

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-110**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Pat Heuchert

APPEARANCES: The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: July 8, 2014

ISSUE(S): Entitlement to reimbursement of chiropractic treatment expenses.

RELEVANT SECTIONS: Sections 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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a two car motor vehicle accident on January 29, 2008. As a result of this accident, the Appellant sustained a soft tissue injury to his neck and back. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

The Appellant initially saw his chiropractor, [Appellant's Chiropractor #1], on January 31, 2008. Funding was approved for up to a maximum of 40 medically required chiropractic visits for the Appellant. The Appellant had attended upon [Appellant's Chiropractor #1] before the motor vehicle accident occasionally, on an as needed basis, for problems with his upper back and neck.

After approximately a month of chiropractic care, the Appellant was still having problems with his head and shoulder and he decided to switch to physiotherapy care. The Appellant went for a few physiotherapy appointments, thought he was doing well, but then decided to go back to chiropractic care as he still had pain in his upper back and his neck. The Appellant completed the 40 approved chiropractic visits under Track I care in June 2009.

In October 2009, the Appellant re-attended for further physiotherapy treatments. The Appellant was discharged from physiotherapy treatment in December of 2009. The Physiotherapy Discharge Report dated December 30, 2009 indicated that the Appellant's pain was resolved.

Subsequent to December 2009, the Appellant presented to [Appellant's Chiropractor #1], in March 2010 with complaints of neck pain. Between March 18, 2010 and January 12, 2011, the Appellant had six treatments with [Appellant's Chiropractor #1]. In his report dated August 1, 2013, [Appellant's Chiropractor #1] indicated that these treatments were not causally related to the January 29, 2008 motor vehicle accident. [Appellant's Chiropractor #1] further noted that the Appellant had a history of recurrent neck and upper back symptoms dating back to 1995 requiring treatment at his office. The most recent treatments of the Appellant for a cervical thoracic condition prior to the date of the motor vehicle accident, were on May 21 and 31, 2007, June 5, 2007 and November 29, 2007. His condition improved with treatments. [Appellant's Chiropractor #1] further indicated that the Appellant's cervical thoracic condition was markedly

exacerbated by the January 29, 2008 motor vehicle accident. The motor vehicle accident related exacerbation of his condition responded favourably to chiropractic therapy within the MPI Track I treatment regime. It was [Appellant's Chiropractor #1's] opinion that the Appellant's need for treatment between June 30, 2009 and March 18, 2010 was consistent with his need for treatment in the years prior to the January 29, 2008 motor vehicle accident.

In June 2011, the Appellant presented to [Appellant's Chiropractor #2] with stiffness and soreness in the neck. [Appellant's Chiropractor #2] submitted a report to MPIC requesting further chiropractic care for the Appellant. The file was reviewed by MPIC's chiropractic consultant in order to determine whether the Appellant qualified for Track II care. The chiropractic consultant determined that the file contents did not form a probable relationship between the Appellant's current necessity for care (June 2011) and the motor vehicle accident of January 29, 2008. In a decision dated January 31, 2012, MPIC's case manager advised the Appellant that he did not qualify for Track II, extended chiropractic care.

The Appellant sought an Internal Review of that decision. In an Internal Review decision dated April 17, 2012, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer agreed with the chiropractic consultant's opinion that the file contents did not provide evidence to suggest that there was a probable cause/effect relationship between the necessity for chiropractic care and the motor vehicle accident of January 29, 2008.

The Appellant has now appealed that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to

reimbursement of outstanding expenses for chiropractic treatment from June 6, 2011 to August 28, 2012.

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:

The Claimant Adviser submits that as a result of the injuries which the Appellant sustained in the motor vehicle accident of January 29, 2008, he continued to require chiropractic treatment from June 6, 2011 until August 28, 2012. The Claimant Adviser contends that even though the Appellant's symptoms resolved following his initial chiropractic care and physiotherapy treatment in 2008 and 2009, those symptoms returned. The Claimant Adviser argues that the Appellant's symptoms from the motor vehicle accident were different than his symptoms pre-

motor vehicle accident for which he sought sporadic chiropractic treatment. As a result, she submits that [Appellant's Chiropractor #1's] opinion should be given little weight.

The Claimant Adviser argues that the Appellant's symptoms for which he sought care from [Appellant's Chiropractor #2] were not the same as the symptoms for which he sought periodic chiropractic care, prior to the motor vehicle accident, from [Appellant's Chiropractor #1]. Following the motor vehicle accident, the Appellant testified that he had headaches which persisted. The Claimant Adviser argues that the Appellant's testimony was credible, that his pain complaints were different following the motor vehicle accident and that they were related to his motor vehicle accident of January 29, 2008.

The Claimant Adviser also notes that the Appellant's condition did resolve with the treatment which he received from [Appellant's Chiropractor #2]. She submits the fact that the Appellant's condition did ultimately improve evidences the fact that he was not at pre-accident state when he completed chiropractic care with [Appellant's Chiropractor #1] and was discharged from physiotherapy treatment in December 2009. As a result, the Claimant Adviser submits that the Appellant's appeal should be allowed and the Internal Review decision of April 17, 2012 should be rescinded.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established, on a balance of probabilities that additional chiropractic treatments were:

1. medically required; or
2. causally related to the motor vehicle accident of January 29, 2008.

Counsel for MPIC submits that the Appellant's motor vehicle accident related symptoms had resolved by December 30, 2009 when he was discharged from physiotherapy treatment. Counsel for MPIC submits that the chiropractic treatment which the Appellant received in 2011 and 2012 was not for symptoms that were causally related to the motor vehicle accident of January 29, 2008. In support of his position, counsel for MPIC refers to the report of [Appellant's Chiropractor #1] dated August 1, 2013 wherein [Appellant's Chiropractor #1] noted that:

It is my opinion that [the Appellant's] need for treatment between June 3, 2009 and March 18, 2010 was consistent with his need for treatment in the years prior to the January 29, 2008 motor vehicle accident.

[Appellant's Chiropractor #1] also opined that the Appellant had achieved pre-accident condition as of June 3, 2009 and treatment beyond Track I was not requested for the Appellant.

Counsel for MPIC also relies upon the opinion of MPIC's chiropractic consultant, set out in his interdepartmental memoranda, that there is no probable relationship between the Appellant's necessity for care in 2011 and 2012 and the motor vehicle accident of January 29, 2008. Counsel for MPIC submits that the Commission should prefer the evidence of [Appellant's Chiropractor #1], the Appellant's long time treating chiropractor with hands-on experience respecting the Appellant's condition and MPIC's chiropractic consultant who is a trained forensic reviewer. He notes that their opinions are that there is no relationship between the Appellant's symptoms in 2011 and 2012 and the motor vehicle accident of January 29, 2008. Counsel for MPIC argues that the Commission should accept their opinion, which is preferable to that of [Appellant's Chiropractor #2].

Counsel for MPIC also argues that the Appellant's requirement for chiropractic care, beyond Track I, was not medically required. Counsel for MPIC submits that common musculoskeletal

disorders such as the soft tissue injuries sustained by the Appellant respond to 40 chiropractic treatments covered by Track I care. Counsel for MPIC submits that [Appellant's Chiropractor #2] did not provide reasons for requesting Track II chiropractic care for the Appellant. The Appellant's other health care professionals, including [Appellant's Chiropractor #1] and the physiotherapist involved with the Appellant's care did not believe that Track II care was necessary for the Appellant's injuries. Counsel for MPIC also notes that the chart notes provided by [Appellant's Chiropractor #2] primarily contain listing of areas that were adjusted with little in the way of subjective or objective information. A review of these chart notes reveals that throughout the course of care, there is little to distinguish one treatment from another. He argues that [Appellant's Chiropractor #2] did not provide additional evidence to suggest that the care he provided to the Appellant would be considered medically required as it relates to the motor vehicle accident of January 29, 2008. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated August 17, 2012 confirmed.

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 the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for 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; 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 treatment was:

1. incurred to treat injuries sustained in the motor vehicle accident of January 29, 2008; and
2. that Track II care was “medically required”.

[Appellant’s Chiropractor #1] provided a narrative report dated August 1, 2013 in addition to his chart notes. In this report, [Appellant’s Chiropractor #1] is unequivocal in his statement that the Appellant, by June 2009, had reached his pre-accident condition. [Appellant’s Chiropractor #1] further acknowledged that he had treated the Appellant for six visits between March 18, 2010 and January 12, 2011. He was of the opinion that those symptoms were not causally related to the motor vehicle accident of January 29, 2008, as the Appellant had prior history of recurrent neck and upper back symptoms dating back to 1995. The Commission accepts the opinion of [Appellant’s Chiropractor #1]. [Appellant’s Chiropractor #1] had experience with the Appellant dating back to 1995, putting him in the position of having experience with the Appellant’s condition both pre and post motor vehicle accident. [Appellant’s Chiropractor #1] was able to draw on his previous experience with the Appellant when forming his opinion regarding causation. As a result, the Commission finds that on the balance of probabilities, the Appellant’s ongoing complaints for which he presented to [Appellant’s Chiropractor #2] in June 2011 are unrelated to the motor vehicle accident of January 29, 2008.

Additionally, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that Track II chiropractic treatment was medically required. The Appellant received both chiropractic and physiotherapy care under Track I. The discharge reports from those care givers note that the Appellant's condition had resolved. Both physiotherapists and [Appellant's Chiropractor #1] stated that the Appellant had essentially no pain and was at pre-accident status at the end of their treatment. Additionally, the Commission notes that the information provided by [Appellant's Chiropractor #2], including his chart notes, provided little in the way of subjective or objective information in order to establish Track II chiropractic care was necessary. The Commission accepts that when comparing the care provided in June 2011, it would appear to be essentially indistinguishable from the care provided in April 2012. As a result, we are not able to conclude that ongoing chiropractic care was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of outstanding expenses for chiropractic care. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated April 17, 2012 is confirmed.

Dated at Winnipeg this 6th day of August, 2014.

YVONNE TAVARES

NEIL COHEN

PAT HEUCHERT