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Indexed as:
D.J.D. (Re)

IN THE MATTER OF an appeal by D.J.D.
AICAC File No. AC-96-39

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[1996] M.A.I.C.A.C.D. No. 29

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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: December 6, 1996.
Decision: December 10, 1996.
(8 pp.)

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Issue(s):

Costs of chiropractic treatment and travel - whether
Appellant entitled thereto.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, s. 136(1).
Regulation 40/94, s. 5.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Joan McKelvey.

D.J.D., the appellant, appeared in person, accompanied by
her husband.

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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 INFORMATIONL

REASONS FOR DECISION

THE FACTS:

[para1] D.J.D. was injured in an automobile accident on
the 2nd of June 1994. M.P.I.C. paid for her physiotherapy,
allowable travel expenses and medications until May 23rd of
1995 at which point, in light of available medical
information, those benefits were discontinued.

[para2] D.J.D. consulted no medical or paramedical practitioners from that point, until September 28th, 1995, when someone recommended that she consult Dr. Gerald P. Stitt, a Doctor of Chiropractic practising in [text deleted], Manitoba. Dr. Stitt then wrote to M.P.I.C., recommending that the Corporation cover the cost of "a trial of chiropractic treatments to determine if her suffering could be alleviated". Dr. Stitt felt that, due to the severity of D.J.D.'s symptoms, she would need approximately six months of fairly intensive chiropractic treatment. Dr. Stitt was inquiring whether M.P.I.C. was prepared to underwrite the cost of those treatments. M.P.I.C. declined, and it is from that decision that D.J.D. now appeals.

[para3] This unfortunate lady has a history of traumas, the principal ones being summarized as follows:

- (i) At age thirteen she was hit by a vehicle, was thrown up into the air and, upon landing, had her leg caught under the wheel of a car; she was hospitalized for about two weeks, her pelvis was twisted and she had resultant leg and back problems which, in fact, appear never to have entirely left her. As she puts it 'I still had problems with my legs when I got married in 1968, at age eighteen; I had pain whenever I put weight on my left leg, although it was improving a little over the years'.
- (ii) In 1982, a car that she was driving slid on some ice, went out of control and hit a tree. She suffered a severe whiplash and, to quote D.J.D. again, 'It was as if everything started all over again'. Following that accident, she attended upon her general practitioner sporadically and then, about two years after that accident, started attending upon Dr. Martin, a Chiropractor in [text deleted], about three times a week. She would take pain killers each time, before leaving home on her way to the Chiropractor, since she found the treatments painful. She finally got some measure of relief, after seeing her Chiropractor for 'quite a few months'. She had 'my good days and my bad days'.
- (iii) In about 1986 she was a passenger in a truck that was rear-ended by another vehicle. As a result, she says, her whole body was sore, with particular emphasis on the neck, shoulder and back. She saw her general practitioner the following day and he prescribed some analgesics and muscle relaxants, telling her to get lots of rest. The Appellant says it took her about three months to get over that, during which period she attended upon Dr. Weston, another Chiropractor, in [text deleted], who treated

her with spinal manipulation and had her wearing a protective or supportive belt, to help relieve pain from the sciatic nerve.

- (iv) In or about the year 1990, D.J.D. had to go into hospital for three separate surgical operations within a space of one and a half years. None of that surgery was in any way related to automobile accidents. It was about that time that she felt obliged to quit work, having been employed sporadically at a hardware store and a grocery store from 1982 onwards. She testified 'I tried to return to work, but the old left leg and hip problems returned'.
- (v) On June 22nd, 1994 the vehicle in which she was riding was rear-ended in a three vehicle collision in [text deleted]. It is this accident which gives rise to the present claim.
- (vi) On December 1st, 1995, D.J.D. was attempting to lift some heavy object when, apparently twisting her body in the wrong way, she sustained injury to her left sciatic nerve, resulting in pain down her back and into her left leg.
- (vii) Also in December of 1995, D.J.D. and her husband were marooned by a snowstorm and obliged to sit upright in an unheated shack all night - an experience which, she is convinced, served to exacerbate the injuries sustained in her accident of June 22nd, 1994.

[para4] We are obliged to rely, in the main, upon available medical evidence, which may be summarized this way:

- (a) D.J.D. was first seen, after her June 22nd, 1990 accident, by Dr. Michele Hultzer at the [text deleted]. She diagnosed a whiplash injury with pain in the neck and thoracic spine. She found good range of movement of arms, good reflexes and flexion - extension and side-to-side movement. She prescribed an analgesic, a muscle relaxant, a soft cervical collar and physiotherapy.
- (b) Dr. Hultzer also referred D.J.D. to the Radiology Department at [text deleted], where the X-rays taken of D.J.D.'s cervical spine and thoracic spine showed certain minor, pre-existing problems but nothing untoward caused by the motor vehicle accident.
- (c) Dr. David Cram, of the [text deleted] in [text deleted], Manitoba, D.J.D.'s general

practitioner, referred her to Dr. Cartagena of the [text deleted], who interviewed and examined D.J.D. in November of 1994. Dr. Cartagena, who is an internal medicine consultant, discouraged D.J.D. from continuing with any passive physiotherapy treatments or chiropractic treatments, urged her to pursue active exercises, stretching and strengthening her axial skeleton in order to avoid the likelihood of osteoarthritis. He did not find any characteristic symptoms of fibromyalgia and he therefore discouraged the continued use of Tylenol 3.

- (d) Dr. Cram, himself, recommended the discontinuance of physiotherapy in April of 1995, since that form of treatment appeared to be having no beneficial effect of consequence, and it was the combined effect of the reports of Dr. Cram, Dr. Cartagena and M.P.I.C.'s own, internal, medical team, that caused the termination of physiotherapy benefits in May. Meantime, at Dr. Cram's suggestion, D.J.D. had been receiving acupuncture treatments, but even these appeared to have no permanent benefit.

[para5] The question that we have to determine, therefore, may be simply stated: do the problems of which D.J.D. complains, and of which she was complaining on the 28th of September 1995, stem from her motor vehicle accident of June 1994?

THE LAW:

[para6] The relevant section of the M.P.I.C. Act is Section 136(1), which 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 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."

(Italics added.)

[para7] In conjunction with that section of the Act, we need also to have reference to Section 5 of Regulation 40/94, which reads in part as follows:

"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;"

[para8] The only one of the professional advisors who have examined D.J.D. or her case history and who has expressed the view that the problems apparently being experienced by D.J.D. in September of 1995 were the results of her 1994 automobile accident is Dr. Stitt. Dr. Stitt, who first saw D.J.D. fifteen months after the accident did not have the benefit of any of the other, prior medical reports. It is, consequently, perhaps understandable that Dr. Stitt, having only the narrative of his new patient upon which to base his opinions, quickly concluded that the problems of which D.J.D. was complaining were a direct result of her automobile accident. It is also noteworthy that all of the other advice from medical specialists discourages the passive, chiropractic treatment that D.J.D. was receiving from Dr. Stitt.

[para9] Dr. Stitt's initial letter to M.P.I.C. of October 16th, 1995, expressed the view that 'Due to the severity of her symptoms she will need approximately six months of fairly intensive chiropractic treatment'. His next report to M.P.I.C., dated February 26th, 1996, indicates that, after four months of chiropractic treatments and having seen approximately a 50% improvement in her overall condition, he was then currently seeing her once a week and this would likely continue for a further four to six months. He expresses the view that the reason his treatment had caused the improvement when other forms of treatment had failed, was that the patient's problems 'appear to be mainly coming from the vertebral joints fixation. The muscular hypertonicity appears to be secondary in nature.' Dr. Stitt's more recent report, dated September 20th, 1996, indicates that Dr. Stitt

had now completed about twelve months of chiropractic treatment, which had produced an approximate, overall improvement of 70%, that he was seeing D.J.D. on a weekly or bi-weekly basis as needed and that over the next twelve months steady improvement could be expected.

[para10] It is beyond question that D.J.D. was suffering from pre-existing, degenerative problem related to her spine and its surrounding tissues - a fragmented osteophyte (bony protuberance), mid-thoracic scoliosis, certain other degenerative changes noted in the report of Dr. Fung (the [text deleted] Radiologist), myalgia, and excessive lumbar lordosis.

[para11] While we do not doubt that Dr. Stitt's treatments of D.J.D. have, indeed, produced some improvement in her overall condition - both D.J.D. and Dr. Stitt appear to be convinced of that - we are not persuaded, on a balance of probabilities, that the conditions that have been thus improved were conditions brought about by the automobile accident of June 22nd, 1994. On the contrary, we are persuaded, upon that same balance of probabilities, that most, if not all, of the extensive list of complaints from which D.J.D. was suffering in September of 1995 were complaints that pre-existed June 22nd, 1994. While the mere possibility that the vertebral subluxations and fixations identified by Dr. Stitt could have been caused, at least in part, by the automobile accident cannot be denied, we are not able to view it as more than that - that is to say, a mere possibility. The much stronger probability, in light of D.J.D.'s medical history, is that any such conditions existing in September of 1995 were there on June 21st, 1994.

DISPOSITION:

[para12] In summary, then, although there is no doubt that D.J.D. has been suffering from quite a wide variety of problems, many of which cause her undoubted pain or discomfort and some of which may, perhaps, be psychosomatic in origin, we cannot find on a balance of probabilities that any of her problems existing in September of 1995 appear to have been caused by her 1994 accident. We must therefore confirm the decision of the Internal Review Officer.

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