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Indexed as:
S.W. (Re)

IN THE MATTER OF an appeal by S.W.
AICAC File No.: AC-98-52

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[1998] M.A.I.C.A.C.D. No. 25

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

Heard: September 4, 1998.

Decision: September 21, 1998.
(16 paras.)

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Issues(s):

Whether Chiropractic treatments were properly
terminated.

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Relevant Sections:

136 (1) of the MPIC Act and Sections 5 of Regulation
40/94.

[Ed. note: Please see paper copy for two page
appendix containing the relevant sections of the Manitoba
Public Insurance Commission Act and Regulation 40/94.]

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Dean Scalletta.

S.W., 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

THE FACTS:

[para1] S.W. was involved in a motor vehicle accident
('MVA') on July 5, 1996. On July 10, 1996 S.W. was examined
by her chiropractor, Dr. W. A. McLachlan, who diagnosed a
Grade 2 Whiplash Associated Disorder type of injury with the

following signs: cervicogenic headaches, lumbar pains, upper cervical pain and restriction, a bruise on the right knee and lateral right thigh. He also noted that at the time of this accident she had been receiving ongoing care for her cervical and lumbar spine as a result of an MVA on November 19, 1994. He indicated that she could "work with modified duties" with restricted flexion and lifting. He then commenced treatments, one to two times per week.

[para2] MPIC, upon notification of the MVA, closed her file from the November 19, 1994 accident and combined all details together in the newly opened file for the July 5, 1996 accident.

[para3] S.W. testified that she was still receiving one chiropractic treatment per week following her 1994 accident up to her July 5, 1996 MVA. After this second accident, treatments were increased to three times per week for a two week period, and then reduced to once a week thereafter. She stated that her additional treatments were for a new injury to her knee and not for injuries caused by the previous accident; Dr. McLachlan had provided ultrasound treatments for her knee and leg as well as continuing adjustments to her neck and back.

[para4] On October 30, 1996, S.W. was treated by Dr. P. Nemeth of the Pan Am Sports Medicine Centre who prescribed medication that eliminated the inflammation in her knee. She was referred for physiotherapy for strengthening exercises. S.W. told her adjuster that her knee felt better and that her ability to walk with less pain had improved.

[para5] In his report of May 18, 1997, Dr. McLachlan reported that S.W.'s X-rays on April 21, 1997 showed pre-existing multiple discopathies with degenerative osteoarthritis. He indicated that she had full function with symptoms, that she could work full duties and that she could now maintain her usual activities.

[para6] Dr. T. Pethrick, a chiropractic consultant for MPIC, had reviewed S.W. file on June 3, 1997 and approved a possible six-month treatment plan. S.W.'s adjuster relayed to Dr. McLachlan that her treatment plan had a possible time frame of six months. Dr. McLachlan replied that in reviewing S.W.'s pre-existing condition he felt that her treatments would likely conclude by October 30, 1997. A letter to Dr. McLachlan from MPIC, dated June 12, outlined the discussion that treatment could proceed for six months if needed and restated Dr. McLachlan's opinion about the expected discharge date of October 30, 1997. Dr. McLachlan was also advised to notify MPIC in the event that the plan terminated earlier than October 30 or required an extension beyond that date.

[para7] S.W. received a letter from MPI, on June 12, 1997, stating that her treatments would be terminated on October 30, 1997, unless there were clinical factors necessitating an extension of her treatment plan. She discussed the letter with Dr. McLachlan, who told her that she was improving and should be able to complete her treatment program by that date. S.W. believed she required further treatment but Dr. McLachlan told her that he would not lie to MPIC when she did not require further treatments as a result of the accident.

[para8] S.W. stated that because of the pain in her leg, back and neck, she still required treatments and continued with Dr. McLachlan for one treatment a week until March 1998. She said that, on the advice of her children, she switched to Dr. Garry Eng who continues to treat her twice per month with manipulations to her lower spine to relieve her knee pain. S.W. submits that the fact that Dr. McLachlan, and now Dr. Eng, continued to provide treatments after the termination date, proves that she needs treatments.

[para9] In order to ensure that her Notice of Appeal would be timely filed, and rather than wait until October to determine her condition and the possible need for an extension of her chiropractic treatments, S.W. filed an appeal on August 8, 1997, indicating that she did not believe that payment for her treatments should be terminated.

[para10] Dr. McLachlan's opinion was that, by October 30th, 1997, S.W. had reached her pre-accident status and had returned to the frequency of one treatment per week that she had been receiving prior to the accident. In that an application for extended medical care was not, in Dr. McLachlan's view, required and considering the natural history of such an injury, MPIC ceased paying for S.W.'s chiropractic treatments on October 30, 1997.

[para11] The issue before us is whether or not S.W. had, in fact, reached her pre-accident status by October 30, 1997 and whether the problems of which S.W. complains after that date are attributable to either of her motor vehicle accidents of July 1996 and November, 1994.

THE LAW:

[para12] The relevant section of the M.P.I.C. Act is Section 136(1), which reads, in part, 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;

.....

(d) such other expenses as may be prescribed by regulation."

In conjunction with that section of the Act, reference must be made 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 dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;....."

[para13] S.W. has received chiropractic treatments over a period of 20 months for injuries from her 1994 accident as well as treatments over 15 months after the 1996 accident. Expenses are paid when care is medically required and dispensed by the victim's caregiver and in this case it was determined by S.W.'s chiropractor, Dr. McLachlan that her care, medically required because of the accident, was no longer required after October 30, 1997.

[para14] There is no objective medical evidence of any nature suggesting that further chiropractic treatments were required beyond October 30, 1997 for any injuries arising from the motor vehicle accident on July 5, 1996. Dr. McLachlan is in the best position to diagnose S.W.'s condition, having treated her since June 1993 for a 1990 MVA and for her injuries from both the 1994 and the 1996 accidents. X-Rays taken on May 9, 1994, prior to S.W. November, 1994 accident, show that even then she had a pre-existing condition of discopathy, osteoarthritic changes and altered cervical lordosis. Dr. McLachlan confirmed that prior condition very clearly, and was of the view that, by October 30, 1997, S.W. had received all necessary treatments related to her 1996 accident.

[para15] We do not doubt that the appellant is suffering from the problems of which she complains. However, we find that, on a balance of probabilities, any of those problems existing after October 30, 1997 were problems that pre-existed May 9, 1994 and were not caused by her MVAs of November, 1994 or July, 1996.

Disposition:

[para16] For the foregoing reasons, MPIC'S Acting Review Officer's decision of March 24, 1998 is confirmed and the Appeal is dismissed.

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