Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-112

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Laura Diamond** **Ms. Deborah Stewart**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.**
HEARING DATE:	**October 4, 2004**
ISSUE(S):	**1. Entitlement to chiropractic treatment benefits beyond July 15, 1999.** **2. Entitlement to reduced Income Replacement Indemnity benefits.** **3. Entitlement to further chiropractic treatment benefits and Income Replacement Indemnity benefits following alleged relapse.**
RELEVANT SECTIONS:	**Sections 136(1)(a), 110(1), 116(1) and 81(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) 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.

Preliminary matters

A pre-hearing meeting was held with the Appellant, counsel for MPIC, and this panel of the Commission on April 19, 2004. The purpose of the meeting was to establish and resolve all procedural matters relating to the hearing of evidence in respect of the appeal.

The Appellant expressed some reluctance to attend this meeting, but did attend on April 19, 2004 along with Mr. J. Shaw who appeared on behalf of MPIC.

At the pre-hearing meeting, the Appellant took the position that he was not ready to proceed with the hearing of his appeal and indicated that MPIC had refused to provide him with all the relevant information he needed in order to prepare the appeal. The Commission indicated to the Appellant that it had provided him with all of the material that the Commission had received from MPIC and Mr. Shaw indicated that MPIC had not withheld any relevant information. The Appellant was unable to provide the Commission panel with specific details as to what information he believed he was being denied access to, but objected to the Commission fixing a date for the hearing of the appeal as he felt he required at least one year in order to prepare.

The Commission advised that since a period of approximately 2 ½ years has elapsed since the Commission had accepted the Appellant's appeal and due to concern that significant delays might prejudice the hearing, the Commission would hear the Appellant's appeal on October 4, 2004 at 9:30 a.m. If the Appellant was able to identify specific documents, relevant to the appeal, which he believed were missing from the documents that had been provided by the Commission and MPIC, he was to advise the Commission's office and an investigation to locate this documentation would follow. The additional documents relevant to the appeal which the Appellant wished to file needed to be filed no later than September 20, 2004.

The Appellant was advised of the panel's decision in regard to the issues reviewed at the pre-hearing meeting, by letter dated April 22, 2004 from [text deleted] Chief Commissioner. This

letter, as well as a Notice of Hearing dated April 22, 2004, scheduling the hearing of the appeal for October 4, 2004 was served on the Appellant.

On August 27, 2004, the Appellant faxed a letter to the Commission outlining information he was requesting. The faxed message was forwarded to Mr. J. Shaw with a request that MPIC provide the Appellant with the documents requested.

On September 27, 2004, Mr. J. Shaw wrote to the Commission (copy provided to the Appellant) stating that MPIC had provided all of the documentation to him.

On October 4, 2004, the hearing into the merits of the Appellant's appeal commenced. Mr. Shaw and the Appellant were present.

The Appellant once again asked for further documents to be provided to him. Mr. Shaw, on behalf of MPIC advised that he had provided all the documents to which the Appellant was entitled. The Appellant was not satisfied with this response and asked that the hearing be adjourned. Upon assurances being made by Mr. Shaw that all the documents to which the Appellant was entitled had been provided to him, the Commission considered and refused the Appellant's request for an adjournment, advising him that the panel was ready to proceed with the hearing on the merits.

The Appellant took exception to this decision to proceed with the hearing and left.

The hearing on the merits then continued with Mr. Shaw's submission on the merits of the Appellant's appeal.

On October 4th, 2004, the Appellant then faxed a letter to the Commission setting out his version of the hearing and once again requesting the production of further documents from the MPIC file, including a "blue file" which he could not access and three "folders" which Mr. Shaw had with him at the hearing.

This request was forwarded to Mr. Shaw for comment and a response was received from him on October 8, 2004. Mr. Shaw stated that the 3 folders of documents that he had at the hearing of October 4th, 2004 were binders which contained the indexed material provided by the Commission to each party for the purpose of the pre-hearing meeting and the appeal. Mr. Shaw also provided the Commission with a copy of a letter dated September 28, 2004 from [text deleted], Vice President, Corporate Legal General Counsel and Corporate Secretary to MPIC, to the Appellant, wherein the issue of the blue files was addressed as follows:

> The Internal Review Office blue files contain the Internal Review Officer's notes as well as Internal Review Office memos. These working papers and notes form the basis of the final decisions on each internal review file and as such do not form part of the claim file and are not subject to disclosure.

On October 13, 2004, [text deleted], the Director of Appeals for the Commission wrote to the Appellant enclosing a copy of Mr. Shaw's response and advising that it appears that MPIC had provided a response regarding his request for information.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on June 12, 1994. As a result of that accident, the Appellant suffered injuries and suffered from back, neck and shoulder pain. The Appellant sought chiropractic care for treatment of his injuries.

Prior to the motor vehicle accident, the Appellant had been employed on a full time basis as a [text deleted] working at the [text deleted]. He had returned to this job from a work related (WCB) Injury Claim on June 6, 1994. He was off work due to injuries following the motor vehicle accident, and in receipt of Income Replacement Indemnity ('IRI') benefits until he returned to regular duties on December 27, 1994. After returning to the regular duties of his job he continued to receive IRI on a reduced basis, as he was unable to work any extra shifts made available to him. He received reduced IRI payments until the end of September 1996, and received chiropractic treatment benefits until July 1995.

On May 7, 2000, the Appellant submitted documentation to MPIC requesting a return of partial IRI benefits and for chiropractic treatment benefits due to a relapse occurrence.

MPIC DECISIONS

1. On June 21, 1999, the Appellant's case manager decided to discontinue coverage for chiropractic treatments as of July 15, 1999. The decision of an Internal Review Officer dated December 2, 1999 concurred with the case manager's decision to discontinue chiropractic treatments, finding that these treatments had long since ceased to contribute to the Appellant's recovery.
2. On August 27, 1999, the Appellant's case manager decided that he was no longer entitled to any further reduced IRI payments shifts and denied payments of compensation for overtime shifts missed in 1997. An Internal Review Officer's decision dated January 17, 2000 confirmed that decision, finding that there was no medical substantiation of an ongoing physical impairment caused by the motor vehicle accident which prevented him from working extra shifts.

3. The Appellant requested that his chiropractic treatments and IRI benefits be reinstituted as a result of a relapse of his injuries from the motor vehicle accident. On September 26, 2000 his case manager refused this request for further IRI and chiropractic therapy arising from the alleged relapse. An Internal Review Officer's decision dated June 25, 2001 confirmed the case manager's decision, refusing funding of further chiropractic treatments and the payment of further IRI as a result of the alleged relapse.

It is from these decisions which the Appellant now appeals to the Commission.

ISSUES

1. Entitlement to chiropractic treatment benefits beyond July 15, 1999.
2. Entitlement to reduced Income Replacement Indemnity benefits.
3. Entitlement to further chiropractic treatment benefits and Income Replacement Indemnity benefits following alleged relapse.

These questions involve issues of causation, in terms of whether there is a connection between the accident and the Appellant's condition, and issues of whether, apart from the question of causation, further chiropractic treatments are a medical necessity in this case.

SUBMISSIONS

Counsel for MPIC submits that further chiropractic treatment is not a medical necessity in this case. Counsel also submits that the Appellant's symptoms and his failure to work overtime shifts after 1996 are not directly connected to or caused by the motor vehicle accident.

1. Entitlement to chiropractic treatment benefits beyond July 15, 1999.

Counsel for MPIC pointed to evidence that the claimant had received in excess of 500 chiropractic interventions, and submitted that the Appellant had long ago reached the maximum therapeutic benefit from this type of care.

These treatments were provided primarily by [text deleted], Chiropractor. He provided a narrative report dated April 14, 1999 recommending future chiropractic care on a decreasing basis to regain stability and functional improvement.

In an Inter-Departmental Memorandum dated May 4, 1999, [text deleted], Chiropractic Consultant to MPIC Claims Services Department reviewed [Appellant's chiropractor's] report and noted that the claimant's progress over 6 years and 500 treatments had not been particularly significant, and recommended alternative treatment.

> ….It is my opinion that this claimant has long since reached maximum therapeutic benefit from chiropractic care and that it is not reasonable to expect after 500 treatments that more of the same care will produce results other than those it has already produced. In short, I do not find compelling objective evidence from [Appellant's chiropractor's] report that supports on going chiropractic intervention as being a therapeutic necessity. It may be helpful to have the claimant assessed by a physical medicine specialist (physiatrist) to explore alternative treatment options……

[Appellant's chiropractor] submitted further treatment plans regarding the Appellant's care, including a report dated April 3, 2000 which recommended that the Appellant receive supportive chiropractic care "*as needed indefinitely*".

In an Inter-departmental Memo dated June 1, 2000, [MPIC's chiropractor] once again noted the number of treatments received by the Appellant, and expressed the following opinion:

> As of the date of my previous review, the claimant had received in excess of 500 chiropractic interventions and it was my opinion at that time that the claimant had long since reached maximum therapeutic benefit from the type of

> care from which he was receiving.
>
> After reviewing [Appellant's chiropractor's] most recent report, there is no additional information in this report to change that previously rendered opinion. It is my opinion that this claimant has had as what can be described as an extensive exposure to [Appellant's chiropractor's] care with what, in my opinion, could be described as disappointing results. In short, it is my opinion that [Appellant's chiropractor's] Treatment Plan Report of April 3, 2000 is not supportive of the necessity for ongoing chiropractic intervention, as it would relate to the motor vehicle accident in question.

On September 2, 2000 [Appellant's chiropractor] submitted a Treatment Plan Report indicating that the Appellant had suffered a "*relapse with flare up of symptoms*" and recommended indefinite supportive chiropractic care.

[MPIC's chiropractor] reported on September 12, 2000 that it was his opinion, based upon his review of the file and consultations with [Appellant's chiropractor], that further chiropractic treatment could not be seen as a therapeutic necessity.

2. Entitlement to reduced Income Replacement Indemnity benefits.

The Appellant has submitted that his inability to work overtime both following the accident and an alleged relapse of symptoms before May 31, 2000, is the result of the motor vehicle accident and as such he should be entitled to reduced IRI Benefits.

To support his claim of being medically unable to work extra shifts, the Appellant submitted a Standard Return to Work/School form completed by his physician, [text deleted] confirming, in handwritten form that the Appellant's inability to work overtime was medically substantiated and related to the car accident. He also submitted a report dated September 8, 1999 from [Appellant's chiropractor], supporting his inability to function in the extreme risk demands of his profession.

The Internal Review Officer noted that [Appellant's chiropractor's] letter did not explain how the Appellant had been able to function on regular shifts in December 1994, but was not able to function on any extra shifts and noting that any inability to work, in any event, was for reasons unrelated to the June 1994 automobile accident. He also reviewed an earlier report, dated April 3, 1997 prepared by [MPIC's doctor], Medical Consultant to MPIC's Health Care Services Department. [MPIC's doctor] noted that his review of [Appellant's doctor #1's] notes showed a lack of objective finding of ongoing physical limitations related to the motor vehicle accident.

In regard to the reduced IRI benefits for overtime missed in 1997, [MPIC's doctor] reported:

> . . . It has been noted in [the Appellant's] file that he is unable to perform any overtime duties since the motor vehicle collision. [Appellant's chiropractor's] assessment of [the Appellant] suggest on going limitations of function which are not supported by [Appellant's doctor #2's] assessment. [Appellant's doctor #1] has been unable to find any objective evidence to suggest ongoing physical limitation. It is therefore my opinion that the medical information in [the Appellant's] file does not support ongoing physical impairment, that has developed as a direct result of the motor vehicle collision, that would prevent [the Appellant] from performing overtime hours when available to him…..

[MPIC's doctor] also suggested that the Appellant be assessed through a Functional Capacity Evaluation to determine any functional limitations or physical impairments that may have developed as a direct result of the motor vehicle collision. The Appellant declined.

The Internal Review Officer relied on [MPIC's doctor's] observation and also concluded that the Appellant's caregivers had failed to identify a medically objective and verifiable condition which would enable him to work regular shifts yet continue to disable him from working extra shifts.

3. Entitlement to further chiropractic treatment benefits and Income Replacement Indemnity benefits following alleged relapse.

With regards to the Appellant's claim for IRI arising out of the relapse, counsel for MPIC submits that the Appellant has long since healed from any injuries sustained in the motor vehicle accident. He submits that there is no causal link between the Appellant's recent symptoms and the motor vehicle accident.

In an Inter-departmental Memorandum dated August 10, 2000, [MPIC's doctor] reviewed the Appellant's file, including the reports obtained from his caregivers over the years following the accident. [MPIC's doctor] concluded that the medical conditions arising from the motor vehicle collision had long since healed and no longer factored into his ongoing symptomology. The Appellant's pre-existing neck and back problems prior to the motor vehicle collision in question led [MPIC's doctor] to believe that it was not reasonable to conclude that any symptoms the Appellant might be experiencing would be solely as a result of a collision that occurred 6 years previously.

[MPIC's doctor] concluded that a review of the file did not identify a medical condition arising from the collision in question which in turn resulted in a permanent impairment of physical and/or psychological function. It was also noted that the Appellant was having psychological problems as a result of issues arising from his work, but had refused a request from MPIC to review his Workers Compensation Board file.

On August 24, 1999, [Appellant's doctor #3] had reported a possible diagnosis of the Appellant as suffering from fibromyalgia.

[Appellant's doctor #1], on May 30, 2000, identified a condition of chronic pain disorder or fibromyalgia.

According to [MPIC's doctor], medical evidence did not identify the Appellant as having fibromyalgia, although the information did indicate he had a chronic pain disorder.

> ….It is my opinion that the medical evidence does not identify a condition arising from the motor vehicle collision in question that played a significant role in the development of this disorder.
>
> It is my opinion, based on the balance of medical probability, that the medical conditions arising from the motor vehicle collision in question has healed and further therapeutic interventions are not a medical necessity in the management of the conditions…

DISCUSSION

RELEVANT LEGISLATION

Chiropractic Treatments:

In order to qualify for funding under the Personal Injury Protection Plan (PIPP) benefits Part II of the MPIC Act, expenses for treatment must be incurred by a victim because of the accident and must be medically required. Section 136(1)(a) of the MPIC act provides that:

> **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 under *The Health Services Insurance Act* or any other Act, to the 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 the care;

Section 5(a) of the Manitoba Regulation 40/94 provides that:

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) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Reduced IRI:

The MPIC Act also provides for IRI benefits in the following provisions:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

(b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;

(c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

I.R.I. reduction if victim earns reduced income

116(1) Where a victim who is entitled to an income replacement indemnity holds employment from which the victim earns a gross income that is less than the gross income used by the corporation to compute his or her income replacement indemnity, the income replacement indemnity shall be reduced by 75% of the net income that the victim earns from the employment.

The Appellant can only be entitled to chiropractic treatment benefits, and to reduced IRI benefits under Section 116, if the treatments are medically required because of the accident, and his inability to work and earn the income he did prior to the accident was caused by the motor vehicle accident of June 12, 1994.

Onus

In each case, the onus is on the Appellant to establish the Internal Review Officer erred in regards to the Appellant's entitlement.

Counsel for MPIC argued that the Appellant failed to cooperate with MPIC in two ways, and that this failure made it difficult to assess and establish his claims to entitlement. The Appellant refused to give MPIC the releases necessary for it to obtain medical information from his Worker's Compensation file. He also refused to proceed with the Functional Capacity Evaluation recommended by [MPIC's doctor]. Counsel for MPIC submitted that all of this information is required in order to assess the reasonableness of the Appellant's claim that he required further treatment, that he was unable to work extra shifts, and that this inability arose as a result of injuries sustained in the motor vehicle accident.

Counsel for MPIC also noted that the Appellant had failed to comply with the alternative treatment therapies suggested, limiting himself to chiropractic therapy.

These decisions by the Appellant deprived him of evidence which might have shed light on the questions involved in this appeal or helped him to meet the required onus for establishing his claims for chiropractic treatment and reduced IRI.

CONCLUSIONS

Having regard to the evidence on the file and the opinions of the foregoing medical practitioners, we find that the Appellant has not established, on a balance of probabilities, that continued chiropractic treatment was medically required. The facts of the case at hand, including the rather

extensive amount of chiropractic treatment undertaken by the Appellant, coupled with the lack of improvement in his condition, lead us to the conclusion that the Appellant had reached maximum therapeutic benefit from chiropractic care as of July 15, 1999. This situation did not change as a result of his alleged relapse prior to May 31, 2000. Accordingly, ongoing chiropractic treatments beyond July 15, 1999 cannot be deemed medically required within the meaning of Section 5(a) of Manitoba Regulation 40/94. We are of the opinion that MPIC was justified in terminating payments for chiropractic treatments for the Appellant as it did.

Further, having regard to the evidence on the file and the opinions of the foregoing medical practitioners, we find that the Appellant has not established, on a balance of probabilities, that his inability to work overtime shifts, both in 1997, and as a result of his alleged relapse prior to May 31, 2000, are causally connected to the motor vehicle accident.

As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decisions of MPIC's Internal Review Officer, bearing dates December 2, 1999, January 17, 2000, and June 25, 2001.

Dated at Winnipeg this 8th day of November, 2004.

MEL MYERS, Q.C.

LAURA DIAMOND

DEBORAH STEWART