

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-19**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], was not present at the hearing; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

HEARING DATE: May 27, 2008

ISSUE(S): Whether the Appellant is entitled to further funding for physiotherapy treatments

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

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The appeal hearing in this matter was scheduled to commence on May 27, 2008 at 9:30 a.m. The Appellant, [text deleted], did not attend at that time.

Filed in these proceedings is a letter dated January 31, 2008 from the Director of Appeals to [the Appellant]. In this letter, the Director of Appeals describes her attempts to contact the Appellant following the Commission's receipt of an e-mail from the Appellant advising that she wished to withdraw her appeal. The Commission had made numerous attempts to obtain a signed Notice of Withdrawal from the Appellant but had been unsuccessful in this regard. The Director of

Appeals advised the Appellant that the Commission would be proceeding with an appeal hearing to deal with her appeal. The Appellant was advised that if she failed to appear or to be represented at the hearing the Commission may proceed with the hearing and render its decision or, alternatively, may dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

The Commission issued a Notice of Hearing dated February 27, 2008 to the Appellant and to MPIC's legal counsel which fixed the date for the appeal hearing for May 27, 2008 at 9:30 a.m. at the Commission's Offices in Winnipeg. In this Notice of Hearing the Commission stated that:

1. Should either party fail to appear or be represented at the hearing the Commission may proceed with the hearing and render its decision.
2. Alternatively, the Commission may dismiss the appeal, adjourn the hearing to a new date or take such further steps as it deemed appropriate.

The Commission was advised by the Commissioners' Secretary that a Notice of Hearing dated February 27, 2008 (a copy of which is attached hereto and marked Exhibit A) in respect of this appeal was forwarded by Canada Post Xpresspost to the Appellant's address at [text deleted], being the address of the Appellant as set out in her Notice of Appeal. The Commissioners' Secretary further advised the Commission that the Commission received a print-out form from Canada Post which indicated that on March 15, 2008 the Notice of Appeal was successfully delivered to the Appellant.

When the Appellant did not appear at the hearing scheduled for May 27, 2008, a member of the Commission support staff telephoned the Appellant at her workplace. The Appellant advised that she would not be attending or participating in the hearing.

When the Appellant did not appear at the scheduled hearing, the Commission reviewed the documents on file and determined that the Appellant had been properly served with a Notice of Hearing in accordance with the provisions of the MPIC Act. As a result, the Commission decided to proceed with the appeal hearing.

The Commission reviewed the Appellant's Application for Review of injury claim decision dated June 9, 2003. The Appellant stated:

I am requesting a review of the decision on May 06, 2003, which has cut off my physiotherapy compensation payments.

The injuries I am suffering are clearly as a result of my car accident. I am only asking for compensation for treatment of these injuries. I have seen several doctors, and they are all submitting letters on my behalf.

The Commission also reviewed the Appellant's Notice of Appeal dated January 2, 2004. She stated:

The decision made by MPI is based on the belief that my injuries are not from my accident. This is based on the type of injury I have sustained. It is an on going problem and MPI does not want to deal with it.

MPIC's legal counsel provided the Commission with a Submission (a copy of which is attached hereto and marked Exhibit B). She reviewed her written submission and submitted that the Internal Review Officer was correct in determining that the Appellant had not established, on a balance of probabilities, that there was a causal relationship between the Appellant's headaches and the motor vehicle accident. She further submitted that:

1. MPIC had correctly determined, pursuant to Section 136(1)(a) of the MPIC Act that MPIC was not required to reimburse the Appellant for any physiotherapy expenses.

2. The Commission should confirm the decision of the Internal Review Officer dated November 27, 2003 and dismiss the Appellant's appeal.

Decision

The Commission, after considering the submission of MPIC's legal counsel, and upon examination of the documentary evidence filed in the appeal proceedings, finds that the Appellant has failed to establish, on a balance of probabilities, that MPIC erred in failing to provide her with funding for further physiotherapy treatments pursuant to Section 136(a) of the MPIC Act. The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated November 27, 2003.

Dated at Winnipeg this 16th day of June, 2008.

LAURA DIAMOND