

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-36**

PANEL: Ms Laura Diamond, Chairperson
Ms Diane Beresford
Ms Mary Lynn Brooks

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: January 31, 2008

ISSUE(S): Entitlement to further chiropractic treatment benefits beyond May 28, 2004

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

A hearing into the Appellant's appeal was scheduled for January 31, 2008 at 9:30 a.m. The Appellant was personally served with a Notice of Hearing, dated November 6, 2007, and an Affidavit of Service sworn by [text deleted] indicated that the Appellant was personally served with the envelope containing the Notice of Hearing on November 7, 2007 at 6:54 p.m.

However, the Appellant failed to attend at the hearing scheduled for her appeal on January 31, 2008 and the Commission did not receive any communication from her in that regard either before or after the hearing.

The Appellant was injured in a motor vehicle accident on November 24, 1998. Her injuries were extensive and she was in receipt of various Personal Injury Protection Plan ('PIPP') benefits. Among these was chiropractic care.

On June 23, 2004, the Appellant's case manager wrote to her indicating that the reports of her chiropractor, [text deleted], had been reviewed by MPIC's Health Care Services Chiropractic Consultant. Since the levels of improvement reported by the Appellant's chiropractor from January to May 2004 would not be considered significant changes with treatment, MPIC concluded that the Appellant had reached a plateau and as such, additional chiropractic treatment was not a medical necessity.

The Appellant sought Internal Review of this decision. On November 30, 2004, an Internal Review Officer for MPIC reviewed the medical reports from [Appellant's chiropractor], the Appellant's family physician [text deleted], and from [text deleted], MPIC's Chiropractic Consultant with Health Care Services. The Internal Review Officer determined that the medical documentation on her file did not support that the Appellant had achieved lasting benefit with that particular modality of treatment. It was the view of the Internal Review Officer that such treatment was not medically required, as there was not any real likelihood that it would lead to demonstrable improvement in the Appellant's condition. He found that the proposed chiropractic treatment was not a therapeutic necessity and confirmed the case manager's decision

terminating funding for chiropractic treatment. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

As noted, the Appellant did not appear at the hearing. Her Application for Review of her case manager's decision indicated:

I have been getting significant relief with chiropractic treatment. Since stopping treatment my neck and low back have been feeling worse and deteriorating. The problems I currently have are due to the motor vehicle injury I sustained (sic) and I did not have these problems before. I am more functional and have less pain with regular care. My chiropractor and medical doctor are both in agreement.

The Appellant's chiropractor reported on August 30, 2004, recommending further treatment of supportive care of two (2) to four (4) treatments per month indefinitely. It was his view that the Appellant had shown eighty (80%) percent resolution of her symptoms, but that her improvement was not stable and that she continued to experience frequent episodes of myofascial, joint and neuropathic pain escalation.

The Appellant's physician, [text deleted], provided a hand written note dated September 23, 2004 indicating:

Patient will benefit from ongoing T-TT/WK chiropractic sessions and I advise their continuation till (sic) further notice.

The Appellant's Notice of Appeal dated February 23, 2005 stated:

I don't feel I was represented properly at the previous hearing.

Submission for MPIC

Counsel for MPIC identified that the only issue on appeal is whether the Appellant is entitled to PIPP coverage for chiropractic benefits beyond May 28, 2004 as a consequence of the motor vehicle accident on November 24, 1998.

Counsel reviewed reports from the Appellant's chiropractor. He also relied on a memorandum dated June 7, 2004 from [text deleted], chiropractic consultant to MPIC's Health Care Services Team. [MPIC's chiropractor] noted that the available evidence provided very little support for the notion that the Appellant was improving with chiropractic treatment. Any improvement was described as marginal and given the extended time frame over which it occurred, [MPIC's chiropractor] felt it "would be difficult to relate to specific therapeutic intervention." He concluded that further chiropractic care was unlikely to progress her functionally or symptomatically.

The treating chiropractor submitted another treatment plan calling for treatments two (2) to four (4) times a month indefinitely. This was supported by [Appellant's doctor's] note.

[MPIC's chiropractor] reviewed the Appellant's file again on November 1, 2004. He noted that the new documents did not provide any objective evidence of deterioration in the absence of treatment. He remained of the view that the Appellant had not shown sufficient progress with chiropractic care to warrant continuation as a medical necessity.

Counsel noted that no evidence of expenses incurred for chiropractic treatments beyond the date of termination had been provided and that no full report from the family physician had been provided.

He 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 or reimbursement arises. He submitted that chiropractic treatment was initiated a considerable time after the accident and that there is very little evidence of measureable objective improvement during the seven (7) months when treatment was being provided on a quasi-regular basis. Thus, he submitted that the test for coverage – medical necessity – had not been met and the appeal should be dismissed.

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

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 panel has reviewed the documents on the file and the submission of counsel for MPIC. We note that the onus is on the Appellant to prove, on a balance of probabilities, that the proposed treatment is medically required. There is not sufficient evidence on the file for us to come to this conclusion. In the absence of any oral submissions or testimony on the part of the Appellant, and in the absence of further medical reports submitted by her to establish the necessity for additional treatment, we agree with the assessment of [MPIC's chiropractor] that further chiropractic treatment is not medically required in the Appellant's case. Accordingly, we dismiss the Appellant's appeal and uphold the decision of MPIC's Internal Review Officer dated November 30, 2004.

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

LAURA DIAMOND

DIANE BERESFORD

MARY LYNN BROOKS