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Indexed as:
L.A.E. (Re)

IN THE MATTER OF an appeal by L.A.E.
AICAC File No.: AC-99-06

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[1999] M.A.I.C.A.C.D. No. 12

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and
F.L. Cox

Heard: April 14, 1999.
Decision: April 15, 1999.
(10 paras.)

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Issue(s):

Whether Appellant entitled to further therapy.

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Relevant Sections:

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

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.

The appellant, L.A.E., appeared on his own behalf.

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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

[para1] In a motor vehicle accident that occurred on
November 21st, 1996 the Appellant, L.A.E., sustained bodily
injuries. His vehicle, which was damaged to the extent of
about \$4,000.00, was struck on the front at the driver's side
by a vehicle attempting to make an unsafe left turn in front
of him. He was wearing a 3-point seatbelt. He struck his
head on the headrest but did not lose consciousness nor
require any emergency medical service.

[para2] On the following morning he experienced neck and lower back pain which worsened over the next few days. He attended upon his family physician, Dr. Fogel, who recommended that he seek chiropractic treatment.

[para3] L.A.E. then attended upon Dr. Michael Kucheravy on November 26th, 1996, complaining of:

- neck pain and stiffness with constant soreness and limited mobility;
- sharp pain in the left scapular region, aggravated by reaching forward;
- headaches, about once weekly, located at the top of his head and lasting for several hours;
- lower back pain and stiffness, located in the midline, occasionally sharp in nature and aggravated by activity;
- right anterior shin pain, intermittent in frequency, mainly while turning over in bed;
- and intermittent right elbow pain.

[para4] Between November 21st, 1996 and about mid-March 1998, L.A.E. received 156 chiropractic adjustments from Dr. Kucheravy. The Appellant was referred by MPIC for an independent chiropractic examination by Dr. Kimberly Castle, which was completed on June 3rd, 1997. It is noteworthy that, at the time of that independent exam, L.A.E. was still voicing all of the complaints with which he had presented to Dr. Kucheravy in December, 1996. He is reported to have told Dr. Castle that, while he had experienced some improvement in his symptoms and that chiropractic care had brought him temporary relief, his improvement seemed to have plateaued during the weeks or months immediately prior to that independent examination. Nevertheless, L.A.E. continued attending upon Dr. Kucheravy until March 1998.

[para5] Meanwhile, upon the recommendation of Dr. Castle, supported by that of Dr. Timothy Pethrick (chiropractic consultant to MPIC), L.A.E. was referred to D'Arcy Bain Physiotherapy, Athletic and Rehabilitation Clinic for a six-week rehabilitation program, later extended by a further two weeks. L.A.E. testified that he received 45 supervised, 1.5-hour, physiotherapy sessions at the D'Arcy Bain Clinic, at the end of which he was, as he puts it "going fairly good" which he later explained to mean that he could bend his body a lot more easily than had been the case prior to starting his physiotherapy course. MPIC terminated payments for any further physical therapy after March 27th, 1998 and it is

apparent that the Appellant has become seriously deconditioned since that time. While a number of his original complaints seem no longer to be extant, we are satisfied from the evidence that L.A.E.'s lower back pain continues, is more intense than was the case in March 1998 and seriously inhibits many of his former activities of daily living. Fortunately, L.A.E. has not had to take time away from work but we are of the view that even that is a possibility in the absence of some therapeutic intervention.

[para6] We are not persuaded that further chiropractic adjustments will be of benefit to L.A.E. On June 8th, 1997 Dr. Castle, the independent chiropractic examiner, expressed the view that chiropractic care should continue at a decreasing frequency over the following ten to twelve weeks, by which time he should have achieved maximum therapeutic benefit. A memorandum prepared by Dr. Pethrick, dated of July 12th, 1997 and concurring in Dr. Castle's comments, makes reference to the Clinical Guidelines for Chiropractic Practice in Canada which state, in part:

8.3 In general, more frequent treatment/care (three to five sessions per week for one to two weeks) may be necessary early. Progressively declining frequency is expected until discharge of the patient or conversion to elective care.

[para7] By May of 1997 L.A.E. had received an average of thirteen chiropractic adjustments per month, with minimal apparent improvement between the symptoms reported at the beginning and those reported six months after his accident. Despite that, L.A.E. continued to receive chiropractic care until March 1998.

[para8] As to a renewal of physiotherapy, we are not competent to determine whether that is indicated or not. That is something that can only be determined after further, expert assessment.

[para9] We find that L.A.E. continues to suffer from injury to his lower back sustained in the motor vehicle accident briefly described above. We are therefore of the view that he should be referred for further assessment to a physiatrist, to be selected by the Appellant from a list of three physiatrists to be furnished to him by MPIC, with that assessment being followed by such radiological or other examinations and subsequent therapy (if any) as may be recommended by that physiatrist or by any other specialist to whom the physiatrist may refer L.A.E., and we so order.

[para10] To the extent, if any, that L.A.E. is obliged to take time away from his workplace for any examination, assessment or treatment resulting from the foregoing, and in

consequence suffers loss of earned income, he will be entitled to income replacement indemnity for the income thus lost.

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