

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-99-90

PANEL:

**Mr. J. F. Reeh Taylor, Q.C., Chairman
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed**

APPEARANCES:

**Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison;
the Appellant, [text deleted], appeared on his own behalf
accompanied by [text deleted]**

HEARING DATE:

January 24th, 2000

ISSUE:

**Whether Appellant entitled to reimbursement for certain
chiropractic treatments.**

RELEVANT SECTIONS:

**Section 136(1)(a) 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

Although the Appellant, [text deleted], has been the victim of three rear-end collisions, and the decision of MPIC's Internal Review Officer, dated May 6th, 1999, deals with more than one issue, the only matter that is before us by way of an appeal stems from MPIC's refusal to pay for chiropractic adjustments received by [the Appellant] from [Appellant's chiropractor] between October 31st, 1998 and April 30th, 1999. [Appellant's chiropractor's] treatments of [the

Appellant] were for injuries sustained by [the Appellant] in an accident on October 16th, 1996.

Following that accident, [the Appellant] consulted his chiropractor, [text deleted], from whom he had been receiving chiropractic adjustments on an 'as needed' basis since earlier accidents in July, 1991, and December, 1995. In a report of December 18th, 1996, [Appellant's chiropractor] gave his opinion that [the Appellant] was suffering from 'whiplash syndrome'. On January 4th, 1997, [Appellant's chiropractor] had diagnosed the Appellant with a Grade 2 Whiplash Associated Disorder (WAD 2) and recommended the continuance of manipulative treatments twice weekly until the end of September of that year.

On January 21st, 1997, [Appellant's chiropractor] provided MPIC with a progress report, diagnosing whiplash syndromes of both Grades 2 and 3a, indicating that the projected discharge date from treatment of the Appellant was "unknown at this time".

On March 10th, 1997, [Appellant's chiropractor], noting that [the Appellant] was showing signs of improvement in his cervical range of motion but was still experiencing pain in his neck, shoulder, arm and lower back, diagnosed a WAD2 and recommended a series of three weekly adjustments for the following four to six weeks, reducing to twice weekly thereafter with, again, an unknown discharge date.

[Appellant's chiropractor] responded on May 5th, 1997, to an enquiry from [the Appellant's] adjuster at MPIC by providing a treatment plan calling for three treatments per week for the following six to eight weeks, in order to improve range of motion and reduce pain, twice weekly

for the subsequent eight to ten weeks in order to increase flexibility of tissues and further reduce pain, then once a week for a further ten to twelve weeks in order to create stability. He estimated a discharge date of some time in November, 1997. MPIC responded by approving [Appellant's chiropractor's] treatment plan, but only up to July 5th, 1997, at which point the plan would then be reconsidered once [Appellant's chiropractor] had given a further progress report.

On August 6th, 1997, MPIC wrote to [Appellant's chiropractor] and [the Appellant], approving a further treatment plan report calling for two adjustments per week, with a discharge date of September 30th, 1997.

On September 2nd, 1997, MPIC approved a revised discharge date of November 30th, 1997.

On November 26th, 1997, [Appellant's chiropractor] again found it necessary to revise his treatment plan, and recommended a further four to six months of treatments at a frequency of once or twice per week "until further stabilization of condition is reached and symptoms resolve". He anticipated a new discharge date of April, 1998. At this point, MPIC's adjuster referred [the Appellant's] file to a chiropractic consultant, [MPIC's chiropractor], who apparently expressed the view that, in light of [the Appellant's] prior history of motor vehicle accidents, the April, 1998, discharge date was reasonable. [MPIC's chiropractor] added that "this patient may be a candidate for functional reconditioning" for four to six weeks. MPIC therefore advised the Appellant on December 23rd, 1997, that [Appellant's chiropractor's] revised treatment plan was approved, calling for one or two treatments per week with a gradual decrease in frequency, monthly monitoring and an anticipated discharge date of April 30th, 1998.

In May of 1998 [Appellant's chiropractor] called [the Appellant's] adjuster and requested approval for further treatments as [the Appellant] had had a "relapse about a week ago due to fishing activity, with pain symptoms in left heel". [Appellant's chiropractor] apparently advised the adjuster that [the Appellant] had been "non-compliant with a home reconditioning program" and, although given some questionnaires to record the progress of his pain symptoms, had taken them home but never returned them. At that juncture, MPIC decided to refer [the Appellant] for an independent chiropractic examination to [text deleted], who examined [the Appellant] on June 25th, 1998. [Independent chiropractor's] report of July 10th, 1998, may be summarized this way:

- (a) he felt that the Appellant had probably suffered a cervical, thoracic and lumbosacral muscular ligamentous strain/sprain type of injury in his motor vehicle accident of October 16th, 1996;
- (b) at the date of examination, [the Appellant] had a "mild limitation of left cervical rotation and cervical extension"; there was also weakness in the left gluteal and sacrospinalis musculatures;
- (c) there were no pre-existing conditions that had been aggravated or enhanced by the 1996 accident;
- (d) [the Appellant] had only received manipulative chiropractic therapy and should be instructed in a basic exercise for the gluteal musculature, which needed to be stretched and strengthened. Similarly, he should be working on strengthening exercises for his sacrospinalis musculature and exercises for stretching his trapezius and cervical paravertebral musculatures. While performing the foregoing exercises he should maintain the manipulative therapy on a reducing basis for about six to eight weeks. If, at

the end of that time, he was still experiencing headaches and gluteal discomfort "then one would have to consider him at a maximum medical benefit with manipulative therapy";

- (e) [Independent chiropractor] did not feel that [the Appellant] had any measurable impairment with regard to the injuries noted above ([Independent chiropractor's] letter actually says "at this time I do not feel [the Appellant] has no measurable impairment with regard to the injuries date above" but two of those words are obvious typographical errors).

On July 28th, 1998, MPIC wrote to [the Appellant] to tell him that the Corporation would fund six to eight weeks of reconditioning program in conjunction with chiropractic care of one to two treatments per week. They also recommended that he consult his own medical doctor prior to attending for reconditioning. They gave him the addresses of four different clinics, including the [text deleted], where reconditioning programs were offered; [the Appellant] elected to attend at the [text deleted] Clinic. He was evaluated there on August 21st, 1998, and the Clinic recommended a four to six week trial of reconditioning at a frequency of three times per week for four weeks, re-evaluation at that point, and a possible extension to a six or eight week program thereafter. Chiropractic treatment at a frequency of twice per week for two weeks and once per week thereafter was felt to be appropriate. That proposed program was approved by MPIC; [the Appellant] and the [text deleted] Clinic were advised accordingly.

On September 26th, 1998, [text deleted] Clinic reported that [the Appellant's] strength and function had improved significantly, but that although the frequency of his painful episodes had abated somewhat the reported intensity of his discomfort had only changed minimally. They

recommended the continuance of his exercise program to a total of eight weeks, along with the adaptation of his exercise program for home use.

On October 27th, 1998, [Appellant's chiropractor] provided a further progress report to MPIC. That report noted that [the Appellant] had just finished his rehabilitation program at the [text deleted] Clinic, had improved significantly but "does seem to present with symptoms that have yet to correct". He requested further chiropractic care at a frequency of once or twice per week in order to determine if symptoms related to his accident resolved entirely. If not, said [Appellant's chiropractor], it was possible that [the Appellant] could be a candidate for supportive care over the next three to six months at a frequency of twice per month until his symptoms had resolved completely.

Since MPIC had refused to extend [the Appellant's] chiropractic treatments from [Appellant's chiropractor] past his eight week reconditioning program at the [text deleted] Clinic, [the Appellant] appealed, on November 23rd, 1998, to MPIC's Internal Review Officer who, before attempting to decide the matter, wrote to [Independent chiropractor] for a further report. [Independent chiropractor], in his response of January 27th, 1999, expressed the following opinions:

- (a) [the Appellant] had reached maximum therapeutic benefit under manipulative therapy. Ongoing, passive therapy at its then current frequency of once or twice a week for the purposes of short term pain relief was not considered in [the Appellant's] best interest and, indeed, was likely to induce physical therapy dependency;
- (b) [the Appellant] might not necessarily have reached maximum medical improvement,

since only one therapeutic approach had been attempted; (*[Independent chiropractor's] meaning here is not clear to us since, by that time, [the Appellant] had received a reconditioning program as well as chiropractic adjustments*);

- (c) since most of the Appellant's symptoms were myofascial in nature, he should be referred to a specialist in sports medicine for an assessment and recommendation for any ongoing treatment;
- (d) [the Appellant] might well be a candidate for chiropractic, supportive therapy. In the latter event, he should be assessed with a different discipline, manipulative therapy should be withdrawn for a period to see whether a regression of therapeutic gains occurred and, if he was then felt to qualify for supportive therapy, a frequency of once each four to six weeks might be the norm.

Following [Independent chiropractor's] recommendation, [the Appellant] was then referred to [text deleted], a physiatrist (specialist in physical medicine and rehabilitation), who examined [the Appellant] on March 19th, 1999, and whose resultant, sixteen page report bears date April 12th, 1999. At the risk of some over-simplification, we may summarize [Appellant's physiatrist's] conclusions as follows: he diagnosed musculoskeletal deconditioning, a mild mechanic neck pain, an irregular heartrate and a thickening of the fibrous bands of the right fourth finger (unrelated to the accident). [The Appellant] had been inactive for so long that his musculoskeletal tissues had become deconditioned, but the condition was reversible with proper motivation and rehabilitative conditioning. The prognosis for complete resolution of [the Appellant's] pain was good. There was no significant impairment other than mild cardiovascular impairment. [Appellant's physiatrist] recommended a referral for cardiac assessment and, given

no contra-indications, a trial of trigger point injections of the acupuncture type, to be followed or accompanied by general physical reconditioning.

On May 6th, 1999, MPIC's Internal Review Officer issued a decision, denying payment for any chiropractic treatments beyond October 24th, 1998. It is from this latter decision that [the Appellant] now appeals to this Commission.

In support of his appeal, [the Appellant] has been furnished with letters from [Appellant's chiropractor] addressed, initially, to [the Appellant's] adjuster at MPIC and, more latterly, to this Commission. [Appellant's chiropractor] advances two points: firstly, he says, he was not informed of MPIC's decision to terminate treatments for [the Appellant] until April of 1999. With deference, we have to say that this is simply not correct. [Appellant's chiropractor] received a copy of MPIC's letter to the Appellant on July 28th, 1998, limiting the Corporation's payment for chiropractic care to the duration of a six to eight week reconditioning program; he received a copy of the Corporation's letter to [the Appellant] on August 28th, 1998, specifying the number and frequency of chiropractic treatments for which the Corporation was prepared to pay; there is a record of a telephone discussion between [the Appellant's] adjuster and [Appellant's chiropractor] on October 21st, 1998, when [Appellant's chiropractor] was advised, again, that the Corporation would continue to fund one chiropractic adjustment per week during the rest of [the Appellant's] reconditioning program; there is a letter from [Appellant's chiropractor] to MPIC of December 1st, 1998, which clearly indicates that MPIC has discontinued payments for chiropractic care, since [Appellant's chiropractor] seeks approval to extend treatments for [the Appellant] at a frequency of once a week for a further six to eight weeks or, possibly, longer.

That approval was never forthcoming.

[Appellant's chiropractor's] second point is that [the Appellant] was still presenting with symptoms related to his 1996 accident and he, [Appellant's chiropractor], felt it his duty to continue treatment until [the Appellant's] appeal had been concluded or until another practitioner had been arranged to undertake alternative treatment. Unfortunately, and while [Appellant's chiropractor's] dedication to the well being of his patient is commendable, the obligation of MPIC to pay for chiropractic care only arises when that care is medically necessary. In the circumstances, the continuance of chiropractic adjustments more than two years after the date of [the Appellant's] accident was not, in our view, medically necessary. We share the opinion of [Independent chiropractor] that, under the circumstances, the continuance of passive therapy was more likely to have been counterproductive by creating a dependency. Both [Independent chiropractor] and [Appellant's physiatrist] recommended a more active program of physical rehabilitation, including strengthening and stretching of the musculature from which the sources of [the Appellant's] discomfort seemed to originate.

We do not imply that [the Appellant] had necessarily reached maximum medical benefit; indeed, MPIC appears to have followed [Appellant's physiatrist's] recommendations. Rather, we address only the question put to us, namely whether [the Appellant] should be reimbursed for the cost of chiropractic treatments between October 31st, 1998 and April 30th, 1999. We are obliged to conclude that such treatments were not "medically required" within the meaning of Section 5 of Manitoba Regulation No. 40/94, and [the Appellant's] appeal must therefore fail.

Dated at Winnipeg this 3rd day of February, 2000.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED