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Indexed as:
D.S. (Re)

IN THE MATTER OF an appeal by D.S.
AICAC File No.: AC-97-72

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[1997] M.A.I.C.A.C.D. No. 47

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and L.J. Goodspeed
Heard: November 14, 1977.
Decision: December 12, 1997.
(9 pp.)

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Issue(s):

- (i) Appropriateness of dental treatment;
- (ii) whether Appellant entitled to total, or only partial, reimbursement for cost thereof.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, s. 136.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Keith Addison.
D.S., the appellant, appeared in person.

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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

FACTS:

[para1] D.S., aged [text deleted] at the time, was involved in a rear-end motor vehicle accident on May 17th, 1995. She sustained injuries to her neck, back, knees, and forearms. At the time of impact her jaw locked, her mouth became temporarily immobilized and she experienced pain to her

head and jaw.

[para2] Prior to the accident, D.S. had not experienced any dental problems apart from a slight overbite which, according to the expert evidence presented to us, does not necessarily predispose a patient to temporomandibular problems. Her mouth had compensated naturally for this overbite, she was pain free, her mouth functioned well and there was a total absence of disk degeneration. Orthodontics had been discussed in relation to her minor malocclusion, but, since that had been for aesthetic reasons alone rather than as a matter of necessity, it had been rejected by the Appellant.

[para3] On June 13th, 1995, D.S. complained to her dentist, Dr. Carmine Scarpino, of painful tightness in her jaw. Dr. Scarpino, noting this new development in his patient's dental condition, referred D.S. to Dr. Bruce McFarlane, an orthodontist, for more extensive temporomandibular joint ('TMJ') therapy.

[para4] There is no doubt at all that it was the motor vehicle accident that caused the TMJ disorder that the Appellant sustained. Dr. McFarlane reported that the motor vehicle accident resulted in the Appellant suffering internal derangements of both jaw joints; muscular disharmony, spasm and pain; loss of range of motion and chronic facial pain. The report from the Appellant's physician, Dr. Kevin Saunders, dated January 30th, 1997 also relates the temporomandibular joint disfunction to the motor vehicle accident and confirms that the patient did not suffer TMJ pain prior to the accident. Her physiotherapist, D'Arcy Bain, reported on February 7th, 1997, his belief that every delay in her dental care worsens her symptoms and if the TMJ disorder is not treated she may not recover fully from her neck and upper thoracic symptoms. M.P.I.C. does not dispute any of those facts.

[para5] Dr. MacFarlane initially prescribed a home regimen with certain lifestyle alterations and a splint for repositioning the upper and lower joints. By June 20th, 1996, Dr. McFarlane was able to report that D.S.'s treatment was successful in establishing for her a comfortable mandibular position with some improvement in muscular and TMJ symptoms. However, he emphasized that the splint resulted in an unstable bite, which would hamper her recovery if it were not corrected. Dr. MacFarlane recommended a full set of braces, with the necessary devices, and two years of active treatment.

[para6] M.P.I.C. referred the matter to its own consultant, Dr. Randy Mazurat, who, in a December 5th, 1996, memorandum, reported that he had consulted with Dr. McFarlane and had concluded that the majority of the proposed

orthodontics would be directed toward correcting the pre-existing malocclusion, with the possibility of improving the TMJ symptoms. Because of this, while preferring a more conservative approach to the treatment of D.S.'s condition - specifically, a gradual thinning of the splint so as to lengthen the operative muscles, with the need to continue wearing a splint on a permanent basis, at least at night - Dr. Mazurat recommended that it would be reasonable that the patient and the Corporation share the expense of the proposed treatment, with M.P.I.C. covering 60% of the orthodontic fees. He viewed the orthodontic approach as a 'fall-back' position, or second choice to be used only if the more conservative one proved unsuccessful.

[para7] Dr. MacFarlane testified that, in his opinion, the prescribed orthodontic treatment to normalize her occlusion and relieve her of the TMD symptoms was D.S.'s best chance for long term stabilization and recovery. The orthodontic braces are applied to support her jaw muscle, have her teeth fit and provide the best possible bite. He bases his opinion on the success that he has had with the mandibular repositioning splint and on the fact that her symptoms return when the splint is removed. Although he can not guarantee a permanent cure, because of the above noted success and the absence of joint degeneration he believes there is a good probability of success. He expressed the further view that if the braces are not applied D.S. will be sentenced unfairly to a lifetime of splint use, discomfort and lifestyle alterations.

[para8] Dr. MacFarlane has recommended the following orthodontic treatment:

- (i) removal of one permanent lower tooth to allow the teeth to fit better;
- (ii) application of upper and lower braces for a two year period with interim splints to fit the braces;
- (iii) upper and lower retainers for night time use to support the teeth in the new position and to prevent the teeth from shifting.

Dr. MacFarlane indicated that the total treatment costs over two years inclusive of all orthodontal devices and care are \$4,050.00.

[para9] Dr. Mazurat described the controversy and studies that have been conducted around TMJ disorders and outlined the various treatment programs undertaken for their resolution. He stated that the traditional treatments that have been used for TMJ disorder are:

- (i) surgery;

- (ii) reconstruction of the mouth with extraction of teeth and placement of crowns to stabilize the jaw;
- (iii) orthodontics; and
- (iv) a program using a series of splints of varying thicknesses to gradually lengthen the jaw muscles and align the teeth.

[para10] Dr. Mazurat went on to note that the entire question of the most effective forms of treatment of TMJ disorder was sufficiently controversial as to have given rise to two national conferences on the subject. The majority opinion that had emerged from those meetings was that invasive, irreversible treatments such as reconstruction of the mouth, surgery or orthodontics were not recommended in most cases. M.P.I.C has adopted that opinion and has notified the dental profession that M.P.I.C. will not reimburse expenses for invasive, irreversible treatments of full mouth reconstruction or orthodontics in cases such as the one now before us. The insurer, in other words, prefers the approach recommended by Dr. Mazurat. Dr. Mazurat was, however, prepared to approve payment by the insurer of 60% of the cost of the orthodontic treatment, primarily because that treatment plan predates the foregoing notification to the dental profession. We note, in passing, that we are not bound by that decision of M.P.I.C., although we would, in the ordinary course and, indeed, in the present case, give serious consideration to the underlying reasons for it. We are not prepared to say that we shall always choose one particular kind of treatment over another; each case must be decided upon its own facts.

[para11] Although neither Dr. Mazurat or Dr. McFarlane was prepared to offer a guarantee of total success with orthodontic treatment, Dr. McFarlane believes that there is a strong probability of success and an enhanced quality of life over a longer period of time.

THE ISSUES:

[para12] There are two, closely related issues before us:

- (a) what is the better course of treatment for the Appellant's condition, or, put slightly differently, is the treatment prescribed by Dr. McFarlane appropriate?
- (b) should the entire cost of the proper treatment be borne by the insurer?

[para13] The first of those issues requires us to decide the best course of treatment to remedy the accident-related

problem - a decision that we are not qualified professionally to make. We must rely upon the expert evidence presented to us and, as Dr. Mazurat commented in the course of his evidence, the advice one gets will most frequently depend upon the specialty of the person giving it. Although the opinions of Dr. Mazurat, a prosthodontist, and Dr. McFarlane, an orthodontist, differ in their proposed methods of treatment, each of them is a highly respected expert within his field and within the dental profession. A review of the literature illustrates that there is no consensus within that profession regarding which is the superior method of TMJ disorder management nor about the efficacy of most treatment approaches. In arriving at our decision, we do not suggest that either of the expert witnesses is wrong but, rather, that both are probably correct; each is likely to arrive at an acceptable result by a different route. We must choose between those routes in the best interests of D.S. while attempting, at the same time, to be fair to the insurer. After a careful review of the above factors related to D.S.'s dental condition both before and after her accident of May 17th, 1995, and with the utmost of respect to Dr. Mazurat, we find that a course of treatment which, if successful, will effect a more permanent correction of the Appellant's TMJ disorder is preferable to a never-ending series of splints, each splint having an anticipated life span of 4-6 months. We find, therefore, that D.S. should be reimbursed by M.P.I.C. for the cost of the orthodontic plan outlined for this Commission by Dr. McFarlane and reflected on page 4 of these Reasons.

[para14] That brings us to the question of whether M.P.I.C. should pay the entire cost of the orthodontistry, since the work is also expected to correct D.S.'s pre-existing minor malocclusion. It is the view of the Commission that the orthodontics only became necessary as a result of the motor vehicle accident and, therefore, that the entire cost should be born by Manitoba Public Insurance Corporation.

[para15] Counsel for the insurer referred us to an earlier decision of this Commission, in the appeal of J.G. (AC-97-09) In the J.G. decision, a finding was made for a shared cost recovery for orthodontics because a large percentage of the work was directed towards correcting pre-existing conditions. J.G. was [text deleted] years of age at the time of her accident and, as the Commission noted when rendering its decision in her case,

"... even prior to the accident, certain of [J.G.'s] teeth were either missing or misaligned. More specifically, her upper teeth on the right-hand side were too far forward, there was a slight over-eruption of her lower front teeth, four of her wisdom teeth and two of her lower side permanent teeth had been missing since birth and, partly if not completely as result of the

absence of those teeth, several of her posterior teeth behind the vacant spots were tilted out of normal alignment;".

[para16] J.G.'s diagnosis after the accident was of a temporomandibular disorder involving an anteriorly displaced disk with reduction on the right and an unknown position of a left disk with the complicating factor of bruxism. But, as will be apparent from the foregoing description, she was almost inevitably facing orthodontistry in any event, whether or not the motor vehicle accident had occurred. Hence, it was only reasonable that she, or her parents, should divide the cost of the restorative work, some, but not all, of which had been made necessary by her accident.

[para17] D.S., on the other hand, at the time of her accident had lived [text deleted] years with good dental health, without vacancies or major misalignments. She had a slight overbite which, since it did not cause discomfort nor detract seriously from her appearance, was never pursued for orthodontic correction, nor was the future need for correction anticipated. We therefore find that D.S.'s case is distinguishable from that of J.G., and that, since none of the proposed treatment would have been undertaken in the absence of her motor vehicle accident, the present Appellant is entitled to reimbursement by M.P.I.C. for the full cost of her orthodontic treatment.

DISPOSITION:

[para18] The decision of the Acting Internal Review Officer is rescinded and D.S.'s appeal is allowed. M.P.I.C. is ordered to pay the entire cost of the orthodontic treatment plan proposed by Dr. McFarlane.

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