Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-036

PANEL:	**Ms Laura Diamond, Chairperson** **Mr. Brian Hunt** **Mr. Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by himself; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.**
HEARING DATE:	**November 3, 2015**
ISSUE(S):	**Whether the Appellant is entitled to further chiropractic treatments.**
RELEVANT SECTIONS:	**Section 136 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 was injured in a motor vehicle accident on April 29, 2008. He sought chiropractic treatment for his injuries, and on May 2, 2008, his chiropractor documented symptoms of "right frontal/orbital headache, moderate neck pain/spasm, moderate low back/pelvic pain, moderate anxiety/chest pain, tingling in facial cheeks, slight left shoulder pain/spasm". The Appellant was in receipt of chiropractic treatment exceeding the 40 Track I chiropractic treatments allowed by MPIC.

On September 19, 2011, the Appellant's chiropractor submitted a Track II report requesting additional chiropractic treatment, noting symptoms of cervical headaches, cervical neck pain, left pelvic pain, mid-back pain, facial pain and left shoulder pain. This report was reviewed by MPIC's Health Care Services chiropractic consultant who found that the information provided by the Appellant's chiropractor was so temporally distant that he was unable to form a probable relationship between the Appellant's current symptomology and the motor vehicle accident. On October 14, 2011, the Appellant's case manager issued a decision denying further chiropractic treatment, stating that the Appellant's chiropractor had not provided sufficient evidence to establish that he required additional treatment.

The Appellant's chiropractor then submitted further invoices for chiropractic care. On July 22, 2013 the case manager issued a subsequent decision stating that these invoices would not be paid by MPIC.

The Appellant sought Internal Review of this decision.

In a decision dated December 9, 2013, an Internal Review Officer for MPIC noted the large time gap of almost 3½ years between the motor vehicle accident and the Appellant's chiropractor's request for Track II approval. The Internal Review officer concluded that given the large time gap between the accident and the request for additional treatment, it was difficult to directly relate the Appellant's present condition to the accident in question. Further, noting the chiropractic consultant's opinion that additional chiropractic care was not medically required, the Internal Review Officer upheld the decision of the case manager dated July 22, 2013.

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

Preliminary Matters:

The Appellant's appeal was scheduled for hearing by the Commission on November 2 and November 3, 2015 at 9:30 a.m. Counsel for MPIC attended at the Commission on November 2, 2015, but the Appellant failed to appear. Commission staff contacted the Appellant by telephone. He indicated that an emergency had arisen at work. The Appellant also indicated that he would not be calling any expert witnesses and that he would not require that MPIC produce its Health Care Services chiropractic consultant for cross-examination. Upon the Commission's request he provided email correspondence indicating that an employee had not shown up at work, that he had to attend to a customer, and therefore was asking for an adjournment of the hearing for November 2, 2015. Accordingly, counsel for MPIC agreed to an adjournment of the hearing scheduled for November 2, 2015 and the Commission advised the parties that the hearing would be convened at 9:30 a.m. on November 3, 2015.

On November 3, 2015 counsel for MPIC once again attended at the Commission. However, the Appellant telephoned and provided staff with an email indicating that due to extraordinary circumstances out of his control he was asking for another adjournment of the hearing. He indicated that he had an employee who appeared to have abandoned his job (as he could not reach him) and had to replace this employee himself in order to fulfill his duties.

The Commission telephoned the Appellant and, after some discussion, the parties agreed that the hearing would proceed by way of written submissions. Counsel for MPIC provided a written submission. A copy of this was provided to the Appellant, who then provided his own written submission. Counsel for MPIC, after reviewing the Appellant's submission indicated that it had no reply.

The panel then proceeded to consider the written documentation on the Appellant's indexed file as well as the written submissions of the parties.

Evidence and Submission for the Appellant:

The Appellant did not testify at the hearing into his appeal. Reports were provided by his chiropractors. In addition to the Initial Chiropractic Report and pain scales provided in 2008, [Appellant's chiropractor #1] provided a Chiropractic Track II Report dated September 19, 2011 indicating moderate disability with symptoms of cervical headache and neck pain, left pelvic and shoulder pain as well as facial pain and mid-back pain.

A letter was also provided from [Appellant's chiropractor #2], an associate of [Appellant's chiropractor #1], dated June 6, 2014. [Appellant's chiropractor #2] indicated that he had examined the Appellant on February 19 and June 4, 2014 and treated him. He stated:

> "[The Appellant] did have an improvement in pain levels and an increase in range of motion in the cervical and lumbar spine after the treatments, however the level of pain and stiffness returned. It is of my clinical opinion that [the Appellant] will not be able to return to his original health status, due to the permanent damage sustained in the motor vehicle accident in 2008. [The Appellant] should however, be able to maintain his function and levels of pain with minimal monthly supportive chiropractic maintenance care. There will be a (sic) periodic flare-ups where exacerbation will occur due to occupational and domestic strains of these weakened and unstable structures, however regular chiropractic monthly supportive care should in all medical probability stabilize these episodic strains."

[Appellant's chiropractor #1] provided a narrative report dated November 25, 2014. He described treatment of the Appellant, on October 28, 2014 for the same neck injuries on April 29, 2008. He indicated that the treatment involved was identical to previous treatments to the cervical spine and that the reason for spinal manipulative therapy to the cervical spine was to restore function and motion with reduction in pain and to enable the patient to drive, shoulder check and bend his neck. [Appellant's chiropractor #1] stated:

> "The patient repetitively experiences a decrease in pain levels and an increase in range of motion, after treatments are employed to meet his physical needs and restrictions. His present employment superimposes direct stressors to the MVA related afflicted joints.
>
> [The Appellant] has been a patient more than two (2) years prior to the accident of April 29, 2008 and did not have any neck problems, whereas the level of pain and stiffness (lockage) return now upon exacerbation.
>
> It is my clinical opinion of thirty-seven years of chiropractic practice, that [the Appellant] will not be able to fully retain his pre-accident health status, due to permanent damage sustained in the MVA of 2008. [The Appellant] will be able (sic) maintain his present functional and pain levels with minimal monthly supportive chiropractic maintenance care and home exercises/stretches.
>
> There will be exacerbations due to occupational and domestic strains of the weakened and unstable structures. Regular chiropractic monthly supportive care should, in all medical probability, stabilize and restore normal range of motion and reduce pain levels to allow the patient to efficiently perform his duties at work and at home."

The Appellant also provided a written submission which stated:

> "To keep this short and to the point I would like the panel to look at (Tab 22) a letter from [Appellant's chiropractor #1] attending chiropractor. It is stated that [the Appellant] has been a patient for more than two (2) years and prior to the motor vehicle accident had no prior neck problems. I feel that that may help the panel establish a probable relationship between the accident of April 29, 2008 (number 6) of MPI's submission and the current symptoms. It (sic) would like to opine that the opinions given by the chiropractic consult could never provide any probable relevance to my injuries as [MPIC's chiropractor] has never examined me. In number (13) of MPI's submission I believe if the letter provided by [Appellant's chiropractor #1] is read all but letter (e) would be incorrect."

Evidence and Submission for MPIC:

MPIC relied upon reports provided by its Health Care Services chiropractic consultant. In a report dated October 11, 2011, the chiropractic consultant opined that the information and request provided by the Appellant's chiropractor in his request for Track II funding was so temporally distant that he was unable to form a probable relationship between the current symptoms and the motor vehicle accident.

The consultant reported again on September 9, 2014 to consider a request from [Appellant's chiropractor #2] for monthly supportive chiropractic treatment to deal with flare-ups due to occupational and domestic strains. The chiropractic consultant reviewed the threshold that must be met before supportive treatment can be considered and concluded that the tests had not been met and supportive chiropractic treatment could not be considered medically required.

The chiropractic consultant then reviewed [Appellant's chiropractor #1's] report of November 25, 2014 and provided another Health Care Services report dated December 23, 2014. He concluded that there was no expectation of a permanent diagnosis in the Appellant's case, that he had reached maximum therapeutic benefit with chiropractic treatment and that a causal relationship between the Appellant's current symptoms and the motor vehicle accident had not been demonstrated. Further, the evidence on the Appellant's file did not meet the tests for supportive chiropractic treatment.

Counsel for MPIC submitted that in a documented conversation with his case manager of May 1, 2008 the Appellant had advised that he suffered from low back pain which pre-existed the motor vehicle accident for which he would get chiropractic treatment on as-needed basis. At that time he indicated that the symptoms related to the accident were a stiff neck and back. Counsel pointed out that this was consistent with [Appellant's chiropractor #1's] report of May 2, 2008 which indicated that the Appellant had last attended for treatment on April 16, 2008, for a quarterly check-up before the motor vehicle accident.

Then, after receiving funding for 40 chiropractic treatments, the Appellant did not seek further treatment in connection with the motor vehicle accident until 3½ years later, on September 19, 2011. At that time, the symptoms were noted to include cervical headache, cervical neck pain,

pelvic pain, mid-back pain, facial pain and left shoulder pain, without any mention of lower back pain.

The case manager's decision letter of October 14, 2011 indicated there was not sufficient evidence to establish that the Appellant required further treatment as a result of the April 29, 2008 accident. No Application for Review was filed in relation to this decision. However, two years later, the Appellant contacted MPIC once again, on September 26, 2013, requesting coverage for chiropractic treatment. Nine months later, on June 6, 2014, MPIC received [Appellant's chiropractor #2's] narrative report, although he had not seen the Appellant until February 19, 2014. Nonetheless, MPIC's chiropractic consultant reviewed this request and provided a report which set out the thresholds that must be met before supportive chiropractic treatment can be considered. These considerations included:

> "Prior to determining whether an individual requires supportive chiropractic treatment, further thresholds must be met, including but not limited to:
>
> 1. There must be a cause and effect relationship between the claimant's current symptoms and the motor vehicle accident in question.
> 2. Initial treatment must provide benefit and the claimant must be at maximal therapeutic benefit.
> 3. The condition deteriorates in the absence of treatment over a therapeutically relevant timeframe; typically over a six-week period (ex. Status inventory and numeric pain rating scores).
> 4. The condition improves with resumption of treatment (demonstrated by objective measures – ex. Status inventory scores and numeric pain rating scores).
> 5. Alternate treatment approaches have been attempted without success.
> 6. An appropriate home base program is in place."

Counsel noted that the file contents did not support a probable cause and effect relationship between the Appellant's symptoms in September of 2011 and the motor vehicle accident in 2008. As well, the medical file lacked objective measures at intervals in which chiropractic treatment was discontinued and then resumed after an absence of chiropractic treatment over a therapeutically relevant timeframe. No alternatives to chiropractic treatment had been attempted

and there was no indication that the Appellant had been provided with an appropriate home based program.

Following receipt of [Appellant's chiropractor #1's] report of November 25, 2014, the chiropractic consultant looked at this report and, counsel submitted, correctly concluded that entitlement to chiropractic care had not been established.

The consultant noted that, based on the natural history of the diagnosed conditions, there was no expectation that the Appellant's diagnosis was permanent. The Appellant had reached maximum therapeutic benefit with chiropractic treatment and no causal relationship between the Appellant's current symptoms and the accident had been established. Subjective and objective evidence was not provided to demonstrate deterioration in the absence of treatment over a therapeutically relevant timeframe or an improvement in conditions with the resumption of treatment. No alternative therapies had been attempted and there was no evidence that the Appellant had been provided an appropriate home based program.

Therefore, MPIC submitted that the medical evidence did not establish that the Appellant's ongoing symptoms were causally related to the motor vehicle accident and further, the medical evidence indicated that the Appellant had reached maximum medical improvement with chiropractic treatment, with no requirement for supportive chiropractic treatment having been established. Therefore, counsel submitted that 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

The onus is on the Appellant to show, on a balance of probabilities, that he is entitled to further chiropractic benefits as a result of the motor vehicle accident.

The panel recognizes the Appellant's submission and the evidence of [Appellant's chiropractor #1] that prior to the motor vehicle accident the Appellant had not suffered from any medical problems.

The Appellant submitted that the Health Care Services chiropractic consultant, [MPIC's chiropractor], did not examine him. The panel acknowledges that [Appellant's chiropractor #2] and [Appellant's chiropractor #1] were the only ones who had the opportunity to examine and treat the Appellant and that [MPIC's chiropractor's] comments were based upon the information provided by these two care-giving chiropractors.

However, no explanation has been provided to account for the gap in time between the motor vehicle accident and the years leading up to the request for Track II care. The Appellant did not testify, so the panel did not have the opportunity to hear his evidence and clarify the circumstances and dates of his treatments.

Clearly, there is a conflict between the position of the Appellant and [Appellant's chiropractor #1] that the Appellant's current symptoms were caused by the motor vehicle accident, and the position of MPIC and its Health Care Services consultant, who are of the view that the causal connection between the current symptoms and the motor vehicle accident has not been established.

However, the panel finds that it is not necessary to determine whether the Appellant's current symptoms were caused by the motor vehicle accident. The chiropractic consultant, while stating his opinion that there is no causal relationship between these symptoms and the motor vehicle accident, went on nonetheless to consider the Appellant's chiropractor's request for supportive care. We find that the evidence established that maximum therapeutic benefit had been reached with chiropractic care, but also find that the Appellant has failed to establish the need for supportive care arising out of the motor vehicle accident.

The parties agreed that the initial chiropractic treatments provided to the Appellant did provide him with therapeutic benefit. MPIC took the position that maximum therapeutic benefit had been reached. As the Appellant failed to appear and testify, the panel did not have the opportunity to clarify whether he was seeking ongoing therapeutic care or supportive care. However, it does appear that the Appellant's chiropractors employed a similar approach to [MPIC's chiropractor's] analysis, in characterizing the treatments sought as supportive care.

[Appellant's chiropractor #1's] most recent report of November 25, 2014 appears to advocate, at page 2, for supportive care:

> "It is my clinical opinion of thirty-seven years of chiropractic practice, that [the Appellant] will not be able to fully retain his pre-accident health status, due to permanent damage sustained in the MVA of 2008. [The Appellant] will be able (sic) maintain his present functional and pain levels with minimal monthly supportive chiropractic maintenance care and home exercises/stretches.
>
> There will be exacerbations due to occupational and domestic strains of the weakened and unstable structures. Regular chiropractic monthly supportive care should, in all medical probability, stabilize and restore normal range of motion and reduce pain levels to allow the patient to efficiently perform his duties at work and at home."

Therefore, the panel has reviewed the criteria to be met for entitlement to supportive chiropractic care benefits as applied in the Health Care Consultant's final report dated December 23, 2014:

> "1. There must be an established cause and effect relationship between the claimant's current symptoms and the motor vehicle accident in question.
>
> In this case a causal relationship between the claimant's current symptoms and the motor vehicle accident in question has not been established.
>
> 2. Initial treatment must provide benefit and the claimant must be at maximal therapeutic benefit.
>
> This was established. Initial treatment did demonstrate that it provided benefit and based on the medical documentation on file (comparing the Initial Chiropractic Report of May 2, 2008 and the Chiropractic Track II Initial Report of September 19, 2011); the claimant appears to be at maximal therapeutic benefit with chiropractic treatment.

3. The condition deteriorates in the absence of treatment over a therapeutically relevant timeframe (ex. status inventory and numeric pain rating scores).

   Subjective and objective measurable evidence was not provided by the claimant's chiropractor to demonstrate deterioration in the absence of treatment over a therapeutically relevant timeframe.

4. The condition improves with resumption of treatment (demonstrated by objective measures – ex. Status inventory scores and numeric pain rating scores).

   Subjective and objective measurable evidence was not provided by the claimant's chiropractor to demonstrate that the condition improves with resumption of treatment after an absence of treatment over a therapeutically relevant (sic).

5. Alternate treatment approaches have been attempted without success.

   The medical file indicates that the claimant has only received chiropractic treatment to date. No other alternative approaches have been attempted.

6. An appropriate home base program is in place.

   There is no evidence within the medical file that the claimant has been provided an appropriate home base program by his chiropractor."

While, as noted above, the parties agree that therapeutic benefit was derived from the initial treatment and disagree in regard to the causal connection between further treatment and the motor vehicle accident, the panel has focused upon the last four criteria for supportive care set out by the Health Care Services consultant. We find that no evidence has been provided by the Appellant to demonstrate deterioration in the absence of treatment over a therapeutically relevant timeframe. We also find that no subjective or objective measurable evidence was provided to demonstrate that the Appellant's condition improved with resumption of treatment after such an absence. The Appellant agreed that no alternative approaches had been attempted. Although the Appellant submitted that a home based program had been followed, and [Appellant's chiropractor #1] recommended such an approach in his report, the panel was not provided with any evidence from the Appellant or his chiropractor that he had in fact complied with such a recommendation to follow a home based exercise program.

As a result, the panel has reviewed and agreed with the Health Care Services consultant's comments in his report of December 23, 2014:

> "Understanding that a probable cause and effect relationship between the claimant's current symptoms and the motor vehicle accident of April 29, 2008, was not established, should one still attempt to answer the remaining threshold questions in order to determine the medical requirement for supportive care, until such time as the subjective and objective measures (ex. Status Inventory scores, Numeric Pain Rating Scores, specific and detailed range of motion findings in applicable areas) are provided that support that the condition deteriorates in the absence of treatment over a therapeutically relevant timeframe, and that the condition improves with resumption of treatment, and furthermore, alternate approaches have been attempted without success, and a reasonable attempt at a home base program has been attempted, it is my opinion that supportive chiropractic treatment cannot be considered medically required, nor contemplated."

Therefore, as a result, the panel agrees that the evidence in this appeal fails to establish an entitlement to supportive chiropractic care using the appropriate criteria. The Appellant has failed to meet the onus upon him of showing, on a balance of probabilities, that he should be entitled to further chiropractic care as a result of injuries arising out of the motor vehicle accident. The Appellant's appeal is dismissed and the Internal Review decision of December 9, 2013 is upheld.

Dated at Winnipeg this 7th day of December, 2015.

LAURA DIAMOND

BRIAN HUNT

PAUL TAILLEFER