Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-41

PANEL:	**Ms Laura Diamond, Chairperson**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.**
HEARING DATE:	**August 1, 2007**
ISSUE(S):	**1. Entitlement to further chiropractic treatment benefits beyond April 23, 2004; and** **2. Entitlement to funding for the following prescription medications:** **a. Ramipril;** **b. Advair 500 Diskus;** **c. Salbutamol HFA;** **d. Atrovent;** **e. Hydrochorothiazide.**
RELEVANT SECTIONS:	**Section 136(1)(a) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Sections 5(a) and 38 of Manitoba Regulation 40/94**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. ALL 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 August 21, 2003. He sustained injuries including a pulmonary contusion, right chest wall contusion, concussion, lacerations to the right lateral thigh, right calf and buttock, and soft tissue injuries to the cervical spine.

The Appellant received treatment, including hospitalization, for his injuries.

Five (5) months following the motor vehicle accident, in January of 2004, the Appellant's chiropractor, [text deleted], submitted a report diagnosing post-traumatic frozen shoulder syndrome. He recommended a course of chiropractic treatment for this condition.

A subsequent report from [Appellant's chiropractor], dated April 28, 2004, also attributed problems with the Appellant's right knee to the motor vehicle accident.

On April 29, 2004 the Appellant's case manager indicated that MPIC would not consider funding for further chiropractic treatments as of April 23, 2004.

On May 25, 2004, the Appellant's case manager wrote to him indicating that MPIC would not reimburse him for certain medications which were prescribed, as a result of the motor vehicle accident. However, the Appellant sought a review of this decision, as well as of the decision regarding chiropractic treatment, seeking reimbursement for other prescription medications such as hypertension medicine and inhalers.

An Internal Review Officer for MPIC issued a decision in the matter on October 26, 2004. The Internal Review Officer found that the Appellant had not conclusively established that the cause of the symptoms affecting his left shoulder and right knee was the motor vehicle accident. Further, even if causation could be established, it was the Internal Review Officer's opinion that the medical information on file did not support that chiropractic care was medically required for injuries sustained in the motor vehicle accident.

The Internal Review Officer also found that the medications Ramipril and Hydrochorothiazide were prescribed for the management of hypertension which predated the motor vehicle accident.

The Internal Review Officer concluded that Salbutamol, Atrovent and Advair Diskus were prescribed as a result of the diagnosis of COPD. Although the accident injuries may have resulted in the diagnosis of this condition, the pulmonary disease was not caused by the accident and the medications would not be reimbursed.

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

Evidence and Submission for the Appellant

Reports were provided by the Appellant's chiropractor, [text deleted], his general practitioner, [text deleted], and consulting orthopedic specialists, [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2].

[Appellant's chiropractor] was of the opinion that both the frozen shoulder problems and problems with the Appellant's right knee were post-traumatic responses to the motor vehicle accident, and that further chiropractic treatment was necessary as a result. He stated, on May 26, 2004:

> . . . the initial stage (of a 3 stage process) of frozen shoulder syndrome usually occur within a 2 to 9 month period; this too appropriately fits the timeline following the accident. As I have not yet personally seen a case that has not been closely associated with a post-traumatic event or overuse situation (usually in women), there is, in all likelihood and probability, a causal relationship.
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> The typical course of a frozen shoulder syndrome over three recognized stages of development, according to the Mayo Clinic, is 18 to 63 months. [The Appellant] is currently enjoying nearly full passive and active ROM within 4 months utilizing conservative manipulative treatment, ultrasound therapy and active rehabilitation involving passive ROM, contract-relax therapy and Thera-Band™ exercises. This, I

> believe, has everything to do with intervening promptly within the early weeks of the first stage of the developing frozen shoulder. He still experiences painful end-range motion but that is expected to significantly improve and possibly resolve within the next 8 – 12 weeks with a progressively diminishing treatment regimen and increasing exercise/use.
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> As to [the Appellant's] right knee complaints, the penetrating wounds are proximal and distal to the affected knee, adjacent to and in the proximity of major soft tissue structures and muscles involved in weight bearing, ambulation and that cross the knee joint. . . Again, this is a typical clinical experience for this physician that leaves me completely mystified as to the difficulty in relating such causal relationships, particularly when they have been applied before with respect to other motor vehicle accidents and in more protected circumstances (from within a motor vehicle vs. on a riding lawn mower) manager by myself as well as other colleagues.

[Appellant's doctor] provided a report on June 17, 2004. In his view the injury to the shoulder and knee were related to the motor vehicle accident:

> In regards to his right knee his ROM to right knee is normal but he gets a popping colapsing (sic) feeling to the right knee with occasional locking which is typical of a medical minical (sic) tear. The patient also has underlying osteo arthritis in his right knee but it appears this is more than just osteo arthritis, This gentleman almost certainly sustained a medical miniscal tear related to previous MVA.
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> . . . There is some issue whether or not the shoulder is related to the MVA because this patient's mobility was so poor in hospital that he likely did not notice nor did anybody else that he could not abduct past 90° in lift shoulder. He was quite immobile for some time related to his right leg injuries. The patient certainly would have noticed inability to abduct his left shoulder prior to the accident and therefore this injury to the left shoulder rotator cuff tear is related to the accident, certainly the right knee is.

[Appellant's Doctor] recommended orthopedic consultation and an MRI for the right knee and left shoulder. However, he did not believe that further chiropractic treatment was warranted:

> . . . He feels the chiropractic treatments has benefited significantly the left shoulder based on the fact that he has less pain he is able to abduct easily to 90° but the shoulder does not abduct past 90° and it certainly will not respond to further chiropractic treatment as this gentleman has a rotator cuff tear.

The orthopedic specialists, [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2], provided a report dated June 28, 2004. They did not attribute either the shoulder or knee injury to the motor vehicle accident:

> My impression is that with respect to his left shoulder, his rotator cuff is intact but he suffers from bursitis or tendonitis or a combination of bot (sic) and possibly from some AC joint arthritis. We have stated that we are happy to see he is progressing with his physiotherapy. He could have a cortisone injection which could help but we would suggest this if he plateaued and wasn't getting any better. Otherwise we would not want to interrupt his progression with a steroid injection.
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> With respect to his right knee, I believe that his pain is secondary to his degenerative arthritis versus a meniscal tear. We stated that he would not benefit from an arthroscopy. He might benefit from conservative management with respect to knee arthritis such as Synvisc, steroid injection, bracing, weight loss, etc. We stated he is not a candidate for a total knee at this point in time. We will see him again on a prn basis.

In regard to the Appellant's medications, [Appellant's doctor] provided a report dated October 19, 2004. He indicated that the Appellant had COPD prior to the accident and had previously been treated for it with Beclofort, Atrovent and Ventolin. He stated:

> . . . As far as the medications are related to the accident it is possible that the accident did exacerbate his COPD requiring at least initially increased use of ventolin (salbutomol), atrovent and initiation of advair discus but this long post MVA now would be hard to come up with any relationship related to the MVA of August 21, 2003.

In regard to the hypertension medication, he stated:

> . . . The Ramapril that he is on and hydrocholorthiazide is for management of hypertension which is not believed to be related to the MVA although one may speculate that the stress of the MVA may have caused an increase in his hypertension surrounding the events of the accident but this would certainly not be causally related after a short period of time post the MVA.
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> . . .
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> In summary at this point and time it is difficult to find any medical indications that these medications that are listed in your letter of August 19, 2004 are related to the MVA at this point and time.

The Appellant submitted that, although he did not feel the effects of the motor vehicle accident in his shoulder until about three (3) months after the accident, it was his view that the shock and immobility resulting from the motor vehicle accident resulted in this problem taking time to materialize. He testified that he continued to see his chiropractor after his benefits were terminated in April of 2004, for about a month and a half (1 ½), approximately two (2) times a week, and then later, one (1) time a week. He indicated that this greatly assisted with the frozen shoulder condition.

He also testified that he had only required asthma medication once prior to the motor vehicle accident, when he had pneumonia and that he had not required hypertension medication before the accident. Accordingly, the Appellant submitted that the motor vehicle accident was the cause of the difficulties with his shoulder and knee and the reason that he required medications for asthma and hypertension.

Evidence and Submission for MPIC

Counsel for MPIC referred to reports from [Appellant's chiropractor], [Appellant's doctor], [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2], as well as medical reports prepared by [MPIC's doctor], a member of MPIC's Health Care Services Team, and [MPIC's chiropractor], a chiropractor who is another member of the MPIC Health Care Services Team.

Counsel for MPIC noted that none of the earlier medical records indicate any left shoulder or right knee complaints or problems. The first mention of left shoulder complaints was found in [Appellant's chiropractor's] report of January 2004, almost five (5) months post-accident. However, [MPIC's doctor], in a review of the medical package on March 5, 2004, did conclude

that there was a medically probable relationship between the accident and the Appellant's left shoulder dysfunction. He stated:

> . . . The condition tends to run its course over a period of one or two years, on average, with or without treatment. The role of treatment would be for symptomatic management. In my opinion, manual therapy to the shoulder would be reasonable if it is associated with improved symptoms at this point in time. . . .

However, [MPIC's chiropractor] took a different view regarding causation. He indicated that:

> The conditions diagnosed by [Appellant's chiropractor] are common in the general population, and are known to develop both within and outside the context of a traumatic injury. Given the absence of a close temporal or traumatic link, . . . it is likely that these conditions are of idiopathic (occurring without known cause) origin.

A second review conducted by [MPIC's doctor] regarding physiotherapy for the knee, concluded that the degenerative changes to the right knee were not, on a balance of probability, accident-related, although if a meniscal tear was found to be the cause of the Appellant's symptoms, the motor vehicle accident was "a possible cause for a meniscal tear".

Although [Appellant's doctor], in his report of June 17, 2004 indicated that both conditions were accident related, counsel for MPIC noted that [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2] concluded that the left shoulder problem was due to bursitis or tendonitis or a combination of both and possibly from some AC joint arthritis, while the right knee pain was secondary to degenerative arthritis and not a meniscal tear.

Counsel for MPIC also reviewed the evidence of [Appellant's doctor] which indicated that the medications in question were unlikely to be related to the accident.

Counsel for MPIC submitted that the evidence was not clear that the left shoulder and right knee problems were caused by the accident. Although he acknowledged that it was certainly possible that the accident contributed to symptoms in those two (2) areas, there was no compelling evidence to support the notion that chiropractic treatment was medically required to address those symptoms. He noted that as one of the hallmarks of "medically required" treatment is that it is likely to or expected to result in a resolution of the condition being treated, that apart from [Appellant's chiropractor], no health care professional involved in the matter has supported the need for chiropractic treatments in relation to the left shoulder or the right knee.

With respect to the five (5) prescription medications in question, counsel for MPIC submitted that the prescribing physician himself ([Appellant's doctor]) was unable to draw the requisite causal connection between the accident and the ongoing need for the medications.

Accordingly, he submitted the appeal should be dismissed.

Discussion

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:

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;
>
> **Medication, dressings and other medical supplies**
> **38** The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

The onus is on the Appellant to show, on a balance of probabilities, that the treatment and medication in question are medically required as a result of the motor vehicle accident.

As was recognized by counsel for MPIC, the medical opinions are divided as to whether the Appellant's right shoulder problems and knee problems were caused by the motor vehicle accident. A causal connection was recognized as being probable by [MPIC's doctor], and was also accepted by [Appellant's chiropractor] and [Appellant's doctor], two of the Appellant's caregivers.

[MPIC's chiropractor] did not accept this causal connection, and reports from [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2] suggested that these difficulties were related to bursitis, tendonitis or arthritis.

Although [MPIC's doctor] believed it was "possible" that the accident had caused a meniscal tear to the Appellant's knee, this was not accepted by the orthopedic specialists, [Appellant's orthopedic specialist #1] and [Appellant's orthopedic specialist #2], who found that this pain was secondary to degenerative arthritis versus a meniscal tear. Accordingly, the Commission finds that the Appellant has not established, on a balance of probabilities, that his right knee condition was caused by the accident rather than by degenerative arthritis.

In regard to the Appellant's left shoulder problems, there is sufficient medical opinion, from [Appellant's doctor] and [Appellant's chiropractor], and also from [MPIC's doctor], that there is a medically probable relationship between the accident and the Appellant's left shoulder dysfunction.

Accordingly, the Commission accepts that there was a causal relationship between the Appellant's shoulder problems and the motor vehicle accident.

Although counsel for MPIC took the position that chiropractic treatment was not medically required for the Appellant's shoulder difficulties, there is a discrepancy in medical opinion on this point. [Appellant's chiropractor] recommended further treatment and the Appellant testified that about after about a month and a half (1 ½), this resulted in the shoulder healing. [Appellant's doctor] did not believe further chiropractic treatment would assist. [MPIC's doctor], while noting that the condition tends to run its course over a period of one (1) to two (2) years with or without treatment, addressed symptomatic management. He stated:

> In my opinion, manual therapy to the shoulder would be reasonable if it is associated with improved symptoms at this point in time.

The evidence of the Appellant confirmed that the continued treatment did in fact result in improved symptoms. Accordingly, the Commission finds that, on a balance of probabilities, the Appellant has submitted sufficient evidence, supported both by [Appellant's chiropractor] and [MPIC's doctor], that further chiropractic treatment beyond April 23, 2004 was medically required for the treatment of his shoulder problems for approximately another month and a half.

The Appellant testified that [Appellant's chiropractor] submitted an invoice for chiropractic

treatment to MPIC, but coverage was denied and the Appellant paid for the treatment out of his own pocket. The Commission finds that the Appellant should be reimbursed, with interest, for any chiropractic treatment to his shoulder for which he paid over the course of the month and a half after April 23, 2004. The Commission finds that the decision of the Internal Review Officer on this point was in error, and the foregoing decision will be substituted.

In regard to the prescription medications in question, the Commission finds that the Appellant has failed to meet the onus of establishing, on a balance of probabilities, that there was a causal relationship between the ongoing use of this medication and the motor vehicle accident. The Commission agrees with counsel for MPIC that even the prescribing physician did not believe that there was a connection between the continued use of these medications and the motor vehicle accident. Accordingly, the Appellant's appeal regarding entitlement to funding for prescription medications is therefore dismissed and the decision of the Internal Review Officer is confirmed on this point.

Dated at Winnipeg this 6th day of September, 2007.

LAURA DIAMOND