

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-120**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Mr. Tom Strutt
the Appellant, [text deleted], appeared in person

HEARING DATE: February 4th, 1998

ISSUE(S): Whether victim entitled to continuing chiropractic care at
insurer's expense.

RELEVANT SECTIONS: Section 136(1) of the MPIC Act ('the Act') and Section 5 of
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

[Text deleted], the Appellant, was involved in a motor vehicle accident on May 12th of 1995. Her vehicle was travelling northbound on [text deleted], in fairly heavy traffic on an icy road. An oncoming vehicle entered her lane of travel, struck the two vehicles in front of hers and, although she tried to veer off to the right in order to avoid a collision, her car came to a stop in a pile of mud and her vehicle was struck in the left rear fender. On May 26th of that year

she consulted [text deleted], the chiropractor by whom she had been treated since December 23rd, 1991 for injuries sustained in an earlier automobile accident on November 19th of 1990. Prior to consulting [Appellant's chiropractor #1] in 1991, [the Appellant] had consulted her family physician, [text deleted] who, after initially feeling that no treatment was required, referred her for a short course of physiotherapy. She had therefore not consulted [Appellant's chiropractor #1] until some thirteen months after her first accident. In that earlier accident she had sustained soft tissue injuries which apparently resulted in headaches, episodes of neck pain and low back pain, aggravated by the demands of her daily activities and, in particular, her work as a [text deleted] teacher in the [text deleted]. [Appellant's chiropractor #1] reported that, prior to her automobile collision of May 12th, 1995, the Appellant was still experiencing occasional neck pain resulting from sitting, standing, reading, computer work, writing and extended periods of neck extension; she was, he said, also still suffering from what he calls "low back exacerbations" as a result of prolonged sitting or standing, carrying packages, as well as house and yard work. Prior to her accident of May 12th, 1995, the Appellant was apparently being treated by [Appellant's chiropractor #1] up to four times per month.

The Appellant felt, and [Appellant's chiropractor #1] confirms, that her accident of May 12th, 1995 caused a definite setback in her progress. She began a renewed course of chiropractic manipulations, starting at a rate of three times per week for five weeks; during the summer months she received chiropractic treatments from a [Appellant's chiropractor #2] in [text deleted], at a frequency of about once per month. In September of 1995, when she returned to the care of [Appellant's chiropractor #1] in [text deleted] and to the more stressful surroundings of her

work at the [text deleted], frequency was resumed at once or twice per week for approximately six weeks, reducing to about once every five days by October 25th of 1995. The May 12th, 1995, accident had resulted in what [Appellant's chiropractor #1] described, in his initial report to MPIC, as 'acute traumatic flexion/extension injury causing cervico-thoracic and pelvic subluxation combined with associated myalgia". He prescribed specific spinal adjustments as the treatment of choice.

By October 11th of 1995, [Appellant's chiropractor #1], while reporting that the Appellant was capable of resuming her main occupation (indeed, she had resumed that occupation from the beginning of the school term) noted that she was still suffering episodic pain related to any prolonged periods of sitting, standing and cervical flexion/extension.

It should be noted that these are essentially the same kinds of complaint, under almost identical circumstances, as those described by [Appellant's chiropractor #1] as part of the Appellant's experience immediately prior to her May 12th, 1995 accident, but the Appellant emphasizes that, while the locations and kinds of complaint are consistent, the degree was different - that is, the amount of pain and discomfort that she felt after her 1995 accident was much more severe.

By January 27th, 1996, the Appellant, in a letter addressed to her adjuster at MPIC, said in part "...I am encouraged by the progress in my treatment with [Appellant's chiropractor #1]. My headaches are less frequent and less severe than at the beginning of the summer. My

upper neck and lower back are improving, but continue to be triggered by certain everyday activities (e.g.: driving, leaning/bending in certain ways, sitting/standing for long periods of time). I continue to do stretching exercises and walking with some regularity. I am looking forward to continued improvement and less frequent trips to the chiropractor in the future."

By April 19th of 1996, [Appellant's chiropractor #1] reports that the frequency of treatments for the Appellant had been reduced to once per week, although she still experienced neck stiffness and right hip discomfort after prolonged periods of sitting, standing and neck flexion.

X-rays taken on May 26th of 1995 and July 3rd, 1996 disclosed no abnormalities of any consequence.

In early November of 1996, since the Appellant had, by that time, received approximately 200 chiropractic treatments between the date of her first motor vehicle accident and that of the accident now under review, and had received something in excess of a further 100 chiropractic treatments following her May 12th, 1995 accident, MPIC referred her to a chiropractic consultant of its own choosing, [text deleted]. The Appellant was examined by [MPIC's chiropractor] on November 19th of 1996 and his lengthy report of January 15th, 1997 forms part of the file submitted to us. He expressed the view that the Appellant had sustained no permanent impairment nor disability and, by November 19th of 1996, had recovered from the injuries sustained in her May 12th of 1995 accident. He expressed the view that [the Appellant]

did not require any ongoing manipulative therapy and that the treatment she was receiving by that time should properly be categorized as maintenance and was not related to the 1995 accident.

Based, in large part, upon [MPIC's chiropractor's] examination and report, MPIC wrote to the Appellant under date of February 3rd, 1997, giving notice of the Corporation's intent to cease paying for chiropractic treatments as of February 15th, 1997.

THE ISSUE:

The issue, here, is whether the Appellant had reached pre-accident status by the time MPIC terminated its payments for her chiropractic treatments. It is always difficult for a panel of lay persons to gauge these matters, since both we and the chiropractic caregiver have only the subjective evidence of the patient's symptoms to guide us by the time the patient is well on her way toward recovery. However, in addition to [MPIC's chiropractor's] report we can rely, to some fair extent, upon the frequency of chiropractic treatments as a guide. In that context, we note from the records provided by [Appellant's chiropractor #1's] office, that the Appellant received no chiropractic treatments in January of 1997, two in February, and four in each of March, April and May; she received three treatments in June, one in July and one in August.

This seems to follow a pattern that had prevailed prior to her accident, with the need for chiropractic adjustments increasing with stress related to the demands of her work - for example, during school exam time.

[Appellant's chiropractor #1's] report of November 30th, 1994, related to the Appellant's earlier accident, only anticipated an eventual recovery of 80 to 90%. The Appellant herself acknowledges that [Appellant's chiropractor #1] never did hold out the probability of a complete cure following her 1990 motor vehicle accident; rather, he has told her that she is likely to have some residual problems with which she must simply learn to live. The frequency of [the Appellant's] treatments by February of 1997 had already reached a level approximately equal to that which had prevailed in February and the succeeding months of 1994. As appears from the following table:

Frequency of Treatments

Month	1994	1997
February	4	2
March	5	4
April	4	4
May	4	4
June	5	3

It would be only fair to add that the Commission was most favourably impressed with [the Appellant's] evidence, which was given in a straight-forward, non-exaggerated manner. It is clear that some of her earlier physical problems were renewed by the later collision. However, by February of 1997, 21 months after her second accident, the strong balance of probabilities favours a finding that she had recovered from her second accident and that the residual pains from which she was undoubtedly suffering were attributable to a combination of her first accident and the fluctuating degrees of occupational stress.

DISPOSITION:

It follows, therefore, that this appeal must be denied and the decision of MPIC's acting review officer of July 15th, 1997 confirmed.

Dated at Winnipeg this 18th day of February 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED