Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-73

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. Keith Addison** **[Text deleted], the appellant, appeared in person**
HEARING DATE:	**October 23rd, 1998**
ISSUE:	**Whether the Appellant is entitled to continued payments for chiropractic treatments.**
RELEVANT SECTIONS:	**Section 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 on December 14, 1994. The record indicates that the appellant was a passenger in a vehicle that was stopped for a pedestrian in a

cross-walk, when the vehicle was rear-ended. She was treated on the same day by her chiropractor [text deleted], who reported her injuries, as being a "mild to moderate whiplash syndrome with involvement of cervical, thoracic and lumbar spine". Her treatment program for spinal adjustments and cryotherapy was established for three times a week with an anticipated duration of six weeks. Her occupational limitations were noted as, " modified work duties: no lifting, bending or stooping January 13 - February 15, 1995". She took time off work from December 14 - January 9, 1995.

She attempted to return to full duties in her regular position as a [text deleted] at [text deleted]. She found however that she was not able to fully undertake her job because it required constant movement of her body, particularly her neck, as well as manoeuvring heavy equipment. One such piece of equipment, a centrifuge, required the installation of a sample holder, into the deep well of the centrifuge, and its removal. She was required to do delicate work such as handling chemicals and test tube samples as well as heavy jobs of lifting pails [text deleted]. She wanted to keep working and not be a burden to anyone, so she persevered despite her pain and headaches. At that time, [text deleted] did not have a system for placing injured employees in alternate jobs or a return-to-work program however an arrangement was made for her to undertake a modified work role with the assistance of a co-worker.

[Text deleted], an Occupational Health Medical Officer with [text deleted], regularly assessed the appellant's condition and worked with a team from [the Appellant’s] department and a [text deleted] safety officer to assist her in her return to work. After an assessment in October, 1995, there was further adaption of the appellant's work site and equipment. When it was later

established that the department required a technician to conduct all the duties of the job, a process was put in place to find [the Appellant] an alternate job.

In May 1996, the appellant was provided with a specially created data analyst's position, entering data [text deleted] into the computer. It was agreed that she could work in this position until she commenced her maternity and nurturing leave for her second pregnancy in September, 1996. It was also established that upon her return from maternity leave, if she was unable to return to her technician's job, the [text deleted] would continue to accommodate her physical limitations for six months following her return to work after maternity leave. Then after this six month period a further assessment would be conducted in respect to [the Appellant's] physical abilities and available positions.

She returned to work on October 1, 1997, in another alternate position utilizing her computer skills. She became a client service representative for [text deleted] employees across Canada, providing software support. She worked at a computer, wearing a telephone headset and responded to concerns about types of software use.

[The Appellant] outlined the care she had received from [Appellant's chiropractor]. She had recalled she had seen [Appellant's chiropractor] in 1990 for the occasional adjustment, because of a motor vehicle accident in May, 1989. She had been treated by him again following a whiplash injury she sustained in a MVA in March, 1992. She stated that she had not recovered from her March motor vehicle accident at the time of the December, 1994 injury. Immediately before the 1994 accident she was still attending for Chiropractic treatments on an as-need-basis, to

alleviate her neck and back pain and migraine headaches sustained in the 1992 MVA. She stated that she required chiropractic treatments the whole time she was working. She tried to extend the periods between treatments but, when her migraines were bad, they were accompanied by extreme nausea and the only relief was through chiropractic adjustments. She stated that [Appellant's chiropractor's] treatment included adjustments to her neck, lower back and hip area. He also instructed her in home exercises which she did regularly to keep active.

[The Appellant] stated that [Appellant's chiropractor] is her main care provider and she only saw a medical practitioner when she required a prescription for pain relief. In June, 1995, [Appellant's chiropractor] referred [the Appellant] to [Appellant's pain management specialist] for acupuncture treatments for pain management. She stated that around February, 1996, she had attended a specialist at the [text deleted] Clinic, whose name she has forgotten, for her migraines. She also stated that she saw a psychologist who told her that there was no psychological basis for her continuing problems.

[The Appellant] provided the Commission with a bar chart illustrating her frequency of chiropractor visits from December 19, 1994 until June, 1998, indicating that her treatments had decreased over time, particularly during maternity leave however, when she returned to work in October, 1997, the frequency increased.

In conclusion, the appellant testified that she just wanted to do her job. As is noted in the record, apart from her limitations, at no time was there any question about her job performance or work ethic and attitude. She appeals from a decision of that discontinued paying for her treatments

almost two years to the day after her 1994 accident. She also stated that she felt it was unfair for MPI to make their determination based on her frequency of treatments while she was in a less stressful situation on maternity leave rather than when she had returned to work and needed more frequent chiropractic treatments. As well she raised a complaint about the delay of over one year from the date she filed her application for an Internal review on January 14, 1997 and the decision dated March 23, 1998.

THE ISSUE:

[The Appellant] is appealing from the decision of the acting Review Officer which reads in part as follows:

> ...A review of all of your medical information shows that before the accident of December 14, 1994 you were attending at a chiropractor for treatment from a 1992 motor vehicle accident three times per month. By December of 1996 you were again attending at your chiropractor three times per month which would put you at pre-accident status. Therefore, by December of 1996 you were at pre-accident status and you were at that time receiving treatment equal to the treatment you had received before your accident of 1994. As well, [Appellant's chiropractor] has suggested that you will soon be receiving two treatments per month and that would put you at a therapeutic level above that which you were at before the 1994 motor vehicle accident.
>
> Based on the above information it is my decision that you had reached pre-accident level by December of 1996 and were no longer suffering any affects from the 1994 accident but were suffering affects from the 1992 accident and were going to your chiropractor three times per month. As a result, you are no longer entitled to have your treatments paid for by The Manitoba Public Insurance Corporation as these treatments are not as a result of your 1994 motor vehicle accident.

[The Appellant] presented evidence in a sincere, forthright manner, clearly explaining the nature of her illness and treatment. She stated at the outset that she felt that she was cut off her chiropractic treatments too early. She wished to be reimbursed for those treatments that she continued to have from the date of termination to the present time and into the future if they are

required. She stated that she may need treatments all her life because they provide her the only relief and are preferable to taking drugs.

The only issue before us is whether MPIC was justified in its decision to cease paying for [the Appellant's] chiropractic treatments as of December 31, 1996 some two (2) years after her 1994 motor vehicle accident.

The Law

The relevant section of the MPIC Act is section 136(1), which reads 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 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;...

In conjunction with this 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;.....

[Appellant's chiropractor] reported on May 24, 1995 that [the Appellant] first attended in his office on May 15, 1991 for treatment of cervicogenic headaches and improved after four treatments. He said she received monthly spinal adjustments from June, 1991 to February, 1992 and with the exception of occasional cervicogenic headaches she was asymptomatic. Following the motor vehicle accident of March 20, 1992 in which she received whiplash injuries, the reports indicate that [Appellant's chiropractor] treated [the Appellant] three times per week , declining to two times a week in July and reducing to two-three times per month starting in January, 1994 until the December 14, 1994 MVA. In his December 3, 1996 report [Appellant's chiropractor] reported that [the Appellant] had no change in her treatment regime and that she attended approximately every two weeks.

Prior to her motor vehicle accident in December, 1994 [the Appellant] was receiving two to three treatments every month. As a result of [Appellant's chiropractor's] report of December, 3 1996 indicating that she was back to the same pre-accident treatment pattern of approximately every two weeks, her treatments were terminated.

The medical reports were reviewed by [text deleted], an MPI Medical consultant. [MPIC's doctor] stated in his report that [the Appellant] had received three chiropractic treatments on average in the five months prior to her December 14, 1994 accident. He went on to say that ..."It would appear that this claimant did get compensated for residuals and future care for the injuries which she sustained in the 1992 motor vehicle accident and that the frequency of care just prior to

her 1994 motor vehicle accident was averaging at three chiropractic treatments per month." Further, he stated that her frequency of care between September, 1996 to the end of January, 1997 was three per month bringing her to what he believed represented her pre-accident status with respect to her 1994 motor vehicle accident.

If the guidelines that are the foundation for commonly held practices within the chiropractic profession, were followed then it is clear that the amount and nature of treatments received by [the Appellant] for the injuries she sustained were more than sufficient over the two (2) year period to bring the appellant to pre-accident status. The chiropractic guidelines upheld by the profession in Manitoba, state that the average frequency and duration of treatments required in a normal grade II whiplash associated disorder, similar to that sustained by the appellant, are approximately 34 treatments over a 25 week period. We fully agree that these are indeed merely guidelines and that exceptions must be taken into account for risk factors such as the previous accidents sustained by the appellant. However, [the Appellant] received 81 treatments from December, 1994 to the end of December, 1995 and a further 38 treatments from January, 1996 to the end of December, 1996 at which point MPIC ceased paying for her further treatments.

The Commission is persuaded, based on all the literature as well as a review of the records and the bar graph provided by [the Appellant], that she had reached her pre-accident status of the same number of treatments that she received prior to her 1994 accident, as of December 31, 1996. If she continues to need spinal manipulations, as she feels she does, we are of the view that this need can no longer be attributed to her December, 1994 motor vehicle accident.

In response to the concern about delays noted by [the Appellant], and while this aspect of her appeal is not within the normal bounds of this Commission's mandate, the record indicates that, at the time of [the Appellant's] application for an Internal Review, she was asked to submit further information she wished to present prior to the Review. As a follow-up to this request, [the Appellant] supplied the Internal Review Officer with a clarification of [Appellant's chiropractor's] report of December 3, 1996. Following the Internal Review which took place on March 13th, 1997, the Internal Review Officer, wrote [Appellant's chiropractor] asking him for clarification on two issues in his reports of December 3, 1996 and February 7,1997. When [Appellant's chiropractor] did not respond to this request another request was sent to him again on July 3, 1997, asking him for the outstanding information. Again, on October 21, 1997 a letter was sent to [Appellant's chiropractor] requesting a response to the March 13 and July 3 letters. On December 8, 1997 some ten months later, [Appellant's chiropractor] provided a report. We agree with [the Appellant] that [Appellant's chiropractor] should have been pursued more vigorously by the Internal Review Officer - indeed, all parties (MPIC, [the Appellant] and, of course, [Appellant's chiropractor] himself) should have taken a more active role in ensuring the more timely, professional response to those requests for clarification. Those delays are regrettable, but they do not affect the outcome of [the Appellant's] appeal.

DISPOSITION:

We therefore find that the Manitoba Public Insurance Corporation was justified in terminating [the

Appellant's] chiropractic benefits as of December 31, 1996, and the decision of MPIC Internal Review Officer is therefore confirmed.

Dated at Winnipeg this 23 day of October 199

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED