

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-10-079**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Loretta Ross

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

HEARING DATE: July 5, 2011

ISSUE(S): Entitlement to reimbursement of medication expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 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 [text deleted] was involved in a motor vehicle accident on April 24, 2008. As a result of that accident, the Appellant complained of injuries to his right side, neck, shoulders and arms. 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. The Appellant is appealing the Internal Review Decision dated March 25, 2010, with respect to his entitlement to reimbursement of expenses for the medication Lenoltec #3 (Tylenol #3).

On January 26, 2010, MPIC's case manager issued a decision which advised as follows:

Your medical information on file has been reviewed by our Health Care Services Team (enclosed). The medical information does not support the ongoing use of Lenoltec and Triamcinolone injections as being related to your injuries sustained in your motor vehicle accident. Therefore, there is no further funding under the Personal Injury Protection Plan (PIPP).

The Appellant sought an Internal Review of that decision. In a decision dated March 25, 2010, 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 medical information on the Appellant's file was clear that the use of Lenoltec was not medically required as a result of his accident related injuries.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of his expenses for the medication Lenoltec.

Relevant Legislation:

Section 136(1) 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 38 of Manitoba Regulation 40/94 provides that:

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.

Appellant's Submission:

The Appellant submits that as a result of the injuries he sustained in the motor vehicle accident of April 24, 2008, he has continued to require the use of Tylenol 3 medication for pain control. The Appellant contends that although he did use Tylenol 3's for pain control prior to the motor vehicle accident, his usage has greatly increased following the motor vehicle accident. At the hearing, the Appellant testified that he used the Tylenol 3 medication to help control the pain in his neck and shoulders which resulted from the motor vehicle accident of April 24, 2008. The Appellant also testified that he takes Tylenol 3's in the evening before he goes to bed because of his shoulder pain in order to allow him to sleep. He maintains that he has decreased his use of Tylenol 3's since the accident and will also use Tylenol extra strength tablets as a method of pain control. The Appellant submits that he uses the Tylenol 3 medication in order to treat his shoulder and neck pain resulting from the motor vehicle accident and therefore he should be entitled to reimbursement of those expenses.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's ongoing use of Tylenol 3 is not related to his motor vehicle accident injuries. She maintains that the Appellant would require the use of the Tylenol 3 medication even if not for the accident of April 24, 2008. Counsel for MPIC contends that the Appellant used Tylenol 3's as a method of pain control prior to the motor vehicle accident and that his ongoing requirement for Tylenol 3's now relates to his pre-existing osteoarthritis and rheumatoid arthritis rather than any motor vehicle accident-related injuries. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for his expenses

for Tylenol 3 medication. She submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated March 25, 2010 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 is entitled to reimbursement of expenses for the medication Lenoltec #3.

Reasons for Decision:

The Commission finds that the Appellant has established, on a balance of probabilities, that his requirement for the medication Lenoltec is related to his motor vehicle accident injuries, specifically his shoulder and neck pain. The Commission notes the report of [Appellant's Rheumatologist], dated July 2, 2010. In that report, [Appellant's Rheumatologist] comments as follows:

His shoulder issues clearly worsened after the motor vehicle accident. Reviewing the MRI from February 16th, 2010, there is no evidence for active rheumatoid arthritis and most of the significant changes were massive tear of the supraspinatus and infraspinatus, with muscle atrophy, as well as a torn biceps tendon. There was osteoarthritis involving the AC joint bilaterally. His biceps tendon was torn on the right and there was a tendinopathy on the left. Certainly, these changes could have been related to the motor vehicle accident, since they did not appear to be an issue previous to this. Unfortunately, [the Appellant] is not a surgical candidate and conservative measures will be continued, including as required injections, as well as anti-inflammatories and physiotherapy as required.

Relying upon [Appellant's Rheumatologist's] report, the Commission finds that the Appellant's shoulder complaints were exacerbated following the motor vehicle accident. We also note that in an interdepartmental memorandum dated September 14, 2010, [MPIC's Doctor], Medical Consultant to MPIC's Health Care Services team opined that:

The reviewed documentation supports that post-motor vehicle collision, the claimant had an aggravation of pain associated with longstanding arthritic pathology affecting his right shoulder. In my opinion, it would be reasonable to support the periodic right shoulder injections that have occurred to date. If the claimant does require follow-up for his right shoulder, with his rheumatologist, and if he is seeking compensation for treatment, a progress report from [Appellant's Rheumatologist] may assist in addressing whether causality is ongoing.

[MPIC's Doctor] has recognized that the motor vehicle accident caused an aggravation of the Appellant's shoulder pain and has supported funding for Triamcinolone injections for the Appellant's right shoulder. Based upon the Appellant's testimony and the medical reports on the file, we find that, on a balance of probabilities, the Appellant's shoulder and neck pain is causally related to the motor vehicle accident of April 24, 2008. As a result, we find that the Appellant's ongoing usage of the Lenoltec medication was required for a medical reason resulting from the motor vehicle accident.

Accordingly, the Commission finds that the Appellant is entitled to reimbursement of ongoing expenses for the medication Lenoltec. As a result, the Appellant's appeal is allowed and the Internal Review Decision dated March 25, 2010 is hereby rescinded.

Dated at Winnipeg this 12th day of August, 2011.

YVONNE TAVARES

NEIL COHEN

LORETTA ROSS