Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-52

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. Dean Scalletta** **[Text deleted], the appellant, appeared in person**
HEARING DATE:	**September 4, 1998**
ISSUE:	**Whether Chiropractic treatments were properly terminated**

RELEVANT SECTIONS: 136 (1) of the MPIC Act and Sections 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 FACTS:

[The Appellant] was involved in a motor vehicle accident ('MVA') on July 5, 1996. On July 10, 1996 [the Appellant] was examined by her chiropractor, [text deleted], who diagnosed a Grade 2 Whiplash Associated Disorder type of injury with the following signs: cervicogenic headaches, lumbar pains, upper cervical pain and restriction, a bruised on the right knee and lateral right thigh. He also noted that at the time of this accident she had been receiving ongoing care for her cervical and lumbar spine as a result of an MVA on November 19, 1994.

He indicated that she could "work with modified duties" with restricted flexion and lifting. He then commenced treatments, one to two times per week.

MPIC, upon notification of the MVA, closed her file from the November 19, 1994 accident and combined all details together in the newly opened file for the July 5, 1996 accident.

[The Appellant] testified that she was still receiving one chiropractic treatment per week following her 1994 accident up to her July 5, 1996 MVA. After this second accident, treatments were increased to three times per week for a two week period, and then reduced to once a week thereafter. She stated that her additional treatments were for a new injury to her knee and not for injuries caused by the previous accident; [Appellant's chiropractor #1] had provided ultrasound treatments for her knee and leg as well as continuing adjustments to her neck and back.

On October 30, 1996, [the Appellant] was treated by [Appellant's doctor] of the [text deleted] who prescribed medication that eliminated the inflammation in her knee. She was referred for physiotherapy for strengthening exercises. [The Appellant] told her adjuster that her knee felt better and that her ability to walk with less pain had improved.

In his report of May 18, 1997, [Appellant's chiropractor #1] reported that [the Appellant's] X-rays on April 21, 1997 showed pre-existing multiple discopathies with degenerative osteoarthritis. He indicated that she had full function with symptoms, that she could work full duties and that she could now maintain her usual activities.

[Text deleted], a chiropractic consultant for MPIC, had reviewed [the Appellant] file on June 3, 1997 and approved a possible six-month treatment plan. [the Appellant's] adjuster relayed to [Appellant's chiropractor #1] that her treatment plan had a possible time frame of six months. [Appellant's chiropractor #1] replied that in reviewing [the Appellant's] pre-existing condition he felt that her treatments would likely conclude by October 30, 1997. A letter to [Appellant's chiropractor #1] from MPIC, dated June 12, outlined the discussion that treatment could proceed for six months if needed and restated [Appellant's chiropractor #1's] opinion about the expected discharge date of October 30, 1997. [Appellant's chiropractor #1] was also advised to notify MPIC in the event that the plan terminated earlier than October 30 or required an extension beyond that date.

[The Appellant] received a letter from MPI, on June 12, 1997, stating that her treatments would be terminated on October 30, 1997, unless there were clinical factors necessitating an extension of her treatment plan. She discussed the letter with [Appellant's chiropractor #1], who told her that she was improving and should be able to complete her treatment program by that date. [The Appellant] believed she required further treatment but [Appellant's chiropractor #1] told her that he would not lie to MPIC when she did not require further treatments as a result of the accident.

[The Appellant] stated that because of the pain in her leg, back and neck, she still required treatments and continued with [Appellant's chiropractor #1] for one treatment a week until March 1998. She said that, on the advice of her children, she switched to [Appellant's chiropractor #2] who continues to treat her twice per month with manipulations to her lower spine to relieve her knee pain. [The Appellant] submits that the fact that [Appellant's chiropractor #1], and now [Appellant's chiropractor #2], continued to provide treatments after the termination date, proves that she needs treatments.

In order to ensure that her Notice of Appeal would be timely filed, and rather than wait until October to determine her condition and the possible need for an extension of her chiropractic treatments, [the Appellant] filed an appeal on August 8, 1997, indicating that she did not believe that payment for her treatments should be terminated.

[Appellant's chiropractor #1's] opinion was that, by October 30th, 1997, [the Appellant] had reached her pre-accident status and had returned to the frequency of one treatment per week that she had been receiving prior to the accident. In that an application for extended medical care was not, in [Appellant's chiropractor #1's] view, required and considering the natural history of such an injury, MPIC ceased paying for [the Appellant's] chiropractic treatments on October 30, 1997.

The issue before us is whether or not [the Appellant] had, in fact, reached her pre-accident status by October 30, 1997 and whether the problems of which [the Appellant] complains after

that date are attributable to either of her motor vehicle accidents of July 1996 and November, 1994.

THE LAW:

The relevant section of the M.P.I.C. Act is Section 136(1), which reads, in part, as follows:

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 care; .....

(d) such other expenses as may be prescribed by regulation."

In conjunction with that section of the Act, reference must be made to Section 5 of Regulation 40/94, which reads in part as follows:

"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) <u>When care is medically required</u> and dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;....."

[The Appellant] has received chiropractic treatments over a period of 20 months for injuries

from her 1994 accident as well as treatments over 15 months after the 1996 accident. Expenses are paid when care is medically required and dispensed by the victim's caregiver and in this case it was determined by [the Appellant's] chiropractor, [Appellant's chiropractor #1] that her care, medically required because of the accident, was no longer required after October 30, 1997.

There is no objective medical evidence of any nature suggesting that further chiropractic treatments were required beyond October 30, 1997 for any injuries arising from the motor vehicle accident on July 5, 1996. [Appellant's chiropractor #1] is in the best position to diagnose [the Appellant's] condition, having treated her since June 1993 for a 1990 MVA and for her injuries from both the 1994 and the 1996 accidents. X-Rays taken on May 9, 1994, prior to [the Appellant's] November, 1994 accident, show that even then she had a pre-existing condition of discopathy, osteoarthritic changes and altered cervical lordosis. [Appellant's chiropractor #1] confirmed that prior condition very clearly, and was of the view that, by October 30, 1997, [the Appellant] had received all necessary treatments related to her 1996 accident

We do not doubt that the appellant is suffering from the problems of which she complains. However, we find that, on a balance of probabilities, any of those problems existing after October 30,1997 were problems that pre-existed May 9, 1994 and were not caused by her MVAs of November, 1994 or July, 1996.

Disposition:

For the foregoing reasons, MPIC'S Acting Review Officer's decision of March 24, 1998 is confirmed and the Appeal is dismissed.

Dated at Winnipeg this 21st day of September 1998.

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J. F. REEH TAYLOR, Q.C.

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CHARLES T. BIRT, Q.C.

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L. J. GOODSPEED