Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-16

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mr. Charles T. Birt, Q.C.** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Keith Addison;** **the Appellant, [text deleted], was represented by [Appellant's representative]**
HEARING DATE:	**April 20th, 1999**
ISSUE(S):	**Whether Appellant entitled to reimbursement for continued chiropractic care.**
RELEVANT SECTIONS:	**Section 136 of the MPIC Act and Section 5 of Manitoba Regulation No. 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 accident:

At the time of her motor vehicle accident on January 27th, 1995, [the Appellant], who had just turned [text deleted] years of age, was a self-employed partner in a [text deleted] shop in [text deleted]. She was also a qualified psychiatric nurse. Her vehicle appears to have sustained a heavy impact on the driver's side by another vehicle that was running a red light - the Appellant testified that her car was indented to an extent between eighteen inches and two feet. The vehicle was described by [the Appellant's] adjuster as "a constructive total loss". [the

Appellant], herself, appears to have sustained a fractured sixth rib, a bruised spleen, multiple bruising including a small pulmonary contusion, and a Grade 2 Whiplash Associated Disorder. She was detained in [hospital] for a couple of days and confined to bed for about a week following her return home.

[the Appellant's] thoracic spine, chest and abdomen were X-rayed at [hospital] on the date of her accident. The X-rays revealed a recent fracture at the lateral aspect of the left sixth rib but, otherwise, no perforation, no obstruction, no pleural nor other abnormality.

[Appellant's doctor's] reports:

[The Appellant's] primary caregiver was her family physician, [text deleted], who felt that the Appellant "should be able to gradually resume activities in about three to four weeks post-accident". There is no question that the Appellant was in substantial pain during those first few weeks; [Appellant's doctor] prescribed Demerol. By February 24th, [Appellant's doctor] was reporting that, although [the Appellant] had shown improvement in her pain, there was still marked spasm of the rhomboid muscle. She prescribed massage therapy to deal with the rhomboid spasm and with a view to increased mobilization. She felt that [the Appellant] would gradually increase her working hours over the following two weeks and should be able to return to work on a full-time basis by about the 10th of March, 1995.

On April 25th, [Appellant's doctor] reported that [the Appellant] was making slow progress with her pain, and prescribed physiotherapy along with Amitriptyline and extra strength Tylenol to help the Appellant cope with her discomfort. [Appellant's doctor] notes that [the Appellant] was "back at work full-time", but with no heavy lifting.

By mid-June of 1995 [Appellant's doctor] expressed the view that [the Appellant] was capable of resuming her main occupation which, at that time, was in retail sales, that her rib condition was progressing well but that she should still be taking massage therapy and reconditioning.

In October, 1995, while noting that [the Appellant] still experienced some discomfort in her upper back, [Appellant's doctor] was able to report her belief that the Appellant's back pain was progressing well, although she still appeared to need reconditioning, massage therapy, Tylenol and Amitriptyline.

In January, 1996, [Appellant's doctor] was suggesting a trial of acupuncture, in light of the Appellant's apparent unresponsiveness to other treatments. In the meantime, [Appellant's doctor] had referred the Appellant for physiotherapy to the [text deleted] Clinic, where she had been attending from the 6th of March 1995 until mid-January 1996. In all, she had received 61 physiotherapy treatments.

[Appellant's chiropractor's] initial reports:

[The Appellant's] last, relevant visit to [Appellant's doctor] occurred on January 22nd, 1996. Thereafter, [the Appellant] did not obtain, nor did she seek, any medical or paramedical care until, on August 14th, 1996, she presented herself at then [text deleted] complaining of severe upper and mid-thoracic costovertebral pain radiating into the shoulders and neck, causing constant, severe headaches. She also complained of lower back pain, radiating into the buttocks. Her treating practitioner was [Appellant's chiropractor] who, on December 12th, 1996, in response to a request from MPIC for a detailed treatment plan, recommended three chiropractic treatments per week for a minimum of 24 weeks, to be followed by treatments twice weekly for a

further 18 to 24 weeks, reducing again to once a week for another 24 weeks. [Appellant's chiropractor] said that, if all went well and there were no exacerbations or relapses, she anticipated [the Appellant] reaching maximum medical benefit at a minimum of two years post-onset of chiropractic treatments, which would take her to about August of 1998.

By the end of 1996, [the Appellant] had received 61 physiotherapy treatments. She had also received 41 chiropractic treatments between August 21st and December 30th, 1996, at an average frequency of once every two or three days, with the exception of one week in September and one week in November during which she appears to have managed without treatment.

[Independent chiropractor #1's] report:

On January 9th, 1997, MPIC referred [the Appellant] to [text deleted] for an independent chiropractic examination. [independent chiropractor #1] examined the Appellant's on January 22nd and expressed his opinion that [the Appellant's] temperomandibular joint problem, fibromyalgia and a radiculopathy at right L5 that he had detected, were not caused by the Appellant's motor vehicle accident. On the other hand, he did ascribe to that accident her continuing cervical dorsal sprain/strain with a Grade II Whiplash Associated Disorder ('WAD II') injury, cervicogenic headaches and left costochondral subluxations with sprain and strain. [independent chiropractor #1] added:

> The client has the following soft diagnoses: equivocal left sacroiliac fixation, equivocal right AC joint arthritis, possible left and right rotator cuff tendonitis, possible lumbosacral stenosis, and probable left L4 radiculopathy.

[independent chiropractor #1] recommended, amongst other things:

(a) a course of home-use cervical spine traction, with [the Appellant] being given a traction unit to take home and use on a daily basis for one to two months;
(b) a very light aerobics program;

(c) some exercises to strengthen the Appellant's abdominal flexors and obliques as well as her low back extensors and especially her quadratus lumborum;
(d) some resistance exercises (for example, theraband tubing) for her proximal hip flexors, extensors, abductors and adductors; and
(e) some rotator cuff exercises (e.g. proprioceptive neuromuscular exercises) as well as stretching exercises.
(f) a referral to [the Appellant's] physician to deal with any depression or sleep-related problems;
(g) the client should be given 'pelvic clock' (a variation of pelvic tilt);

(There is no evidence on file that any of these recommendations was ever passed along to [Appellant's chiropractor] nor, indeed, even to [the Appellant] until some time in August, 1997, if at all; in any event, none of them seems to have been adopted.)

[independent chiropractor #1] also expressed the view that the Appellant had sustained a Grade 2 Whiplash Associated Disorder and should be given a further three to four months of chiropractic treatment to address problems in the Appellant's cervical, cervico-thoracic and costochondral regions. His report was dated January 23rd, 1997. As a result of [independent chiropractor #1's] report, MPIC wrote to [the Appellant] on February 24th, 1997, to indicate that the insurer would only be responsible for ongoing chiropractic treatment up to June 28th, 1997.

Request for extended treatments

Some time in mid-April of 1997 the Appellant apparently twisted her back when diving into a swimming pool in the course of some 'aquasizes' that had been recommended by her chiropractor. As a result, [Appellant's chiropractor] recommended an extension of her treatment program, coupled with an increased frequency. The additional treatments recommended by [Appellant's chiropractor] would have amounted to about 50 additional adjustments, terminating in December, 1997. MPIC refused to pay for any treatments past June 28th, 1997.

Despite that decision by MPIC, [the Appellant] continued to attend upon [Appellant's chiropractor] at her own expense.

Internal Review.

On October 3rd, 1997, since [the Appellant] had applied for an internal review of her adjuster's decision, [Appellant's chiropractor] wrote a lengthy and detailed letter to MPIC's internal review officer in support of her contention that [the Appellant's] continuing, physical problems were a direct result of her motor vehicle accident and required continuing chiropractic treatments. [Appellant's chiropractor] makes the point, in that letter, that it had taken MPIC from August 21st, 1996 until the end of January, 1997, to accept the fact that [the Appellant] required chiropractic treatments - a delay that MPIC explains by noting that it was not until mid-December 1996, that MPIC received an actual treatment plan for the Appellant from [Appellant's chiropractor], giving rise to the referral to [independent chiropractor #1]. [Appellant's chiropractor's] letter of October 3rd, 1997 revealed, amongst other matters, that a subjective evaluation completed by [the Appellant] on September 29th, 1997 had shown that, at least in the Appellant's own perception:

(a) she saw herself with a severe disability of the neck;
(b) she was still experiencing severe headaches, although felt that these had decreased in frequency with chiropractic care;
(c) lifting, reading and work all caused increased neck pain;
(d) she still experienced slight difficulty in concentration and could only perform her regular work, but no more;
(e) driving a vehicle still caused moderate pain in her neck;
(f) all recreational activities were limited due to her neck pain, which she rated as seven on a scale of one to ten, with ten being excruciating pain;
(g) [The Appellant] felt that she had a 64% disability rating with respect to her lower back, indicative of a severe disability;
(h) she was experiencing moderate lower back pain, on a fluctuating basis, associated with leg and knee pain;
(i) walking and standing were limited due to her back pain;
(j) sleep was disturbed due to pain in her lower back and she rated her lower back pain as eight on a scale of one to ten, with ten being excruciating pain.

It must be added that [the Appellant] felt that her lower back pain was fluctuating but, overall, was definitely getting better.

[independent chiropractor #2's] report

MPIC's internal review officer also received a letter from [independent chiropractor #2], a chiropractor to whom [the Appellant] had been referred (presumably by [Appellant's chiropractor]) for an independent chiropractic examination on September 23rd, 1997. [independent chiropractor #2] diagnosed the Appellant as suffering from a traumatically induced cervical subluxation complex with attendant tortional sprain/strain, and associated myalgia, and cephalgia. He also found that the Appellant's lumbopelvic region was also subjected to a traumatically induced lumbosacral subluxation complex with an attendant tortional sprain/strain and associated myalgia. This, over time, in [independent chiropractor #2's] view, had created what appeared to be a chronic bilateral instability in the sacroiliac articulations with probable radicular changes stemming from the lumbar spine. There were attendant radicular changes into the upper and lower extremities, he said, with apparent discal involvement in both the lumbar and cervical regions.

[Independent chiropractor #2] expressed an opinion that prognosis for [the Appellant] was guarded to fair. It was readily apparent to him that the Appellant was still experiencing considerable difficulty on a daily basis although she appeared to be experiencing gradual improvement under care - this latter opinion could, of course, only have been based upon the Appellant's own view as related to him.

[MPIC's chiropractor's] report

MPIC referred [the Appellant's] file and, in particular, the two most recent reports from [independent chiropractor #1] and [independent chiropractor #2], to one of its own consultants, [MPIC's chiropractor], for further assessment. [MPIC's chiropractor] expressed the view that there had been minimal, if any, improvement in [the Appellant's] status since the reported exacerbation of June, 1997. (We believe [MPIC's chiropractor] was probably referring to the diving incident which took place in April, not in June, 1997.) He based his view upon the fact that, even in the interval between June and early October 1997, [the Appellant] still had an extremely high self-reported disability; [Appellant's chiropractor's] clinical examination of September 29th, 1997 had reported a multitude of pronounced physical findings, including visible muscle spasms, multi-site tenderness, muscular imbalance attributed to "cerebellar deficiencies" and "other multi-level neurological findings". [MPIC's chiropractor] felt that these findings did not reflect any material improvement from earlier reports.

[MPIC's chiropractor] also reviewed [independent chiropractor #2's] report and here, too, found substantial support for his position that chiropractic treatment had, for the most part, failed. [MPIC's chiropractor], referring to [independent chiropractor #2's] report, says in part:

> His ([independent chiropractor #2's]) findings as of September 23rd, 1997 paint a picture of an individual with ongoing pronounced loss of range of motion, demonstrable neurologic findings and multi-region severe pain reports. Given the length of time and treatment that this woman had undergone prior to [independent chiropractor #2's] examination, it would not appear that this report supports the efficacy of treatment being administered.

[MPIC's chiropractor] commented that failure of treatment is unavoidable in some cases and does not constitute a criticism of the treatment nor of the treatment provider. He was of the view that [the Appellant] had substantial indications of a somatoform pain disorder and, perhaps, chronic pain syndrome. He felt that the only therapeutic avenue that might be of benefit would

be an evaluation by a multi-disciplinary group, including psychological intervention for pain management.

MPIC's internal review officer wrote to [the Appellant] on January 15th, enclosing and agreeing with [MPIC's chiropractor]'s report and adopting his recommendations.

Multi-disciplinary assessment

[The Appellant] therefore attended at [rehab clinic] for a multi-disciplinary screening assessment on March 3rd, 1998, where she participated in physiotherapy, occupational therapy and psychological assessments. The findings of that group may, at the risk of oversimplification, be summarized this way:

- [The Appellant] was able to perform to a light level of functional capacities, despite her own perceived level of moderate disability
- she showed a non-functional standing tolerance
- she was physically deconditioned
- she had slightly decreased spinal mobility, associated muscle tightness and imbalance
- since [the Appellant] was currently receiving chiropractic care "which works well for her", it did not seem appropriate to involve her in a rehabilitation program
- however, she had become seriously deconditioned and her participation in lumbar stabilization classes twice weekly and aerobic pool program three times weekly was recommended, along with a detailed home stretching program
- from the viewpoint of [text deleted], clinical psychologist, she was felt to be a good candidate for rehabilitation with, perhaps, short term pain management counselling sessions.

DISCUSSION:

There is no doubt that [the Appellant's] accident was one of moderate severity. Her prior medical history, which included hypothyroidism, hyperlipidemia, hypertension, a knee injury compensated by Workers' Compensation Board in 1986 but still requiring the use of a knee brace, a number of visits to her physician over the years for low back pain, a past history of Meniere's Disease, a remote history of a prolapsed lumbar disk, a compression fracture of her lumbosacral spine in 1978, a meniscectomy of her left knee in 1986, as well as sundry other

surgical and medical problems of lesser relevance here - all of these factors would combine, to a greater or lesser degree, to delay her rate of recovery. Other factors, including [the Appellant's] quite substantial weight problem, and the fact that she appeared to glean little, if any, benefit from any of the treatments she received for the first eighteen months following her accident would, in our view, only serve further to retard her rate of progress.

At the same time, we have to ask ourselves whether, upon reviewing all of the chiropractic reports available to us, and in light of [the Appellant's] own evidence, the chiropractic treatments she has been receiving during the past year or more have really achieved very much for her.

It seems quite clear that the treatments received by the Appellant from [Appellant's chiropractor] enabled her to return to work as a psychiatric nurse at [text deleted] in or about the month of July, 1997. She started that work on a 'casual' basis - that is to say, she was on call but with no guaranteed hours and no benefits beyond her hourly rate of pay. Some time in September, 1998, after working for a few months as what is called a 0.4 (which is to say that she was guaranteed at least four, eight-hour shifts per fortnight, plus benefits) she was given a guarantee of seven shifts per fortnight on permanent staff basis. She testified that, had she been offered work at a 0.4 or even a 0.7 frequency back in July of 1997 she would have felt able to try it, at least. Ever since recommencing work at [text deleted] in July 1997 she has been performing all of the required duties of her position, including restraint of patients where necessary, medication, clothes changing, et cetera. If a full-time job became available, she would apply for it, she said.

[The Appellant] also testified that, having tried physiotherapy, massage therapy and acupuncture at the [text deleted] Clinic for about a year following her accident, she had quit attending at that

clinic altogether in early 1996 on the recommendation of her massage therapist since she appeared to be getting no better. In the meantime, she had started working part-time at her family's store and part-time as a psychiatric nurse at a [text deleted]. Her headaches and other, bodily pains became more difficult to cope with, causing her to seek help from [Appellant's chiropractor]. She started receiving chiropractic treatments three times per week for approximately the first six months, then twice per week for roughly another six months, and once per week thereafter. She testified that, since about the end of 1997, her visits to [text deleted] Chiropractic Centre had consisted of one hour of treatment from a massage therapist followed by approximately five minutes of chiropractic adjustment. For a day following each treatment, she testified, she felt fine and pain free with pretty good range of motion; the situation deteriorates during the following week. She felt that this situation had prevailed throughout 1998 and to date, but she felt that, by seeing [Appellant's chiropractor] regularly, she was able to maintain a reasonable functional level. [The Appellant] added that, despite the foregoing, "I've seen myself progress since the beginning of 1998; I've been able to add activities to my lifestyle, both at work and at home".

The nature of the 'exacerbation' caused by [the Appellant's] diving incident in April 1997 does not persuade us of the need for the additional and intensive chiropractic care suggested by [Appellant's chiropractor]. Indeed, the Appellant herself indicated that she was back to what we might call 'pre-dive condition' within about one month. [The Appellant] testified that she had entered the water on that occasion in her normal fashion, without attempting any unusual contortion, but that she had 'felt a kind of twisting' upon completing her dive.

DISPOSITION

We are not in a position to assess with any certainty the effectiveness of the chiropractic therapy that [the Appellant] has continued to receive from [Appellant's chiropractor]. It does appear, however, that the Appellant plateaued at or about the end of 1997. Since that time she has been attending at the chiropractic clinic once a week but, as noted above, 92% of that treatment consists of massage and slightly less than 8% represents actual, chiropractic treatment. We find that the additional activities that the Appellant has been able to add to her lifestyle are more likely the result of the natural history of her earlier problems than attributable to ongoing chiropractic care.

On the other hand, it does seem to us that MPIC was premature in terminating [the Appellant's] treatments on June 28th, 1997. Although she was able to return to work at about that same time, we are satisfied that she did continue to benefit from [Appellant's chiropractor's] treatments at least until the end of that year, by which point she had, on a reasonable balance of probabilities, reached maximum therapeutic benefit. She should therefore be reimbursed for the costs incurred for any chiropractic (as opposed to massage) treatments that she received between June 28th and December 31st, 1997. The massage therapy, not having been administered by a physician, chiropractor, athletic therapist nor physiotherapist, is not eligible for reimbursement.

Dated at Winnipeg this 26th day of April, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX