotherapy from January 10<sup>th</sup>, 2001 onwards should be covered by MPI because the symptoms that I need physio for are related to the accident. Although physio was stopped in approximately April 2000 and was started again in January 2001, I should have started to go again sooner because I still needed it. I thought it would go away so I put up with the pain, but instead of going away, it got worse. I feel the physio is helping me now, just as it helped me after the accident. I feel that I have not taken advantage of the system regarding physio because I have followed the physiotherapist's advice, and continue to do exercises as instructed....

The Appellant testified at the appeal hearing that she did not make a full recovery from the accident-related injuries and that she was not discharged from physiotherapy treatments by [Appellant's physiotherapist #1] in the month of April 2000. In her testimony, the Appellant provided a credible explanation for the nine-month delay in continuing with physiotherapy treatments. MPIC did not call the case manager who had prepared the memoranda to file dated April 18, 2000, and June 14, 2001, nor [Appellant's physiotherapist #1], to rebut the testimony of the Appellant in respect to these issues. The Commission accepts the Appellant's testimony on these issues.

#### **Physiotherapy Report from [Appellant's physiotherapist #2]**

In the physiotherapy report from [Appellant's physiotherapist #2] to MPIC dated January 13, 2001, [Appellant's physiotherapist #2] indicates that the Appellant had been discharged from physiotherapy treatments as a result of the injuries sustained in the motor vehicle accident of December 23, 1999, after a full resolution of signs and symptoms.



The Appellant, in her testimony at the appeal hearing, contradicted [Appellant's physiotherapist #2's] written comments as set out in her physiotherapy report. The Appellant testified that at no time had she been discharged from physiotherapy treatment by [Appellant's physiotherapist #1], and at no time had there been a full resolution of the injuries she sustained in the motor vehicle accident. On the contrary, the Appellant testified that after the month of April 2000, the symptoms increased in severity and the home exercise program did not resolve the symptoms and, as a result, she was compelled to continue with physiotherapy treatments in the month of January. The Appellant, who testified under oath and was subjected to a rigorous cross-examination, was a credible witness, and the Commission accepts her explanation as to the reasons for the delay in resuming physiotherapy treatments after a period of nine months.

[Appellant's physiotherapist #2] was not called to rebut the Appellant's testimony in respect of these issues and, as a result, the Commission is left to speculate as to the basis of [Appellant's physiotherapist #2's] written comments in her report. The Commission does not know whether the written comments from [Appellant's physiotherapist #2] were based on the Appellant's physiotherapy records, or [Appellant's physiotherapist #2's] discussions with the Appellant and/or [Appellant's physiotherapist #1], or whether they were based on her unsubstantiated assumptions, similar in nature to those assumptions made by the case manager in his written memoranda to file. Having regard to the conflict in evidence between the sworn testimony of the Appellant (which the Commission finds to be credible) and the unsworn written comments of [Appellant's physiotherapist #2], the Commission accepts the testimony of the Appellant that the accident-related symptoms were not resolved in the month of April 2000 but continued, increased in severity, and this required the Appellant to resume her physiotherapy treatments in the month of January 2001.

**Medical Reports of [MPIC's doctor] dated January 29, 2001, and May 10, 2001****First Report: January 29, 2001**

In the first report, an inter-departmental memorandum to the case manager dated January 29, 2001, [MPIC's doctor] states:

A medical opinion is sought with regards to the necessity for further therapeutic treatment secondary to injuries sustained in the motor vehicle collision.

**BACKGROUND**

As a result of the motor vehicle collision, the claimant suffered soft tissue injuries consistent with a WAD 2 injury classification. She also sustained a contusion to the shoulder secondary to a seat belt injury. The claimant received physiotherapy treatment through [text deleted] Physiotherapy; for a total of 19 treatments. A Subsequent Physiotherapy Report for the visit of January 10, 2001 indicated that the claimant's prior treatment had concluded on April 1, 2000. At the time of discharge, the claimant was noted to have had full resolution of signs and symptoms associated with her previous injuries and noted to have been educated in a home program of exercises. The claimant apparently returned in January 2001 complaining of a recurrence of symptoms to her neck associated with nausea, dizziness and headaches. Clinical findings were of decreased cervical spine range of motion, muscle spasm associated with the cervicothoracic region and thoracic region stiffness and hypomobility. Four to six weeks of physiotherapy treatment was recommended.

**OPINION**

Given the January 10, 2001 documentation indicating resolution of signs and symptoms associated with the motor vehicle collision, it is medically improbable that the claimant's current symptom complaints are related to the motor vehicle collision. Further physiotherapy treatment is not recommended.

[MPIC's doctor], in the preparation of her initial report, was not requested by the case manager to physically examine the Appellant to determine whether or not the symptoms in question were accident-related, and to determine the reason for the nine-month delay by the Appellant in the resumption of physiotherapy treatments. [MPIC's doctor] was requested only to conduct a paper review in order to advise MPIC whether the physiotherapy treatments outlined in [Appellant's physiotherapist #2's] report dated January 13, 2001, were medically necessary.

In arriving at her initial decision, [MPIC's doctor] relied substantially on the comments contained in [Appellant's physiotherapist #2's] physiotherapy report dated January 13, 2001, in concluding that the physiotherapy treatments were not medically necessary. [MPIC's doctor], in providing her initial medical opinion, was unaware of the Appellant's position that her accident-related symptoms after the month of April 2000 had not resolved themselves but had, in fact, increased in severity and compelled her to return to [text deleted] Physiotherapy for physiotherapy treatments. As a result, [MPIC's doctor] did not have in her possession all of the material facts necessary to provide a complete medical opinion, nor was she provided with the opportunity to examine the Appellant in order to obtain this information.

The Commission notes that the case manager who initially dealt with the Appellant and provided the memoranda to file in the months of April and June 2000 was not the same case manager who received [Appellant's physiotherapist #2's] physiotherapy report dated January 13, 2001, and requested a medical opinion from [MPIC's doctor]. Perhaps the case manager who received [Appellant's physiotherapist #2's] report requesting additional physiotherapy treatments nine months after the file had been closed should have contacted the Appellant in order to personally interview her. Had the case manager done so, the Appellant may have provided the same explanation to the case manager that she provided to the Commission at the appeal hearing wherein the Appellant contradicted the written comments in [Appellant's physiotherapist #2's] report. In these circumstances, the case manager could have either accepted the Appellant's explanation and authorized the resumption of MPIC's contribution to the payment of physiotherapy treatments or alternatively referred the matter to [MPIC's doctor] for her medical opinion. If the case manager had decided to refer the matter to [MPIC's doctor], the case manager would have been in a position to have provided [MPIC's doctor] with the critical

information in respect of the Appellant's explanation for the delay in obtaining physiotherapy treatments in order to permit [MPIC's doctor] to provide a complete medical opinion.

**Second Report: May 10, 2001**

[MPIC's doctor] was requested by MPIC to reply to [Appellant's doctor's] medical report dated March 13, 2001 (referred to in page 4 hereof). In this report, [Appellant's doctor], who had initially treated the Appellant on January 14, 2000, approximately three weeks after the motor vehicle accident, again saw the Appellant on January 4, 2001. In his report dated March 13, 2001, [Appellant's doctor] indicates that the symptoms of which the Appellant was complaining on January 4, 2001, were related to the injury to her neck which occurred as a result of the motor vehicle accident on December 23, 1999. [MPIC's doctor] rejected the medical opinion of [Appellant's doctor] and instead accepted the written comments of [Appellant's physiotherapist #2] in her physiotherapy report to MPIC dated January 13, 2001.

The Commission finds that on January 4, 2001, [Appellant's doctor] was in a much better position to determine the medical status of the Appellant than was [MPIC's doctor]. [Appellant's doctor] initially treated the Appellant shortly after the accident and again on January 4, 2001. On both occasions he had an opportunity to physically examine the Appellant and to communicate with her. As a result, [Appellant's doctor] was in a better position than [MPIC's doctor] to assess the Appellant's explanation relating to the discontinuance of her physiotherapy treatments and to determine whether or not the symptoms about which she was complaining on January 4, 2001, were similar to the accident-related symptoms. Having regard to the evidence submitted at the hearing, including the testimony of the Appellant which the Commission finds credible, the Commission accepts the medical opinion of [Appellant's doctor] on this issue.

**Internal Review Officer's Decision, Dated May 22, 2001**

The Internal Review Officer in his decision (referred to on pages 5 and 6 of the award) rejected the Application for Review based on the assumptions of the case manager, the written comments of the physiotherapist, [Appellant's physiotherapist #2], and the medical opinions of [MPIC's doctor]. The Internal Review Officer also rejected the medical opinion of [Appellant's doctor] in rendering his award. As a result, the Internal Review Office concluded:

1. that the discontinuance of the physiotherapy treatments in April was due to a complete recovery by the Appellant in respect of her injuries sustained in the motor vehicle accident; and
2. that the physiotherapy treatments that the Appellant required in the month of January 2001 were not causally connected to the motor vehicle accident which occurred on December 23, 1999.

The Commission finds that had the case manager, [MPIC's doctor], and the Internal Review Officer had the opportunity to discuss with the Appellant the reasons for her delay in seeking physiotherapy, they may very well have concluded, as did [Appellant's doctor], that the complaints the Appellant made in January 2001 as to her neck pain, dizziness and headaches were causally connected to the motor vehicle accident and they were a continuation of the medical problems she had arising from the motor vehicle accident.

The Commission, like [Appellant's doctor], did have the opportunity to personally observe the Appellant and hear her explanation as to the issues in dispute. As well, the Commission had the opportunity to observe her demeanor during her examination in chief and during a rigorous cross-examination. The Commission finds that the Appellant, who testified under oath, was an

impressive and honest witness who gave her testimony in a direct, candid and straightforward manner. The Commission finds that the Appellant made every reasonable effort to deal with the accident-related injuries, and we accept her explanation that she was unable to effectively deal with a resolution of the accident-related injuries in a timely fashion due to a personal crisis. The Commission, therefore, accepts the Appellant's testimony on all issues in dispute between MPIC and herself in this appeal.

The Commission, therefore, concludes that the Appellant has established, on the balance of probabilities:

1. that her complaints to the physiotherapist on January 10, 2001, in respect of headaches, nausea, dizziness and neck pain were causally connected to the motor vehicle accident of December 23, 1999;
2. that physiotherapy treatments between January 10, 2001, and May 23, 2001, were medically required on account of injuries arising out of her motor vehicle accident of December 23, 1999, pursuant to Section 5(a) of Manitoba Regulation 40/94.

The Commission further concludes that the Appellant has not established, on the balance of probabilities:

1. that the physiotherapy treatments for the period June 11, 2001, to June 25, 2001, relating to physiotherapy treatments for a sore arm was a medical injury caused by the motor vehicle accident in question;
2. that the physiotherapy treatments beyond June 25, 2001, were medically required pursuant to Section 5(a) of Manitoba Regulation 40/94, since treatments beyond that date were of a supportive nature.

**Conclusion**

The Commission therefore:

- (a) directs that MPIC reimburse the Appellant for the costs of physiotherapy treatments between January 10, 2001, and May 23, 2001, and for the travel expenses incurred in attending those physiotherapy treatments, together with interest thereon at the prescribed rate to the date of payment;
- (b) retains jurisdiction in this matter. If the parties are unable to agree on the amount of compensation, then either party may refer this dispute back to this Commission for final determination; and
- (c) determines that the decision of MPIC's Internal Review Officer, bearing date May 22, 2001, be rescinded and the foregoing substituted for it.

Dated at Winnipeg this 25<sup>th</sup> day of January, 2002

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**MEL MYERS, Q.C.**

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**YVONNE TAVARES**

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**WILSON MacLENNAN**