Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-05-054

PANEL:	**Ms Laura Diamond, Chairperson** **Mr. Guy Joubert** **Ms Lorna Turnbull**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Virginia Hnytka, Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.**
HEARING DATE:	**March 25, 2013**
ISSUE(S):	**Entitlement to reimbursement of chiropractic treatments from August 2005 to January 2007 (41 treatments)**
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 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 January 20, 1999 and then again on January 12, 2004. As a result of the accidents he sustained a soft tissue injury to his neck, back, knees and shoulders, and bruising to his chest.

MPIC provided funding for treatment for the Appellant's injuries, including chiropractic care and athletic therapy.

On March 22, 2005 the Appellant attended for a third party chiropractic assessment with [Independent Chiropractor]. In his report [Independent Chiropractor] commented that a discharge from chiropractic care to self management with independent exercise should be imminent and recommended that the Appellant receive a further eight weekly visits with his chiropractor to promote positive coping strategies and ensure compliance with independent active care initiatives. Chiropractic care should be discontinued after that time.

The Appellant's case manager wrote to the Appellant on June 16, 2005 advising that, further to [Independent Chiropractor's] recommendations, MPIC would not consider the cost of funding further chiropractic treatments beyond August 5, 2005.

The Appellant sought an Internal Review of this decision.

On September 16, 2005, an Internal Review Officer for MPIC reviewed [Independent Chiropractor's] report along with a memorandum of review by the chiropractic consultant with MPIC's Heath Care Services team, who supported [Independent Chiropractor's] recommendation.

The Internal Review Officer considered the extensive therapy (approximately 193 chiropractic treatments), in conjunction with athletic therapy that the Appellant had undergone and applied a test for whether further treatment was medically required: whether there was any real likelihood that it would lead to a demonstrable improvement in the condition of the patient and not only provide short-term symptomatic relief. The Internal Review Officer concluded that there was ample evidence on the file to support the case manager's decision to end funding for chiropractic treatment following the eight weekly visits.

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

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described his life prior to the motor vehicle accidents as a happily married family man able to support his family by working full-time as a middle to high income earner. He worked as a [text deleted] with a home business involving [text deleted]. He also described the recreational motor sports which he had been involved in. The Appellant then described the injuries he suffered in the motor vehicle accident, indicating that his lower back and neck were the biggest issue, along with the pain in his knees.

He had to give up his part time business, and while he returned to his job, he could not work at the same pace. He is receiving Income Replacement Indemnity ("IRI") benefits and has also received permanent impairment awards for injuries to his knees.

The Appellant explained that following his 1999 accident, he had lower back issues, resulting from a seatbelt injury. He was rehabilitating with chiropractic care. Then he had a second motor vehicle accident in January of 2004, which caused severe bruising to his chest and knees, neck injuries and, he believed, a tear in his back. The injuries and pain prevented him from returning to work on a full-time basis, even after participating in rehabilitation or re-education programs provided by MPIC.

The Appellant indicated that after MPIC terminated his chiropractic treatment coverage, he continued to go for chiropractic treatment for pain management. He described the problem as beginning with dull pain and numbness and becoming unbearable and very painful. He tried to take medications to deal with the pain, but these affected him. So, when the pain became

unbearable he would go to the chiropractor. The Appellant described this as a maintenance issue to realign nerve endings so he would recover from the pain. He also attended for deep massage therapy, explored injection therapy and now attends every six months for rhizotomy treatment, which provides substantial pain reduction. The Appellant explained that an MRI had shown bulging discs and a tear in his back, and that while the rhizotomy provides significant relief, it does not result in a permanent repair.

The Appellant explained that he was seeking funding for chiropractic treatment for pain management and maintenance because of deterioration, spurring and degeneration in his back with significant pain that he rated as crippling.

On cross-examination, the Appellant indicated that while he had explained his pain to [Independent Chiropractor] when he attended for his independent examination, the MRI showing damage to his back did not occur until after that meeting. The Appellant also indicated that he had been seeing his chiropractor, [Appellant's Chiropractor], even before the 1999 motor vehicle accident and that he had undergone 200 chiropractic treatments after the 2004 motor vehicle accident.

The Appellant also submitted and relied upon reports from his chiropractor, [Appellant's Chiropractor]. On February 12, 2010, [Appellant's Chiropractor] described three motor vehicle accidents in which the Appellant had been involved (the third accident occurred on January 3, 2007, subsequent to the case manager's decision and Internal Review decision at issue). He indicated that each subsequent injury made the Appellant worse and that he had received many specific chiropractic spinal adjustments in an attempt to minimize his pain caused by the traumatic forces of these accidents on his spinal column and other soft tissues. He indicated:

> "The chiropractic care he is receiving is specifically to help him cope by reducing as much irritation on the spinal cord and nerve roots with specific chiropractic spinal adjustments.
>
> [The Appellant] relates to me that when he gets adjusted regularly (once every 2 weeks) his neck pain, stiffness and hand numbness is a 2 out of 10 (10 being worst), and is therefore very manageable...
>
> His spine is degenerating due to the traumatic forces involved in all 3 accidents and previous micro traumas from his previous employment as a [text deleted]."

[Appellant's Chiropractor] described a withdrawal from care several times between 1999 and the present:

> "I did withdraw [the Appellant] from care several times from 1999 to present. The longest period was for 2 months August and September of 2008, March till April 2009 and from May and June of 2009. Several other times for 1 month withdrawals and then 2 week withdrawals I observed that anything longer then (sic) 2 weeks without a treatment [the Appellant] would come into my clinic complaining of increased neck, thoracic and lumbar pain and stiffness that would be on an intensity of 6 to 8 on a 10 scale.
>
> Treatment would resume on an average frequency of 3 times per week for 2 weeks, to 2 times per week for 2 weeks, then once a week for 2 to 3 weeks. The symptoms by then would subside to a 2 out of 10, then treatments suspended again. He was told to return when his pain got excessive. This usually took on average 2 to 3 weeks to even 1 month, but each time the flare-ups would take 10 to 12 visits to subside to a tolerable level of 2 on the 10 scale."

[Appellant's Chiropractor] indicated:

> "I feel [the Appellant] has reached maximum therapeutic benefit, but this benefit has failed to be maintained when his treatments go beyond 2 weeks.
>
> I feel for now, supportive care is needed every 2 weeks, but I fear in the future as his condition continues to deteriorate, he will need care at more frequent intervals. This, I feel, is medically required and justified to lessen his disability resulting from bodily injury sustained in these motor vehicle accidents. As well, these treatments are required for his ongoing rehabilitation as well as facilitating his return to a fairly normal life."

[Appellant's Chiropractor] also provided a report dated September 9, 2010 listing all of the chiropractic visits for which the Appellant attended between January 1999 and October 4, 2007.

He then provided a letter dated January 12, 2012. This letter indicated that the Appellant had stated to [Appellant's Chiropractor] on several occasions that the adjustments he was receiving were keeping him from getting worse. The chiropractor compared the potential forces involved in motor vehicle accidents with damaging forces from a hit in hockey or football with protective gear, concluding that forces in motor vehicle accidents cause devastating long-term effects to one's health and that regular ongoing care slows down these deteriorating effects. In his view, regular chiropractic care keeps individuals who have been in motor vehicle accidents functioning and keeps their pain at lower levels without the long-term effects of using pain medication. He stated:

> "[The Appellant] needed and still needs ongoing chiropractic spinal adjustments to keep him from further deterioration due to the traumatic forces introduced into his body from the MVA's he was involved in. This care is a medical necessity for him to be able to keep functioning at the level he presently enjoys.
>
> I do not understand [MPIC's Chiropractor's] comment that the chiropractic care he received from 2005 to 2007 was not particularly effective. To the contrary, the chiropractic spinal adjustments [the Appellant] received have stopped him from backsliding to the point that he could no longer function at his present capacity. In [the Appellant's] own words "These adjustments are keeping me from getting worse".
>
> These adjustments were medically necessary and continue to be so due to the multiple traumas he has experienced in these MVA's These spinal adjustments are what is allowing him to maintain a fairly normal life and keeping him in the work force although not at his chosen profession, that of diesel mechanic."

A letter from [Appellant's Doctor #1], dated November 17, 2006, indicated that the Appellant did not have any neurological or radicular symptoms and basically has chronic mechanical low back pain which was treated with one left F1 joint injection of Depo Megrol, which did not help the patient a lot overall.

A letter dated February 2, 2009 from [Appellant's Doctor #1] indicated that he last saw the Appellant on January 5, 2007, when he stated he was having low back pain which sometimes radiated into his buttocks, resulting in the Appellant's referral to the pain clinic.

The panel was also provided with a report dated March 16, 2009, from [Appellant's Doctor #2], of the [text deleted] Clinic, describing the Appellant's condition of mechanical back pain and treatment with fluoroscopic-guided facet joint injections. He also described treatment with rhizotomies and the improvement in the Appellant's pain since this treatment, as well as referral to physiotherapy for reconditioning with a plan to repeat facet joint rhizotomies as required.

Counsel for the Appellant submitted that the Appellant was seeking reimbursement for 41 chiropractic treatments he underwent between August 2005 and January 2007, as a result of the motor vehicle accidents in 1999 and 2004. Counsel described this treatment as supportive chiropractic care. She reviewed [Appellant's Chiropractor's] description of the Appellant's injuries and indicated that while the Appellant had many chiropractic treatments, it should be noted that MPIC had approved all of these treatments, following review by their consultants of [Appellant's Chiropractor's] regular reports. After the motor vehicle accident in January of 2004, MPIC approved recommended treatments at a rate of three per week. The Appellant missed over two months of work at that time, and he was never able to return to work to his full-time work duties after that. [Appellant's Chiropractor] believed that his attempts to return to work aggravated his lower back spasms.

Counsel indicated the fact that MPIC funded 137 chiropractic treatments for the Appellant in 2004, which is significantly above what normally would be allowed for Track I chiropractic

treatment (40 treatments), really shows that the Appellant had some very serious injuries that were recognized by MPIC.

Counsel queried [Independent Chiropractor's] examination and report which claimed that there was no medical evidence that the Appellant had an injury and also noted no specific findings implicating an ongoing cause and effect relationship to the motor vehicle accident. Counsel noted that causation has never been raised as an issue by MPIC and queried how [Independent Chiropractor] could come to the conclusion that there was no medical evidence of injury when the Appellant, at that time, was still only working four hours a day at a job he couldn't really do and having a great deal of difficulty.

Counsel also queried [Independent Chiropractor's] note that the Appellant had maladaptive beliefs regarding his lower back which were detracting from his recovery. She queried how anyone with a serious low back injury could be focused on anything else. She also queried [Independent Chiropractor's] conclusion that there was no specific findings when, clearly, an MRI of October 12, 2005 showed a posterior disc protruding at the F1 level.

Counsel for the Appellant rejected [MPIC's Chiropractor's] assertion, in his report of June 2005, that the Appellant had likely reached maximum medical improvement and that there was no evidence to suggest that ongoing care at the level of three times per week was necessary as a result of the motor vehicle accident. Counsel noted that by March 2005 chiropractic treatment had been in fact reduced to one treatment per week, and [MPIC's Chiropractor] failed to address that.

Counsel noted a report from the physiotherapist, [text deleted], dated January 11, 2010. Following extensive testing and evaluation she concluded that, due to objective findings, the Appellant would require reasonable accommodation and a lighter job.

Counsel went on to explore MRI findings, in November 2005, of a disc bulge and annular tear and complaints through March, May and June 2006 of lumbar pain and spasms and lower back pain.

Although [Appellant's Chiropractor's] description of the longest trial of withdrawal of care which the Appellant had undergone (two months) occurred in 2008 and 2009, after the beginning of the Appellant's rhizotomy treatments, counsel indicated that this does not mean that in the earlier, applicable periods between 2005 and 2007, there had been no withdrawal of care.

Counsel emphasized that the treatments which the Appellant had received over the past two years, involving some 41 treatments, were not even on a weekly basis and could certainly be considered chiropractic treatments on a *supportive* basis. The Appellant was an honest and reliable witness who really believed he needed these treatments. He was a hard worker and not a malingerer. Pain is always a subjective question and we cannot tell if the Appellant is in pain today or was in pain in 2005 and 2006 without his telling us that he is and was in pain. It was his evidence that he was in pain and that he needed chiropractic care and the panel should believe this. Counsel asked that the decision of the Internal Review Officer be overturned and that the Appellant be reimbursed for the chiropractic treatments that he testified he needed while he was in pain.

Evidence and Submission for MPIC:

Among the many reports and documents on the Appellant's indexed file, counsel for MPIC focused on reports from [Appellant's Doctor #3], [MPIC's Chiropractor] and [Independent Chiropractor].

In the multi-disciplinary assessment completed by [Appellant's Doctor #3], dated July 5, 2004, he summarized the following therapeutic recommendations:

1. "A work hardening program (6-weeks) is appropriate. This would develop his tolerance and endurance, but it is unlikely that it will return him to full duties.
2. [Text deleted] machine would prove beneficial.
3. Electronic vibrator massager, for the low back area.
4. His back exercises could be optimized.
5. [The Appellant] should continue to use his knee braces.
6. He should continue an active lifestyle (walking, cycling etc.)."

Counsel noted that none of these listed recommendations contained a recommendation for chiropractic treatment.

Counsel noted that although the evidence and submission for the Appellant included information regarding the motor vehicle accidents and the Appellant's reaction to them and their impact on his life, including subsequent MRI, injections, rhizotomy, drops in income and effect on the Appellant's personal life, this does not mean that these are in issue before the panel in this appeal. The Appellant cannot simply present all of these problems and issues and ask the panel to put them all together to conclude that on a balance of probabilities MPIC must pay for 42 chiropractic treatments between 2005 and 2007. Many issues of the Appellant have been dealt with over the last several years, and MPIC provided a variety of treatments and benefits. However, based upon an independent assessment and chiropractic report by [Independent

Chiropractor] and a file review performed by [MPIC's Chiropractor], MPIC's Health Care Consultant, MPIC had decided that there would be no more entitlement to chiropractic coverage. MPIC was aware, when it made this decision, that the Appellant had already been funded for approximately 400 treatments, but still took the position that further chiropractic treatment was not medically required.

Counsel noted that the issue of supportive chiropractic care has been thoroughly addressed at the Commission in the last couple of years. [Appellant's Chiropractor's] report of February 2010, did refer to the supportive care concept. Although [Appellant's Chiropractor], in his report dated February 12, 2010, did assert that supportive care was required for the Appellant every two weeks, counsel noted that the Appellant had failed to establish, through these medical reports, that all of the tests for supportive or medically required chiropractic care had been met.

In light of the numerous issues on the Appellant's file, MPIC sent [Appellant's Chiropractor's] report to [MPIC's Chiropractor], who tried to narrow down the issues when looking at the file. In focusing on the 41 chiropractic treatments, [MPIC's Chiropractor] asked to see [Appellant's Chiropractor's] chart notes. Following a review of these notes, [MPIC's Chiropractor] provided a report dated March 22, 2011 that described and reviewed the issue at hand. He was aware that approximately 40 chiropractic treatments were in issue and that [Appellant's Chiropractor] took the position that these were supportive. However, the file evidence did not lead to a change in [MPIC's Chiropractor's] opinion that such treatments were not required. Despite receiving 40 treatments, the Appellant has continued to suffer significant low back pain. In fact, he was then seen by [Appellant's Doctor #1] and [Appellant's Doctor #2] and received injections and rhizotomy treatment. This progression from chiropractic to much more invasive treatment

argues against, counsel submitted, chiropractic treatment between 2005 and 2007 being effective at resolving the Appellant's condition.

The Appellant then provided a further report from [Appellant's Chiropractor] dated January 12, 2012. Following a review of this report, [MPIC's Chiropractor] reviewed the file again on August 7, 2012 to deal with the points [Appellant's Chiropractor] had raised and addressed them. He stated:

> "With respect to point 3, when directing his narrative to the claim in question, there is nothing in the way of objective information to support the contention that ongoing chiropractic care was medically required. Specifically, the comments directed towards this topic seem to be that [the Appellant] continued to need the chiropractic care because he said it helped him.
>
> In a previous memorandum I had opined that there was little in the way of objective information to describe the care between 2005 and 2007 as particularly effective. [Appellant's Chiropractor] takes issue with that statement stating that the care between 2005 and 2007 was necessary as it "*...stopped him from backsliding to the point that he could no longer function at his present capacity. In [the Appellant's] own words 'These adjustments are keeping me from getting worse.*"'.
>
> A detailed review of the file contents however contradict [Appellant's Chiropractor's] opinion that the care between 2005 and 2007 was effective at stopping the claimant from backsliding in so far as subsequent to August 2005, although he continued to see [Appellant's Chiropractor], [the Appellant's] medical care escalated significantly shifting from relatively non invasive chiropractic care to increasingly invasive medical procedures including fluoroscopy guided lumbar spine injections and ultimately a lumbar spine rhizotomy.
>
> As previously pointed out in my March 22, 2011 dictation, this progression and escalation of increasingly more invasive treatments argues against the care provided by [Appellant's Chiropractor] as being medically required. Indeed, it is difficult to understand how one could describe the care between 2005 and 2007 as stopping the claimant from backsliding when it would appear that his requirement for increasingly invasive care increased."

Counsel submitted that it was not determinative of the issue to simply hear from the Appellant that he felt the chiropractic treatments helped him. The Appellant has the onus to establish that those 41 chiropractic treatments were medically required and he has not discharged that onus.

Counsel submitted that when the statements of [Appellant's Chiropractor] and [MPIC's Chiropractor] are carefully analyzed, it becomes clear that the Appellant has not established the necessity for such treatment.

[Independent Chiropractor] was aware of the Appellant's dependency on chiropractic treatment and so recommended that he should have eight more treatments in order to acquire some coping strategies, and move toward independence and away from passive or repeated chiropractic care. [MPIC's Chiropractor] believed the medical information on the file showed that even with chiropractic treatment, the Appellant continued to get worse, with the nature of treatment escalating to a more invasive level. Accordingly, counsel submitted that the panel must conclude the Appellant has failed to satisfy the onus upon him that the Internal Review decision was incorrect and the appeal should be dismissed.

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;
>
> (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 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;

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer erred in finding that further chiropractic treatments for the Appellant were not medically required.

The Appellant took the position that these treatments were required on a supportive care basis.

An accepted definition of "supportive care" includes the following elements:

1. It is for patients who have reached maximum therapeutic benefit but failed to maintain it and, in fact, progressively deteriorate when treatment is periodically withdrawn.
2. It applies after a trial and passive modalities of treatment, including rehabilitation and lifestyle modifications.
3. It is appropriate after alternative care options (including but not limited to, home based self-care) have been considered and attempted.
4. It may be inappropriate when it interferes with other appropriate primary care, or when the risk outweighs its expected benefits.

In this context, the panel has carefully reviewed the evidence for the Appellant, including his testimony and the reports submitted by his chiropractor, [Appellant's Chiropractor]. We have

also considered and reviewed the evidence provided by MPIC, particularly the reports of [Independent Chiropractor] and [MPIC's Chiropractor], as well as the submissions for both parties.

The onus is on the Appellant to establish, on a balance of probabilities, that the Internal Review Officer erred in finding that the additional 42 chiropractic treatments for which he seeks coverage were medically required, on a supportive care or other basis.

The panel notes that the evidence of the Appellant is largely based upon subjective reporting. Although the panel found the Appellant to be credible in his belief that he required this chiropractic care in order to function, this evidence was limited to subjective reporting. As well, the reports from his chiropractor, [Appellant's Chiropractor], were largely based on the Appellant's subjective reports of his experience to the chiropractor. Although both maintain that the Appellant required the chiropractic care for maintenance of his condition and to prevent backsliding, the panel finds that there was a lack of objective medical evidence, in terms of measurements, observations, or description of a trial withdrawal of care during the relevant period, which would support the Appellant's claim.

Although even [Independent Chiropractor] recognized the Appellant's firm belief in the requirement for this chiropractic care in order for him to function, and the panel found the Appellant's evidence to be credible in regard to his description of pain and the struggles he has encountered as a result of his motor vehicle accidents, the lack of sufficient objective evidence from the Appellant must be compared to the evidence of [Independent Chiropractor] and [MPIC's Chiropractor].

Although [Appellant's Chiropractor] has known and treated the Appellant for a lengthy period (which does carry significant weight), his assessment of the Appellant's condition and need for the chiropractic treatments in the relevant period, failed to go beyond a recounting of the Appellant's subjective reporting of his symptoms and did not include the objective measurements and observations which are required to establish a need for this care, either as supportive or medically required.

[Independent Chiropractor] provided a lengthy report dated April 13, 2005 which included both a paper review of the Appellant's file, the results of his examination and interview of the Appellant, and diagnostic impressions, assessment and recommendations.

He noted:

> "**Clinical Status:**
>
> Physical assessment confirms that [the Appellant] is well over the worst of any accident related injuries he may have initially incurred. The medical or therapeutic necessity of continuing passive treatments of any nature relating to the motor vehicle accidents was not established by the findings on assessment. Psychosocial influences in the form of maladaptive beliefs regarding his low back appear to be detracting from [the Appellant's] appreciation of recovery. [The Appellant] expressed illness convictions when repeatedly referring to his "bad back" and by his zeal for continued passive therapies at an intensive rate. He tolerates activity well but is showing a propensity towards a dependency on treatment and this signals the importance of self-management. [The Appellant] has been exposed to sufficient athletic therapy and is versed in low back stabilization exercises that he could perform independently.
>
> **RECOMMENDATIONS:**
>
> - A discharge to self-management through independent exercise should be imminent. There are several exercises [the Appellant] could focus on to address the muscular imbalances found on assessment. Prone extensions or "supermans", bridging tracks, and side wall glides for the gluteus medius in addition to the other gym ball routines he is familiar with through athletic therapy should offer [the Appellant] a fundamentally sound self-management program to continue training his low back and instill appropriate coping skills.

- In deference to the extensive management [the Appellant] has undergone to date a transition to self-care through a discretionary limited allotment of chiropractic treatment should be a consideration. Eight further weekly visits with [Appellant's Chiropractor] should be sufficient to promote positive coping strategies and ensure [the Appellant's] compliance with independent active-care initiatives."

[Independent Chiropractor's] report was reviewed by [MPIC's Chiropractor] who provided a memorandum dated June 2, 2005. [MPIC's Chiropractor] indicated:

> "For the purpose of this dictation I reviewed the medical package in its entirety, including reports from all involved health care providers and a third party examination from [Independent Chiropractor].
>
> After reviewing this information, and with due regards to the date of loss and the amount of care to date, it appeared to me that this claimant has likely reached his maximum therapeutic benefit with passive chiropractic intervention. In addition to this, it would appear that [Independent Chiropractor] has identified red flags for passive treatment dependency which is a significant concern with respect to the claimant's long-term prognosis.
>
> I would suggest that [Independent Chiropractor's] recommendation for a further eight weeks of treatment, with the intention to transition the claimant to a self-management program, is reasonable. There does not appear to be evidence on file to suggest that ongoing care, particularly at the unremitting level of three times per week, is a necessity related to the motor vehicle accident in question."

[MPIC's Chiropractor] reviewed the information on the Appellant's medical file several times. In reports dated June 29, 2010, March 22, 2011, and August 7, 2012, he applied his review to the question of medically required or supportive care for the Appellant between 2005 and 2007. In his view, the additional chiropractic interventions were not, on a balance of probabilities, medically required as a result of the motor vehicle accident.

On March 22, 2011 he noted:

> "After reviewing the information on file, there is little in the way of evidence to lead me to change that previously rendered opinion. Indeed despite the additional 40 treatments the patient received after August of 2005, he continued on to suffer with significant low back pain, such that he was seen by [Appellant's Doctor #1] and received several fluoroscopically guided injections to his lumbar spine as well as a lumbar spine rhizotomy. This progression in treatment from a relatively passive and non invasive

> treatment plan through to a much more invasive treatment plan would argue against chiropractic treatments between August of 2005 and January 2007 being particularly effective at resolving the claimant's condition."

On August 7, 2012, [MPIC's Chiropractor] again reviewed [Appellant's Chiropractor's] reports, as well as the Appellant's medical file and summarized as follows:

> "...I was of the opinion that the totality of the file information at that point did not provide evidence to suggest that there was an accident related medical requirement for the chiropractic care between August 2005 and January 2007.
>
> By way of a brief background, as you are aware, [the Appellant] was involved in two motor vehicle collisions, one in January of 1999 and the second in January of 2004. The primary area of injury for which he was being treated was lumbar spine pain. Between the second accident in January of 2004 and August of 2005, the claimant received close to 200 chiropractic interventions. This represents an average of nearly three chiropractic interventions per working week for the duration of the time interval between January of 2004 and August of 2005. Indeed, this three visit per week schedule was a schedule that [the Appellant] continued to be on at the time I began reviewing the file.
>
> It would appear that the issue at hand is whether or not an additional 41 chiropractic interventions subsequent to August of 2005 until the claimant had a more recent accident in January of 2007 would on the balance of probabilities be considered medially required ..."

[MPIC's Chiropractor] then went on to address the 3 major points [Appellant's Chiropractor] had put forward in his narrative reports. These compared the forces generated during a hockey hit and the force generated during a motor vehicle collision, commented on how claimants do not have exposure to sufficient treatment post injury, and described the medical necessity for treatment based on the patient's well entrenched belief that the care is necessary.

[MPIC's Chiropractor] rejected all three of these approaches and noted that:

> "Unfortunately [Appellant's Chiropractor] does not provide anything in the way of specific objective information pertaining to [the Appellant] that could be used to support his contention that the interventions in question were medically required...."

He concluded:

> "A detailed review of the file contents however contradict [Appellant's Chiropractor's] opinion that the care between 2005 and 2007 was effective at stopping the claimant from

> backsliding in so far as subsequent to August 2005, although he continued to see [Appellant's Chiropractor], [the Appellant's] medical care escalated significantly shifting from relatively non invasive chiropractic care to increasingly invasive medical procedures including fluoroscopy guided lumbar spine injections and ultimately a lumbar spine rhizotomy.
>
> As previously pointed out in my March 22, 2011 dictation, this progression and escalation of increasingly more invasive treatments argues against the care provided by [Appellant's Chiropractor] as being medically required. Indeed, it is difficult to understand how one could describe the care between 2005 and 2007 as stopping the claimant from backsliding when it would appear that his requirement for increasingly invasive care increased."

The panel finds that the evidence of [Independent Chiropractor] and [MPIC's Chiropractor] in this regard is persuasive and that the Appellant has failed to meet the onus upon him of providing sufficient objective evidence which would, on a balance of probabilities, support the need for further chiropractic care during the relevant period, which is medically required as a result of the accidents or meets the definition of supportive care set out above.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated September 16, 2005 is confirmed.

Dated at Winnipeg this 1st day of May, 2013.

LAURA DIAMOND

GUY JOUBERT

LORNA TURNBULL