

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-77**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Mr. Paul Johnston

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

HEARING DATE: October 5, 2009

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

RELEVANT SECTIONS: Section 136(1)(a) 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.

Reasons For Decision

The Appellant, [text deleted], was involved in two motor vehicle accidents, on August 17, 1995 and on November 6, 1996. As a result of those accidents, the Appellant sustained bodily injuries and became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review Decision dated May 5, 2008, with respect to her entitlement to reimbursement of ongoing chiropractic treatments.

By way of background, the Automobile Injury Compensation Appeal Commission has previously rendered a decision with respect to the medical requirement of chiropractic care as it relates to the two accidents in question. On October 8, 1998, the Commission rendered a decision (File No. AC-97-138) which in part states, "We have no hesitation in finding MPIC justified in discontinuing chiropractic treatment at the time and in the manner that it did. However, it is regrettable that MPIC does not appear to have followed the recommendations of its Internal Review Officer who, in his decision letter dated November 6, 1997, directed the adjuster to follow-up with [Appellant's doctor] and the Appellant regarding another course of management, which would presumably have included a Functional Capacity Evaluation and, thereafter, a Functional Restoration Program".

In accordance with that decision, funding for chiropractic treatment ended effective July 19, 1997. Additionally, a Functional Capacity Evaluation and restoration program was initiated on two separate occasions, including June 22, 1999 and October 31, 2009. However, the Restoration Program was, in both instances, discontinued upon the advice of [the Appellant's] doctor.

Subsequently, the Appellant again requested that MPIC fund her ongoing chiropractic treatments. In support of that request, she provided further medical information to MPIC regarding her ongoing need for chiropractic care.

On October 30, 2007, MPIC's case manager issued a decision to address the medical requirement of chiropractic treatments subsequent to the Commission's decision of October 8, 1998, as well as the causal relationship of the Appellant's current symptoms to the motor vehicle accident of November 6, 1996 and August 17, 1995. The case manager found that there was no

entitlement for further chiropractic treatment following the Commission's decision of October 8, 1998 arising from the motor vehicle accidents of November 6, 1996 and August 17, 1995.

The Appellant sought an Internal Review of that decision. In a decision dated May 5, 2008, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that there was an absence of evidence to substantiate that the administration of chiropractic treatment (for approximately 12 years) had provided [the Appellant] with substantial and/or sustained improvement in her condition. Additionally, the Internal Review Officer found that the Appellant's file contents did not describe a therapeutic withdrawal or other objective evidence to suggest that the Appellant met the criteria for supportive care as it related to her accident injuries. The Internal Review Officer further found that no convincing evidence had been presented to support that chiropractic treatment provided a significant palliative effect beyond short term symptom relief. As a result, she found that chiropractic treatment was not medically required for the Appellant within the meaning of the PIPP legislation.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of ongoing chiropractic treatments.

Relevant Legislation:

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 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;

Appellant's Submission:

Counsel for the Appellant submits that the Appellant's ongoing chiropractic treatment is medically required within the meaning of the PIPP legislation. He argues that since the Appellant requires chiropractic care to maintain her condition, then it must be medically required. With respect to whether the Appellant meets the requirements for "supportive care", counsel for the Appellant submits that the Internal Review Officer did not consider the Appellant's evidence that her condition deteriorates without chiropractic treatment. He claims that the Appellant's evidence should be given significant weight in determining whether her condition does objectively deteriorate.

Counsel for the Appellant also relies upon [Appellant's chiropractor's] opinion, set out in his report of November 24, 2006, that:

"Chiropractic adjustments are the only thing that gives [the Appellant's] relief. She has been coming in on average of once per week for treatments but is very susceptible to further injury due to her progressive spinal degeneration. She will need chiropractic spinal adjustments for life to help her with her pain management."

Counsel for the Appellant contends that the Appellant's functional ability decreases without chiropractic care. He submits that the Appellant's own evidence that she has a deterioration of her signs and symptoms meets the requirements for supportive care. Accordingly, counsel for the Appellant maintains that the Appellant requires periodic chiropractic care in order to maintain her level of function and provide her with the most consistent modality for relief of her pain. As a result, counsel for the Appellant submits that the Appellant's appeal should be allowed and that she is entitled to funding for ongoing chiropractic treatments.

MPIC's Submission:

Counsel for MPIC submits that ongoing chiropractic care is not medically required for the Appellant. Counsel for MPIC submits that in order to determine the medical necessity of chiropractic treatment, it is necessary to demonstrate that an individual continues to enjoy sustained or progressive improvement that is ongoing and significant, or that the Appellant's condition deteriorates significantly in the absence of treatment. Counsel for MPIC maintains that the content of [Appellant's chiropractor's] written reports and clinic notes do not support either conclusion.

With respect to the issue of whether the Appellant's ongoing chiropractic treatment meets the requirement of supportive care, counsel for MPIC maintains that the accepted definition of "supportive care" includes the following elements:

1. There must be an objective demonstration that the proposed treatment program has a palliative effect with respect to the claimant's signs and symptoms;
2. It must be demonstrated objectively that the lack of a proposed treatment results in a deterioration of the claimant's signs and symptoms.

Counsel for MPIC submits that the Appellant has not satisfied the criteria for supportive care as there is no objective evidence of deterioration in the Appellant's condition and there has been no withdrawal of treatment. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for ongoing chiropractic treatment.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for ongoing chiropractic treatment.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 2004; and
2. the treatments must be "medically required".

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing chiropractic treatments are medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. The Appellant's condition has remained virtually unchanged, despite ongoing chiropractic care. The evidence

before the Commission does not establish that ongoing chiropractic care improves the Appellant's condition.

Additionally, we find that the Appellant has not met the criteria for supportive care. In this regard, we agree with the opinion of [MPIC's chiropractor], that there is no objective evidence of deterioration in the Appellant's status with a discontinuation of chiropractic treatment. The reports of [Appellant's chiropractor] do not provide adequate evidence of deterioration in care following a discontinuation of chiropractic treatment. There simply was no evidence before the Commission of a withdrawal of care for this Appellant. Accordingly, we find that the Appellant is not entitled to reimbursement of ongoing expenses for chiropractic care.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated May 5, 2008 is confirmed.

Dated at Winnipeg this 17th day of November, 2009.

YVONNE TAVARES

DIANE BERESFORD

PAUL JOHNSTON