Manitoba

# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**
**AICAC File No.: AC-02-122**

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| **PANEL:** | **Ms Laura Diamond, Chairperson** |
| **APPEARANCES:** | **The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.** |
| **HEARING DATE:** | **January 24, 2008** |
| **ISSUE(S):** | **Entitlement to treatment benefits** |
| **RELEVANT SECTIONS:** | **Section 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and 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 Appellant was injured in a motor vehicle accident on March 8, 1999. She experienced lower back, cervical and interscapular discomfort.

Following the accident, the Appellant attended at a chiropractor, [Appellant's chiropractor], who examined her, took x-rays and treated her.

On December 7, 1999, the Appellant attended for an independent chiropractic exam with [independent chiropractor]. [Independent chiropractor] concluded that the Appellant had

suffered from a muscular ligamentous irritation as a result of the motor vehicle accident and that her treatment, and its frequency at that time were reasonable. He reported that, by the anniversary of her accident, March 8, 2000, she would have attained maximum therapeutic benefit.

[MPIC's chiropractor #1], a Senior Chiropractic Consultant with MPIC's Health Care Services Team, reviewed the Appellant's file and provided a report dated March 27, 2001. At that time, he concluded that the Appellant had reached maximum therapeutic benefit and that further chiropractic treatments were no longer a medical necessity.

The Appellant's case manager wrote to her on April 5, 2002, advising that MPIC would not consider further treatment effective from receipt of the case manager's letter.

The Appellant sought Internal Review of this decision. On July 25, 2002, an Internal Review Officer for MPIC reviewed the Appellant's file and the medical reports and concluded that further treatment was no longer necessary. She confirmed the case manager's decision of April 5, 2002.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

## Evidence and Submission for the Appellant

The Appellant gave evidence at the hearing into her appeal. She testified that she had suffered from previous accidents, and at the time of the motor vehicle accident of March 8, 1999, her third, she reinjured her back. Since MPIC would not pay for physiotherapy benefits, she went for chiropractic therapy.

The Appellant testified that although MPIC had found that she no longer required chiropractic treatment, she was in pain. She described the pain as having "returned with a vengeance". She testified that she takes over-the-counter drugs and pain killers to deal with this pain.

The Appellant submitted that her pain was a result of the motor vehicle accident. She believed that letters submitted by her friends and co-workers established her pain. However she indicated that she had difficulty obtaining appropriate evidence from her general practitioner, [Appellant's doctor], to establish her condition and the requirement for chiropractic care, although she did submit documentary evidence of prescriptions from [Appellant's doctor] for massage therapy.

**Submission for MPIC**

Counsel for MPIC recognized that it was not entirely clear why MPIC had continued to fund treatment – both chiropractic and athletic therapy, for a year after [MPIC's chiropractor #2] provided his opinion, on March 27, 2001 that:

> Seeing that this claimant has had both chiropractic and athletic therapy care over the last two years during which time she has had approximately 62 chiropractic treatments and 88 athletic therapy treatments, I would suggest that based on all of the information on file, there is no longer a necessity for further care, in that the claimant has likely reached maximum therapeutic benefit and likely maximum medical improvement.

He submitted that the Appellant had admitted, in a letter to her case manager dated May 14, 2002, that she herself discontinued chiropractic care treatment "as I felt it was doing absolutely nothing but aggravate the condition." However, she sought "as needed" treatment on an ongoing basis.

Counsel for MPIC submitted that Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation P215 40/94 require that care must be medically required before an entitlement to coverage arises.

He submitted that the expenses for which reimbursement were being sought were incurred seven and one-half (7 ½) to eight and one-half (8 ½) years post-accident. He argued that there are no reports linking these expenses to the Appellant's motor vehicle accidents, such that neither of the two tests for coverage, causal relationship and medical necessity, have been met.

## Discussion

**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;

**Manitoba Regulation 40/94:**
**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;
(b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to treatment benefits as a result of the motor vehicle accident and that such treatments are medically

required.

The Commission has reviewed the documentary evidence on file, as well as the evidence of the Appellant and submissions of the parties.

The Commission has reviewed [independent chiropractor's] recommendation that treatment benefits should last until one (1) year after the accident, March 8, 2000. I have also considered [MPIC's chiropractor #1's] comments (on March 27, 2001) that after sixty-two (62) chiropractic treatments and eighty-eight (88) athletic therapy treatments, there is no longer a necessity for further care, and that the claimant has likely reached maximum therapeutic benefit and likely maximum medical improvement.

Accordingly, the Commission finds that the Appellant has failed to establish, on a balance of probabilities that further treatment benefits are medically required. She has not submitted evidence to establish a medical requirement for such a treatment.

The Appellant's appeal is hereby dismissed and the decision of the Internal Review Officer dated July 25, 2002 is confirmed.

Dated at Winnipeg this 26th day of February, 2008.

**LAURA DIAMOND**