

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-062**

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnston
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: March 27, 2012

ISSUE(S): Entitlement to further chiropractic treatments.

RELEVANT SECTIONS: Section 136(1) 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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was injured in a motor vehicle accident on July 27, 2009. As a result of the accident, the Appellant indicated she experienced soreness in her neck, back, hips, left leg, left foot, right shoulder and muscle tension between her shoulder blades. She was diagnosed with injuries which included whiplash injury and various strains and sprains.

An initial chiropractic report dated July 29, 2009 indicated that Track II chiropractic care may be necessary as a result of psychological stress, medication and obesity.

On September 27, 2009, MPIC's Chiropractic Health Care Consultant reviewed the Appellant's file and noted that the multiple areas of injury supported Track II – Phase 1 treatment.

On November 25, 2009, the Health Care Consultant noted that the Appellant's improvement supported Track II – Phase 2 treatment.

The Chiropractic Health Care Consultant reviewed the Appellant's file again on January 27, 2010 and indicated that the only residual problems were low back and hip pain which had not improved. In his opinion, the trial of care had been adequate and further treatment was not likely to result in improvements, it was therefore elective, and not required.

The Appellant's case manager wrote to her on February 2, 2010 indicating that there was no entitlement to further funding of chiropractic treatments beyond Track II, Phase 2, which was a maximum of 52 treatments. Additional treatment was not medically required.

The Appellant sought an Internal Review of this decision. On April 9, 2010, an Internal Review Officer for MPIC reviewed the Appellant's file and concluded that the medical information on the file indicated that further chiropractic treatment was not medically required as a result of injuries the Appellant sustained in the motor vehicle accident. The case manager's decision was confirmed. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal. She described the motor vehicle accident in which her vehicle was rear-ended, and the whiplash injuries which resulted.

The Appellant submitted that as a result of her injuries she required constant chiropractic treatment since the motor vehicle accident. She had developed a vestibular disorder and fibromyalgia, which, she submitted, was caused by the motor vehicle accident.

She indicated that she attended regularly for chiropractic care and would then feel all right for a few days. Then, the pain would return in her low back and legs and she found it necessary to return for further chiropractic treatment.

On cross-examination, the Appellant acknowledged that she had received 52 MPIC-funded chiropractic treatments. She indicated that she then saw her chiropractor for a further 34 treatments in 2010 and continued seeing him in 2011 after a fall she had in her home. She indicated that she was seeing her chiropractor approximately two to three times a week.

The Appellant also provided reports from [the Appellant's Chiropractor] dated December 7, 2010 and October 28, 2011.

On December 7, 2010, [the Appellant's Chiropractor] indicated that:

“Based on comparison of this patient’s response to Chiropractic treatment prior to and after the motor vehicle accident, the patient has responded remarkably well. She has shown steady improvement with Chiropractic treatment with more room for improvement. It is my professional opinion based on her response to treatment, objective examination and diagnostic findings including her complicating factors the patient [the Appellant] can benefit from an extension in her Chiropractic treatment to restore biomechanical integrity, limit intensity and frequencies of muscle spasms. Her symptoms of muscle spasms have happened with greater intensity and frequency post motor vehicle collision.”

On October 28, 2011, [the Appellant's Chiropractor] set out the treatments which the Appellant had received in 2010. He stated that it was his clinical opinion that most of the symptoms

displayed by the Appellant after her 52nd visit were residual injuries from her motor vehicle accident. He noted that the Appellant's symptoms had notably decreased in frequency and pain intensity during the above stated treatment and that the length of time for recovery did not seem unnatural considering the speed at which she was rear-ended. He stated:

“Her overall response to Chiropractic treatment as it pertains to injuries sustained in her motor vehicle accident have restored biomechanical integrity, limit intensity and frequencies of muscle spasms by reducing inflammation and neurological irritation.”

The Appellant submitted that she required further chiropractic treatment as a result of the motor vehicle accident and that her appeal should be upheld.

Evidence and Submission for MPIC:

Counsel for MPIC indicated that the issue in the Appellant's appeal was entitlement to further chiropractic treatment as a result of the motor vehicle accident of July 27, 2009. Counsel noted that after the case manager received a report from the [Appellant's Chiropractor] dated December 30, 2009, it was determined that the Appellant had reached a plateau in her recovery and that further chiropractic treatment was not medically required.

Counsel for MPIC noted that pursuant to Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94, chiropractic and other treatments must be medically required as a result of the motor vehicle accident. It was MPIC's position that based upon the assessments done by the chiropractors and the reports provided during treatment, the Appellant had reached maximum medical recovery. She had reached a plateau in her recovery from her injuries.

Counsel reviewed the Appellant's Application for Compensation which set out some of the Appellant's complaints of pain, as well as the initial chiropractic and follow-up reports provided

by [the Appellant's Chiropractor]. These were considered alongside [the Appellant's Chiropractor's] report dated October 27, 2009. Some of the Appellant's pain showed slight improvement, some had resolved, and some had become worse. When MPIC's Health Care Services department reviewed all of these reports, they concluded that no further treatment was required, as the Appellant had reached maximum medical improvement.

[The Appellant's Chiropractor's] report of October 28, 2011 was reviewed by MPIC's Health Care Services Consultant on December 14, 2011. After a review of the Appellant's file, the Consultant noted that the Appellant's complaints had not resolved and that they were either unchanged or worse, subjectively and objectively. It was noted that although [the Appellant's Chiropractor] provides the opinion that most of the Appellant's symptoms displayed were residual injuries from her motor vehicle accident, and that the patient's symptoms notably decreased in frequency and pain intensity during the treatment regime, no quantification of either outcome was given.

Counsel noted that, for example, in a period prior to the motor vehicle accident, the Appellant had attended for chiropractic treatment 22 times during a period of two months.

The Health Care Consultant noted:

“A more recent report from [the Appellant's Chiropractor] dated October 28, 2011 does not provide evidence to support the contention that care beyond the 52nd visit was on the balance of probabilities medically required and related to the motor vehicle collision. [The Appellant's Chiropractor] describes in this letter that the claimant's response to care was good yet her frequency of treatment appears to be relatively unchanged throughout 2010 and 2011. Above and beyond that, it would appear that the claimant presented to him prior to the motor vehicle accident with relatively significant symptoms in the same areas of complaint that she had post motor vehicle accident.”

Counsel for MPIC submitted that the medical information on the Appellant's file depicted an individual who had complaints of pain in numerous areas which began prior to the motor vehicle accident. Although MPIC had acknowledged some exacerbation from the motor vehicle accident and provided treatment, this exacerbation had either been completely resolved or was not going to resolve by additional treatments beyond the additional 52 treatments that MPIC had funded for the Appellant by December 30, 2009. Counsel submitted that any further chiropractic intervention for this patient would have been elective. Based upon this submission, counsel took the position that the Appellant's appeal should be dismissed and the decision of the Internal Review Officer upheld.

Discussion:

The MPIC Act provides:

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 provides:

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 further chiropractic treatment is medically required as a result of injuries sustained in the motor vehicle accident.

The panel has reviewed the evidence of the Appellant as well as the documentary evidence on her Indexed file and the submissions of the Appellant and counsel for MPIC.

The panel notes that the Appellant, due to pre-existing pain complaints, attended for at least 22 chiropractic treatments prior to the motor vehicle accident. Her pain complaints were then exacerbated by the injuries suffered in the motor vehicle accident. This was accepted by MPIC, who provided 52 treatments for her.

The panel agrees with counsel for MPIC that following these 52 treatments, many of the Appellant's pain complaints had resolved. Some complaints were unchanged and some complaints had worsened. We note the opinion of MPIC's Health Care Services Consultant that any residual complaints due to the motor vehicle accident could not be resolved by further treatment.

The panel accepts the submission of counsel for MPIC that the Appellant has failed to show, on a balance of probabilities, that she required further treatment. As indicated by MPIC's Health Care Consultant:

“In conclusion, after reviewing the entire file in detail, it is my opinion that the file contents do not provide evidence to suggest that chiropractic care beyond Phase 2 of Track 2 was on the balance of probabilities medically required and related to the motor vehicle accident in question. The file contents are most supportive of the position that the claimant's low back pain and hip pain (which existed pre-motor vehicle collision)

remained relatively unchanged over the course of 52 chiropractic interventions suggesting that the maximum response to chiropractic care had been achieved by December 30, 2009. Her other complaints (which also largely existed prior to the motor vehicle collision) resolved to the point where ongoing chiropractic care specifically directed to them would not be required as it related to the motor vehicle accident beyond December 30, 2009.”

The panel finds that the Appellant has failed to meet the onus upon her of showing, on a balance of probabilities, that further treatment was medically required as a result of the motor vehicle accident. We are in agreement with the comments of MPIC’s Chiropractic Health Care Consultant and counsel for MPIC that the Appellant had reached maximum medical improvement with chiropractic treatment and that further chiropractic treatments were not medically required in accordance with Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94.

Accordingly, the Appellant’s appeal is dismissed and the decision of the Internal Review Officer dated April 9, 2010 is upheld.

Dated at Winnipeg this 2nd day of May, 2012.

LAURA DIAMOND

PAUL JOHNSTON

LES MARKS