



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-83**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Wendy Sol
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by [Appellant's representative]; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.

HEARING DATE: March 3, 2004

ISSUE(S): Entitlement to reimbursement of expenses for chiropractic treatments.

RELEVANT SECTIONS: Subsection 136(1)(a) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and subsection 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.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on September 28, 1995. As a result of this motor vehicle accident, the Appellant suffers from ongoing neck and lower back pain. The Appellant is appealing the Internal Review decision dated February 24, 2003, which dismissed his Application for Review. In her decision, the Internal Review Officer upheld

the case manager's decision of November 1, 2002 and determined that there was no entitlement to funding for further chiropractic treatments beyond November 22, 2002.

At the appeal hearing, the Appellant's representative submitted that ongoing chiropractic care was required to help the Appellant cope with his ongoing neck and low back pain, which he attributes to the motor vehicle accident. The Appellant's representative maintains that regular chiropractic care helps the Appellant maintain a productive lifestyle, without treatment his condition regresses and he is unable to function.

Counsel for MPIC submits that further chiropractic treatment beyond November 22, 2002 was not medically required as a result of the September 28, 1995 motor vehicle accident and therefore MPIC was not obligated to continue to fund chiropractic treatments beyond that date. Counsel for MPIC relies on [MPIC's chiropractor's] opinion, set out in his Inter-Departmental Memorandum of February 12, 2003, where he concludes:

In my opinion, the benefit of chiropractic care has not been demonstrated. The need for supportive care has not been demonstrated. Supportive care is a category of care that is considered advisable because the patient's condition deteriorates significantly with the withdrawal of care. In my opinion, this criterion for supportive care has not been met. The care cannot therefore be considered supportive.

Counsel for MPIC maintains that the Appellant has not demonstrated that his condition deteriorates significantly with the withdrawal of chiropractic care. As a result, she submits that the ongoing requirement for chiropractic care has not been demonstrated and accordingly the Internal Review decision should be confirmed.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a) of the MPIC Act, which provides 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 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 Manitoba Regulation 40/94, which provides 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) 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.

Having carefully reviewed all of the evidence made available to it, both oral and documentary, the Commission finds that the objective medical evidence on the Appellant's file indicates that further chiropractic treatments were not medically required as a result of his motor vehicle related injuries beyond November 22, 2002.

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, eight and a half years ago and his present condition, it remains to inquire whether the treatments for which he seeks reimbursement were "medically required". We find that the Appellant has not established, on a balance of probabilities, that chiropractic treatments beyond November 22, 2002 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 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.
- 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.

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 facts of the case at hand, including the rather extensive amount of chiropractic treatments undertaken by the Appellant, coupled with the lack of improvement in his condition, lead us to the conclusion that the Appellant had likely reached maximum therapeutic benefit from chiropractic care as of November 22, 2002. Accordingly, ongoing chiropractic treatments beyond November 22, 2002 cannot be deemed medically required within the meaning of subsection 5(a) of Manitoba Regulation 40/94. Therefore, we are

of the opinion that MPIC was justified in terminating payment for further chiropractic treatments for the Appellant on November 22, 2002, as it did.

As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 24, 2003.

Dated at Winnipeg this 11th day of March, 2004.

YVONNE TAVARES

WENDY SOL

PAUL JOHNSTON