

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-97-82

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Keith Addison, [Text deleted], the Appellant, appeared in person assisted by her husband [text deleted]

HEARING DATE: February 10th, 1998

ISSUE(S): Whether Appellant entitled to chiropractic care.

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

The present appeal relates to an accident in which the Appellant, [text deleted], was involved in December of 1995. She had been the victim of an earlier motor vehicle accident on June 3rd of 1991, when her vehicle was rear-ended by two others; she sustained injury to the lower back which resulted in low back pain with occasional radiation to the left buttock and thigh. Since those symptoms seemed to be persistent, [the Appellant] was referred by her general

practitioner, [text deleted], to [text deleted], an orthopedic specialist, who saw her in February of 1994. While his examination of the Appellant produced almost entirely normal results, [Appellant's orthopedic specialist] felt that [the Appellant] might be suffering from a soft tissue myofascial syndrome, or mechanical pain syndrome from facets or deep ligamentous structures. He referred her to the [text deleted] Clinic at [hospital] in [text deleted], where she was given certain injections; she continued with physiotherapy for some time thereafter.

On December 15th, 1995, while still apparently suffering from some residual discomfort as a result of her 1991 accident, [the Appellant] was again involved in a motor vehicle accident. She was driving east on [text deleted] when another car cut in front of her, striking her vehicle and pushing it into the median, from which her car rebounded back across four traffic lanes over icy roads. That collision resulted in pain in the left side of her neck, difficulty in lateral bending and rotation, numbness in both hands and arms, particularly in the morning and, in particular, frequent and severe headaches which have subsequently been described by members of the medical and chiropractic professions as migraines.

Following that second accident, the Appellant was initially referred by her general practitioner, [text deleted], to physiotherapy, which she continued for approximately a year. That, together with a membership in a gymnasium, was paid for by MPIC. During that same period, [the Appellant] was also receiving massage therapy at her own expense. She testified that, despite her own best efforts and those of her therapists, these forms of treatment were of minimal benefit and that, in particular, the headaches and neck pains that she was experiencing were becoming more severe rather than improving.

She was referred, by her MPIC adjuster, to [Appellant's orthopedic specialist] for a further and independent medical examination. [Appellant's orthopedic specialist] found no objective evidence of continued disability specifically related to the accident of December 15th, 1995, although he does report that her recovery from that accident was not yet complete as of October 29th of 1996, the date of his examination. [Appellant's doctor #1] and [Appellant's orthopedic specialist] both report that [the Appellant] was not disabled from an occupational point of view - she was then, and still is, employed by the [text deleted], coordinating courses for trainees, organizing lectures and, in general, dividing her time between sedentary work and work of a more strenuous physical nature. [The Appellant] concurs in that view.

On the 18th of February 1997, at the urging of her husband, [the Appellant] attended upon [text deleted], a doctor of chiropractic, because the neck and head pains from which she had continued to suffer since her 1995 accident had become more severe and more frequent. She testified that the course of treatments that she received from [Appellant's chiropractor] had significantly decreased both the frequency and the severity of her migraine headaches. The Appellant was at great pains to emphasize that these headaches from which she has suffered since her 1995 accident are of a completely different kind from the headaches to which she had been subjected in previous years. Those early ones, she testified, were of a general, common or garden nature, whereas the more recent problems were localized over the left eye and the left side of her head, radiating into the left side of her neck. She described them as 'excruciating' and testified that the treatments she had been receiving from [Appellant's chiropractor] were really the first and only form of relief that she had been able to obtain. These migraine-type headaches were now no more frequent than about twice per month and less debilitating.

Since commencing to see [Appellant's chiropractor], [the Appellant] has had 56 treatments from him up to the date of this Decision. Those treatments, which started at a frequency of 4 per week and steadily decreased to about once every two weeks, certainly seem to have achieved the desired results to a point at which, in our view, she should have attained pre-accident status by the end of June of 1998, if not sooner. She is currently receiving treatments from [Appellant's chiropractor] approximately twice per month - once per week if the headaches flare up.

Although [Appellant's orthopedic specialist], [Appellant's doctor #2] (the general practitioner who took over her care from [Appellant's doctor #1]) and [text deleted] (the neurologist to whom she was referred by [Appellant's doctor #2]) are all unable to describe any specific, objective signs that would point to the causes of [the Appellant's] neck and head pains, there is no evidence that contradicts that of [the Appellant], which we found to be undramatic and convincing. We are satisfied upon a reasonable balance of probabilities including, but not limited to, the temporal relationship between the accident and the onset of her migraines, that those pains are secondary to the motor vehicle accident. We are also of the view that, by underwriting the cost of her chiropractic treatments from February 18th, 1997 to June 30th, 1998, MPIC will have fulfilled its obligations to [the Appellant] and will have restored her, as best it can, to pre-accident condition. Our willingness to have [the Appellant's] treatments paid for until the end of June presupposes, of course, that the frequency of those treatments will, at the very most, be no greater than those which have prevailed during the six weeks prior to the date of these Reasons; the object of the exercise, patently, is to decrease their frequency.

DISPOSITION:

We therefore find that the Appellant, [text deleted], is entitled to be reimbursed for the cost of her chiropractic treatments from [Appellant's chiropractor] from February 18th, 1997 to date, and to have her future chiropractic treatments from [Appellant's chiropractor] paid for by the respondent Corporation up to June 30th of 1998, at a frequency no greater than that which has prevailed between January 1st and February 15th of 1998.

Dated at Winnipeg this 19th day of February 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LESLIE COX