

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-00-118

PANEL: Yvonne Tavares, Chairperson
F. Les Cox
Colon Settle, Q.C.

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta

HEARING DATE: March 14th, 2001

ISSUE(S): 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

The Appellant, [text deleted], sustained injuries in a motor vehicle accident ("MVA") on February 26th, 1997. She initially attended for chiropractic treatment with [Appellant's chiropractor #1], complaining of constant mild headache, bilateral shoulder pain, upper, mid and low back pain, right-sided rib pain with sore, stiff muscles and joints. On examination, [Appellant's chiropractor #1] found muscle spasm, soft tissue changes and spinal subluxations. These injuries were diagnosed as sprain-strain type injuries

categorized as a Whiplash Associated Disorder II. The Appellant attended for chiropractic treatment with [Appellant's chiropractor #1] until approximately June 30th, 1998, at which time she was discharged from care. The Appellant's evidence at the hearing of her appeal was that the chiropractic care that she had been receiving from [Appellant's chiropractor #1] was of little benefit to her and she chose to discontinue it at that time since she was obtaining little if any improvement from the ongoing treatments.

On or about August 15th, 1999, the Appellant appeared to suffer a relapse and again attended upon [Appellant's chiropractor #1] for chiropractic treatment. In a Treatment Plan Report dated August 20th, 1999, [Appellant's chiropractor #1] diagnosed the Appellant with a cervical and upper dorsal flareup and prescribed care at two times a week for four weeks at which time discharge should occur. Indeed, the Appellant was discharged from care by September 30, 1999.

On or about March 24th, 2000, the Appellant began attending [text deleted] Chiropractic for chiropractic care to reduce her continuing headaches and sore neck. In an initial Health Care Report to MPIC, [Appellant's chiropractor #2] diagnosed the Appellant with chronic subluxations and fibrosis in damaged muscles with trigger points. She described the Appellant as able to work full duties and classified her as full function with symptoms. [Appellant's chiropractor #2] prescribed adjustments two times a week for an unknown period of duration. In a further Treatment Plan Report dated April 28th, 2000, [Appellant's chiropractor #2] noted headaches and neck pain had improved and the low back pain had also improved. She recommended treatment weekly until the end of May

followed by once every two weeks until the end of July, followed by once every three to four weeks until the end of October. In terms of her diagnosis, she noted remodeling of soft tissue injury and subluxation of the spine.

The Treatment Plan Report was reviewed by [text deleted], chiropractic consultant to MPIC. After reviewing the information on the Appellant's file, it was [MPIC's chiropractor's] opinion that this claimant had had an adequate exposure to passive chiropractic interventions as a result of the February 1997 motor vehicle collision and that ongoing intervention of the type described was unlikely to change the natural history of her recovery from this injury. He also noted that, "With respect to remodeling of the soft tissue injury as noted by [Appellant's chiropractor #2], it is my opinion that maximum remodeling has likely taken place in the three years since the motor vehicle collision. With the above in mind, it is my opinion that file contents are not supportive of ongoing chiropractic intervention as being a therapeutic necessity with respect to the motor vehicle collision injuries".

Based on [MPIC's chiropractor's] opinion, [text deleted], staff adjuster, wrote to the Appellant on May 16th, 2000, to advise her that further chiropractic treatments would not be covered as she had reached maximum medical improvement.

[The Appellant] sought an internal review from that decision. The Internal Review decision of September 25th, 2000, upheld the Claim's decision on the basis that further

chiropractic treatments would not improve her condition. It is from this decision that [the Appellant] now appeals.

[The Appellant] seeks reimbursement for the chiropractic treatments that she has received since May 16th, 2000, when coverage for chiropractic care was terminated by MPIC. She argues that the chiropractic treatments that she has received from [Appellant's chiropractor #2] have been of benefit to her and provided her with relief from the constant discomfort and headaches.

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 a motor vehicle accident and must be medically required. If we accept, for purposes of these Reasons, the causal relationship between [the Appellant's] accident four years ago and her present condition, it remains to inquire whether the treatments for which she seeks reimbursement were "medically required". 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, No. 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 timeframes within which maximum chiropractic benefit may usually 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.

- 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 (M.T.B.).

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. The rather extensive amount of chiropractic treatments undertaken by the Appellant to date coupled with the lack of improvement in her condition, lead us to the conclusion that the Appellant has likely reached maximum therapeutic benefit and, essentially, maximum medical improvement from chiropractic care. We are of the opinion that MPIC was justified in terminating payment for further chiropractic care for [the Appellant] on May 16th, 2000, as it did.

Dated at Winnipeg this 30th day of March 2001.

YVONNE TAVARES

F. LES COX

COLON SETTLE, Q.C.