Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-33

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison;** **the Appellant, [text deleted], and her husband attended the hearing by long-distance telephone.**
HEARING DATE:	**August 29th, 2000**
ISSUE:	**Whether chiropractic treatments terminated prematurely.**
RELEVANT SECTIONS:	**Section 136 of the MPIC Act; Section 5 of Manitoba 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 motor vehicle accident in which [the Appellant] was involved on August 10th, 1994, in addition to causing her a cracked pelvis and multiple contusions, resulted in soft tissue injuries of a kind, and to an extent, that appear to have baffled her care-givers throughout the six, intervening years. In the course of her accident, [the Appellant] had apparently left a Stop sign before it was safe to do so, with the result that her vehicle had been broad-sided on the driver's side by another vehicle; the door of her car had been badly damaged and [the Appellant], herself,

had been rendered unconscious, having little, if any, recollection of the event until shortly before being discharged from [hospital] some few hours after being taken there by ambulance.

[The Appellant] was initially seen by [Appellant's doctor #1] who, in successive reports, diagnosed lumbar back strain and left hip strain; she prescribed physiotherapy and indicated that [the Appellant] would be unable to return to work until early December of 1994.

In early November of that year, X-rays disclosed that [the Appellant] had sustained a cracked pelvic bone. That her motor vehicle accident (MVA) was the cause of this undisplaced fracture is not disputed.

[The Appellant] received physiotherapy at a frequency of about three times per week until early 1995, when the emphasis in her therapy became directed more towards a work-hardening program.

In April 1995, [the Appellant] started consulting her physician, [text deleted], and in addition to continuing with her physiotherapy started receiving treatment from [Appellant's chiropractor #1] at [text deleted] Chiropractic Clinic. [Appellant's chiropractor #1] treated her cervical and lumbar regions; her physiotherapist, [text deleted], was treating her hip and attempting to build leg strength and standing tolerance. A consensus seems to have been reached between [the Appellant's] care-givers and MPI that she could commence a graduated return to work in early July of 1995. At the same time, [Appellant's doctor #2] was recommending five physiotherapy sessions per week for an indeterminate period.

By August of 1995, [Appellant's doctor #2] was recommending two to three physiotherapy sessions per week, indefinitely, while noting that [the Appellant] was currently working two hours per day with the expectation of increasing that to about four hours daily over the following few weeks.

By the beginning of October 1995, however, [the Appellant's] condition appears to have deteriorated rather than improved. [Appellant's chiropractor #1] was recommending that she remain off work entirely for two months. [Appellant's physiotherapist], due to her own pregnancy, was not as available as [the Appellant] appeared to need, but [the Appellant] was seeing [Appellant's chiropractor #1] at a frequency of three to four times weekly. By early November of 1995 [Appellant's doctor #2] and [Appellant's physiotherapist] felt that the Appellant should move into a structured work-hardening/conditioning program, rather than have physiotherapy twice a week and chiropractic adjustments three to four times a week; that work-hardening program was to have taken place at the [rehab clinic]. However, [the Appellant] elected not to participate in that program but, instead, to continue receiving chiropractic adjustments from [Appellant's chiropractor #1].

By November 27th, 1995, [Appellant's chiropractor #1] was forecasting a return to work for [the Appellant], albeit on reduced hours, by January 2nd, 1996. MPIC's adjuster then in charge of the case agreed to extend Income Replacement Indemnity and other benefits to [the Appellant] to February 15th, 1996, in order to allow a graduated return-to-work ('GRTW') schedule to be implemented. Thereafter, chiropractic treatment would be continued but, the adjuster was led to believe, only a maintenance program would then be needed. [The Appellant] did return to work on February 11th, 1996, working for 16, 21 and 22 ½ hours in each succeeding week. She still seemed to be having some discomfort and, as a result, [Appellant's chiropractor #1] extended the

period of her restricted work hours to March 23rd, 1996. Meanwhile, MPIC retained the services of [text deleted], Occupational Therapist, to perform a Selective Functional Capacity Evaluation of the Appellant.

[Appellant's occupational therapist] felt that a further extension of her GRTW needed to be negotiated for [the Appellant] with her employer, [text deleted], and that a plan should be developed for increasing [the Appellant's] resistive capacities, to be managed in conjunction with her work time. She noted, in a report of March 19th, 1996, that [Appellant's chiropractor #1] was not providing relief for [the Appellant's] neck symptoms, although was apparently successfully treating her lumbar complaints.

After a brief period during which [text deleted] seems to have found it difficult to accommodate [the Appellant's] need for reduced hours of work, that problem was resolved and [the Appellant's] hours of work increased, on a weekly basis, until by the week of May 26th, 1996, she was able to work a total of 25 hours. Prior to her accident, her regular work week had consisted of 26 hours.

MPIC had offered [the Appellant] a membership in a gymnasium but, instead, she elected to follow the advice of [Appellant's chiropractor #1] and [Appellant's doctor #2] by starting 'aquacises' at a local swimming pool. MPIC paid for that. At this point, in May of 1996, [the Appellant] was still attending for chiropractic manipulations at a frequency of two or three times per week.

[The Appellant] and her husband moved to Alberta in early June, 1996. There, on the advice of [Appellant's chiropractor #1], [the Appellant] started attending upon new chiropractic care-

givers, [Appellant's chiropractor #2] initially and, on a more long-term basis, [Appellant's chiropractor #3], from whom MPIC sought and obtained a narrative report. On December 2nd, 1996, almost two and one-half years after her motor vehicle accident, [Appellant's chiropractor #3] reported that [the Appellant] continued to complain of "continuous cervical spine stiffness and pain, headaches with pain bilaterally in the occipital region occurring approximately twice per week, bilateral TMJ pain, pain between the shoulder blades and lower back pain with the left side being worse". She was, he said, capable of doing all her own housework but was "unable to lift heavy". The combined reports from [Appellant's chiropractor #2] of July 12th, 1996, and of [Appellant's chiropractor #3] from December 2nd, may be summarized this way:

> they found posterior facet fixations in the upper cervical and lower cervical spine at the C2-C3 and C7-T1 levels, and in the thoracic spine at levels T3-T4. There were bilateral sacroiliac joint fixations. Range of motion of [the Appellant's] cervical and lumbar spine showed restrictions in flexion, extension, left and right lateral bending and left and right rotation. Her upper and lower extremity reflexes were normal. Her straight leg raising was bilaterally 60º restricted by hamstring hypertonicity. [The Appellant] displayed tenderness to palpation of the upper cervical joint structure, with attendant hypertonicity of the sub-occipital muscles. Treatments consisted of manipulation to the affected joints and trigger-point massage of the hypertonic muscles.

[Appellant's chiropractor #3], expressing the belief that a considerable portion of the Appellant's pain was of soft tissue in origin, said quite candidly that he was unsure how to proceed with [the Appellant]. He wondered whether the insurer would be prepared to pay for a course of massage therapy and invited MPIC's adjuster to put forward any alternative suggestions or recommendations that might return [the Appellant] to a more functional, pain-free state.

MPIC's adjuster responded that massage therapy was not covered under the current Personal Injury Protection Plan. He noted that, prior to her move to Alberta, [the Appellant] had received 90 physiotherapy treatments, 204 chiropractic treatments and a further 97 physiotherapy treatments in conjunction with acupuncture. He had no recommendations to offer, other than that exercise should be the main treatment modality for [the Appellant's] problems. He noted that there was nothing on file to suggest that the Appellant was left with any permanent impairment, and said that MPIC would keep its file open for a maintenance program of treatment, if required, along with supervision of a home regimen to be maintained by the Appellant herself.

By the end of May 1997, [the Appellant] was continuing to attend for chiropractic treatments two to three times every week, her main complaint being of pain in the left side of her mid- to lower-back area.

On June 20th, 1997, [Appellant's chiropractor #3], in response to a demand from a new adjuster who had taken over [the Appellant's] case for MPIC, responded that

> [The Appellant] is one of those unfortunate patients who continues to suffer from cervical and thoracic pain after many treatments from chiropractors and physiotherapists. I am able to keep her working and she states she feels relatively good for four to five days post manipulation but I am not able to return to [sic] the joint structure of the cervical and thoracic spine to a functioning state…..Thus she is able to work, but she is not pain free for prolonged periods of time.
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> …..Although manipulation is not "fixing" her problems, it is my opinion that if she discontinued treatment, she would start to experience a decreased cervical spine range of motion and increased intensity and frequency of her complaints. (When she initially presented at our office she had not received manipulation treatments for several weeks and presented with a decreased range of motion which, it is my understanding, her [Manitoba] chiropractor had restored.)

No further developments, nor any correspondence between the insurer and either the Appellant or her chiropractors, are recorded until June 16th, 1998, when, in response to a request from yet

another, new adjuster at MPIC, [Appellant's chiropractor #3] reported that, despite weekly chiropractic manipulations, he could see no improvement in [the Appellant's] conditions. "I treat her", he said, "to enable her to continue working and prevent an increase in the cervical spine range of motion loss." He reported almost identical conditions, treatment and indeterminate duration of care in a further report of October 21st, 1998. By that time, [the Appellant] had had in excess of 400 chiropractic treatments in addition to the physiotherapy referred to earlier.

On November 2nd, 1998, MPIC's adjuster wrote to [the Appellant] to say that the Corporation was not prepared to fund any further chiropractic care since, in the view of the insurer, further treatment of that kind was unlikely to be of therapeutic benefit.

[The Appellant] obtained a decision from MPIC's Internal Review Officer who, primarily upon the advice of [MPIC's chiropractor], concurred in the adjuster's position. [MPIC's chiropractor's] opinion, stated briefly, was that although the care provided by [Appellant's chiropractor #3] appeared to be reasonable, since it gave symptomatic relief for [the Appellant's] complaints, it could not be considered therapeutically necessary with respect to her motor vehicle accident.

We note, in passing, that there is a semantic distinction between the opinion expressed by [MPIC's chiropractor] and the language used by the Internal Review Officer when confirming the adjuster's decision. [MPIC's chiropractor] refers to further treatment as not being "therapeutically necessary"; the Internal Review Officer speaks of further chiropractic treatment as no longer "medically necessary"—the latter being the language of the statute. While it is quite clear from the very candid views expressed by [Appellant's chiropractor #3] that further

chiropractic treatments were not "therapeutic", in the sense of being curative, [Appellant's chiropractor #3] also makes the point that those treatments were palliative and at least enabled the Appellant to get on with her life.

[The Appellant] testified that, while she had certainly seen improvement in her overall condition since moving to Alberta, since she had progressed from needing three treatments per week to the point at which she now only receives chiropractic adjustments once or twice per month, she has still not reached pre-accident status. The reduction in frequency of treatments seems to have coincided with the commencement of 'cranial sacral massage therapy' which she receives from [text deleted] at a cost of $65 per treatment. She describes this as a non-manipulative form of massage, involving extremely light touching by the therapist at specific tender points on the body of the patient. [The Appellant] testified that she had started chiropractic treatments because she was receiving no further benefit from physiotherapy. She speculated that she had, perhaps, reached a point at which she was receiving no further benefit from chiropractic and would achieve maximal improvement from this cranial sacral massage. Having no experience with nor any knowledge of this latter form of therapy, we are unable to comment, save only to say that it is not within the purview of the MPIC Act and Regulations.

[The Appellant] seeks reimbursement for the chiropractic treatments that she has received between November 2nd, 1998, and July 12th, 2000, in the total amount of $1,509.66—covering something between 55 and 60 chiropractic adjustments.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. If we accept, for purposes of these Reasons, the causal relationship between

[the Appellant's] accident six years ago and her present condition, it remains to inquire whether the treatments for which she seeks reimbursement were "medically necessary". In this context, we have reference to the Clinical Guidelines for Chiropractic Practice in Canada, published as a supplement to the Journal of the Canadian Chiropractic Association, Volume 38, Number 1, in March of 1994. Those Guidelines, adopted not only by the national association but also by most, if not all, of the provincial chiropractic associations, contain some recommended time-frames within which maximum chiropractic benefit may usually be anticipated both for 'normal' and for more difficult cases. They also offer the following advice, *inter alia*, to the practitioner:

- …..failure to achieve therapeutic objectives requires that it (i.e. the treatment modality) should be re-evaluated. A change in treatment procedure, or the obtaining of a second opinion, is indicated. Continued failure should result in the patient being discharged either as being inappropriate for active chiropractic care, or for having achieved maximum therapeutic benefit.
- There is a natural history of recovery for uncomplicated cases (Waddell 1984) that can serve as a timeframe from which to evaluate and shape a successful treatment plan.
- Of the adult population that experiences an acute episode of lower back pain, 50% recover and return to work within two weeks. Within six weeks, 80% have returned to work. The remaining 20% provide a clinical and socio-economic challenge (Halderman 1992).
- (for complicated cases)…..continued failure to show initial improvement or failure to show additional improvement over any period of six weeks of treatment, should result in patient discharge or appropriate referral, or the patient will be deemed as having achieved maximum therapeutic benefit (MTB). If MTB has been reached, maintenance or supportive care may be considered.
- Patients at risk for becoming chronic should have treatment plans altered to de-emphasize passive care and refocus on active care approaches.
- Alone, the repeated use of acute care measures generally fosters chronicity, physician dependence and over-utilization (Riley et al 1988).

While fully realizing that [the Appellant] undoubtedly falls into the 'remaining 20%' referred to in the above extract from the Guidelines, we cannot find enough evidence upon which to base a decision that would allow this appeal. We recognize that the Guidelines are just that—that is to say, a basic set of principles by which the practitioner should be guided, rather than a rigid set of rules. Nevertheless, there has been no suggestion from either of the practitioners from whom

[the Appellant] has received care that some other modality of chiropractic treatment should be tried, nor any apparent thought given to referring the patient out to some other discipline.

Even if we disregard the opinion expressed by [Appellant's doctor #2] on June 24th, 1996, that "[the Appellant] has recovered from the injuries sustained in the MVA of August 10th, 1994" we are of the opinion that MPIC was justified in terminating payments for further chiropractic care for [the Appellant] on November 2nd, 1998, as it did. We are bolstered in that view by the knowledge that it was not until she started attending the [text deleted] that [the Appellant's] perceived need for chiropractic treatments decreased to their present frequency; this indicates that there are, indeed, other forms of therapy that should, in due course, remove any existing patient/practitioner dependency—if that is what has, in fact, developed.

[The Appellant] expressed concern that, were we to dismiss her present appeal, she would be forever precluded from seeking any further benefits from MPIC as a result of her 1994 motor vehicle accident. We have assured her that if, at any time in the future, symptoms arise that can, on a reasonable balance of probabilities, be attributable to that accident, she will have a perfect right to ask MPIC to re-open her claim file in order to deal with those new or resurfacing problems. Meanwhile, the only issue before this Commission is whether MPIC should be ordered to reimburse [the Appellant] for the chiropractic expenses referred to above. We find that it should not be so ordered.

It may be that [the Appellant's] general medical practitioner, [text deleted], can suggest some further diagnostic procedure that might enable [the Appellant] and her care-givers to determine the cause of her ongoing discomfort, should that persist in spite of the new form of therapy that she has been receiving.

In sum, therefore, [the Appellant's] appeal must be dismissed but her claim file is not permanently closed; the effect of this decision is, simply, to deny her reimbursement for her chiropractic treatments received since November 2nd, 1998.

Dated at Winnipeg this 1st day of September, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

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