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Indexed as:
L.T. (Re)

IN THE MATTER OF an appeal by L.T.
AICAC File No.: AC-95-22

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[1996] M.A.I.C.A.C.D. No. 6

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and L. Goodspeed
Heard: February 13, 1996.
Decision: March 20, 1996.
(9 pp.)

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Issue:

Resumption of chiropractic treatments after stabilization
whether patient entitled to reimbursement of costs of
treatment.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, ss. 136(1)(a).
Regulation 40/94, ss. 6, 7, and 9.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Joan McKelvey.
L.T., the appellant by way of telephone conference call.

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MAIC 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 FACTS:

[para1] L.T., a baker's helper at [text deleted] food
store in [text deleted] was injured in an automobile accident
on March 7th, 1994. On that same day, she was examined by Dr.
Noel for injuries to her neck. X-Rays revealed a compression
fracture at C5 of the cervical spine and two buckle fractures
at T4 and T5. Dr. Noel advised against lifting and twisting

actions required in her job, recommended physiotherapy and prescribed Morphine and Tylenol. As well as physiotherapy treatments, L.T., of her own volition, undertook chiropractic treatment with Dr. Klitsas at the Flin Flon Chiropractic Centre. She commenced sick leave and she was subsequently reassured that her job was being held for her and that concessions would be made if, on her return, she was not able to undertake all aspects of her work. While she was on disability leave, M.P.I.C. received information that L.T. had placed third in the S.S.P.P.M.R., on June 3rd, 1994, in [text deleted]. L.T. told her adjuster on July 28th, 1994, that she had cleared her participation in the mud race with Dr. Noel and with her physio-therapist, Mr. Redl, prior to involving herself in the endurance tests. She further stated that she had advised Mr. Redl that she was taking flying lessons. L.T. described the mud race as requiring her to accelerate a vehicle into a 300 foot long mud pit. Her evidence was that she competed in the tests on 2 consecutive days, travelling 50 feet into the mud pit before bogging down at the top speed of 20 mph, and that she was wearing a lap belt and a helmet. We express considerable doubt about the accuracy of that speed - 20 m.p.h. would not, we believe, have carried her vehicle 50 feet into that much mud. Dr. Noel and Mr. Redl, have a different recollection from that of L.T., since each says that he was never consulted about the Appellant's intent to engage in mud racing.

[para2] L.T. returned to work on a part-time basis in August and to her full duties in September of 1994.

[para3] Mr. Redl left The Pas, and the appellant continued her treatments with Dr. Klitsas who, after an initial opinion, date April 12th, 1994, in which he had expressed the view that the Appellant would be incapacitated for about two weeks, rendered several subsequent reports to M.P.I.C. at the corporation's request. Of those reports, there are two which assume some significance:

- (a) on June 27th, 1995, Dr. Klitsas reported, in effect, that L.T.'s earlier symptoms had been considerably reduced, that she had responded favourably to conservative management, and that her treatments had become less frequent and could probably be discontinued within the following month. He noted that estimated healing time for injuries of the type suffered by L.T. would normally have been from 6 - 10 months, but that the distance of some 53 miles between L.T.'s home in [text deleted] and Dr. Klitsas's clinic in Flin Flon had made treatments less frequent and, thus, had prolonged what he calls 'Management time';
- (b) on September 12th, 1995, Dr. Klitsas produced another report which is an exact duplication of the

earlier one, save only that he adds a likelihood the L.T. 'will continue to have periods of symptomatic exacerbations and remissions depending upon his (sic) work and leisure activities'. Noting that tissues, once injured, are left weaker, less elastic and 'more sensitive (sic) to the normal stress and strains of daily activities', even when repaired, Dr. Klitsas says that he had explained to his patient that she might need to resume 'further chiropractic care for symptomatic control following these exacerbation.'

[para4] M.P.I.C., which until then had paid Dr. Klitsas's fees and, perhaps, L.T.'s travel expenses (the evidence is not clear on that point), advised L.T. and Dr. Klitsas that those payments would cease as of September 1st, 1995.

[para5] L.T. applied for a review of that decision. M.P.I.C. Internal Review Officer conclude that L.T. did not, at that point, appear to need further chiropractic care as a result of her accident, and that the need for any such future care was a matter of speculation. The Internal Review Officer also advised L.T. that Manitoba Health Services Commission would cover up to 14 additional treatments in any year and that she would in any event be at liberty to reapply to M.P.I.C. for the costs of any chiropractic treatments beyond the 14 visits covered by MHSC, if those additional treatments could be shown to have been made necessary as a direct result of her automobile accident. It is from that decision of the Internal Review Officer that L.T. now appeals.

[para6] At the time of the hearing, the Appellant testified that she had continued with her chiropractic treatments because of recurring neck displacement and had 12 adjustments since September 1st of 1995. She readily agreed that her condition had improved and that she can manage work and daily activities. However, she says, when her neck appears to be out of alignment her only relief is found in chiropractic treatment. She adds that her condition does not seem to be related to any one activity but can be triggered when she is lying down, washing her hair, vacuuming or lifting things at work.

[para7] L.T. testified that Dr. Klitsas seemed surprised that her neck was still causing problems for her. She says that he at not time indicated when her treatments should stop, if at all.

[para8] This Commission wrote to Dr. Klitsas on February 13th, 1996, immediately following the hearing of L.T.'s appeal, seeking further information on a number of points. His reply, received by the Commission on March 18th, was almost entirely unresponsive but does, at least, seem to indicate that:

- (a) by the end of July 1995, the Appellant's condition had been 'stabilized', by which we take Dr. Klitsas to mean steady, not varying, resistant to change and free from symptoms requiring treatment;
- (b) the Appellant had experienced some further discomfort at the end of August, 1995, and had returned for 3 or 4 further treatments, following which she was again asymptomatic. We take Dr. Klitsas's use of the word 'resume', in his September 12th letter to M.P.I.C., to indicate a prior discontinuance of treatments, since one cannot resume something unless one has already stopped doing it;
- (c) the Appellant attended at Dr. Klitsas's chiropractic clinic twice in each of September, October and November of 1995, and once in December - a total of 7 visits in 1995 after M.P.I.C. had discontinued paying for treatments - and a further 6 times from January 10th up to and including March 12th of 1996; and that
- (d) a recent examination on February 15th, 1996, revealed neither orthopaedic nor neurological deficit, a good range of motion and a total absence of any symptoms requiring treatment and arising from the automobile accident of March 7th, 1994.

[para9] We should also note, in passing, that Dr. Klitsas, like Dr. Noel and Mr. Redl, says that he was never asked by the Appellant about the wisdom (or lack of it) of participation in a mud racing event, wearing a lap belt rather than a full seat belt, so soon after her accident. They all say, not too surprisingly, that they would have advised against such an enterprise since it would have been likely to have an adverse effect upon her recovery.

THE LAW:

[para10] The issue at hand is whether compensation for the Appellant's chiropractic care should be considered after September 1st, 1995. That issue, in turn, gives rise to two, further questions: are continuing chiropractic treatments made necessary by L.T.'s automobile accident, or by some one or more new, intervening factors, and are those treatments, in any event, covered by Manitoba Health Services Commission and, therefore, excluded from M.P.I.C.'s coverage by virtue of Section 136(1) of the Act?

[para11] Any authority for payment by M.P.I.C. of a claim must be found within the four corners of the Act and Regulations. The relevant section of the Act reads as follows:

"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 orthopaedic 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."

[para12] The relevant regulation is Regulation 40/94 entitled "Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation", which reads, in part as follows:

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;

[para13] Since Manitoba Health Services Commission will cover up to 14 chiropractic visits in any one calendar year, L.T. is entitled to claim reimbursement for her 7 visits to Dr. Klitsas after September 1st in 1995, and for the 5 visits to his clinic that she has made up to and including March 12th of this year, leaving her a further 9 chiropractic treatments for which, if they become necessary, she can also claim in 1996. Needless to say, her claim will be limited to the maximum amount that MHSC pays for a chiropractic visit. If treatments in 1996 or subsequent years become necessary, beyond the 14 for which MHSC will reimburse her, she will at liberty to reapply to M.P.I.C. for reimbursement if she can establish that those treatments are, in fact, a result of her accident and not primarily brought about by her work or

leisure activities. It is not necessary for us to decide, at this juncture, whether the symptoms that cause her to seek continuing chiropractic care are caused by her 1994 accident or by other, subsequent activities; whatever their cause, the first 14 of those treatments in each calendar year will be eligible for payment under the Health Services Act and, therefore, will not be covered by the Manitoba Public Insurance Corporation Act and its Regulations.

DISPOSITION:

[para14] For the foregoing reasons, the decision of M.P.I.C.'s Internal Review Officer is confirmed and the appeal is dismissed.

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