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Indexed as:
G.S. (Re)

IN THE MATTER OF an appeal by G.S.
AICAC File No.: AC-98-30

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[1998] M.A.I.C.A.C.D. No. 26

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

Heard: September 11, 1998.
Decision: September 24, 1998.
(11 paras.)

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Issues(s) :

Whether continued chiropractic care necessitated by motor
vehicle accident.

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Relevant Sections:

Section 136(1) (a) of the MPIC Act and Section 5 of
Manitoba Regulation 40/94.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Joan McKelvey.

The appellant, G.S., 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 REMVOING
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

REASONS FOR DECISION

[para1] The Appellant, G.S., was the victim of a motor
vehicle accident in February of 1994 (shortly before the
current legislation came into force) in which he sustained
injury to his lower back, neck, upper back, left buttock and
leg. He commenced seeing Dr. Richard Moorhead, chiropractor,
as well as being treated by his medical practitioner, the Pain
Clinic at the St. Boniface General Hospital and, for
physiotherapy treatment, the Canadian Back Institute. He had
also suffered a work-related back sprain in July of 1993, for

which he also received chiropractic treatment.

[para2] G.S. was still seeing Dr. Moorhead for chiropractic adjustments at least once a week when, on April 19th, 1995, he was involved in a second accident that is the subject of this appeal. G.S.'s evidence was that, in this second accident, he was driving east on Marion Street at Archibald in the median lane on a green light. A driver heading west made a left turn and hit the left side of the hood, fender and doors of G.S.'s vehicle. He says that he was thrust to his right, that his vehicle was then airborne for second or two before hitting a snowbank. He was, understandably, shaken up by that accident.

[para3] G.S. was initially seen by Dr. Jacqueline Rempel, chiropractor, who worked out a treatment plan with MPIC that, on July 25th of 1997, called for two treatments per week for the subsequent six weeks, to be followed by one treatment per week for the following twelve weeks, with an expected discharge date of November 15th.

[para4] Dr. Rempel went on maternity leave, and G.S. therefore continued his chiropractic treatments under the care of Dr. Bruce Naherniak who, after re-evaluating the Appellant, proposed a slightly revised treatment plan with which MPIC agreed. That plan, commencing October 14th, 1997, called for two treatments per week until November 1st to be followed by one treatment per week until an estimated discharge date of December 6th, 1997. That treatment plan was committed to writing, of which a copy was provided to G.S. MPIC has refused to pay for any chiropractic treatments beyond December 6th, 1997.

[para5] On December 3rd, 1997 G.S. applied for a review of the foregoing decision, claiming that the nature of his work for [text deleted] required continued, regular, chiropractic visits. He has, indeed, received continued chiropractic care until the present time, although the frequency of his treatments has now been reduced to once or twice per month. The question before us is whether the chiropractic adjustments that he has received since December 6th, 1997 were made necessary by his 1995 motor vehicle accident and should therefore be paid for by MPIC.

[para6] Dr. Naherniak is on record with his report that, on December 4th, 1997, G.S. "was determined to have reached maximum chiropractic improvement", in the context of his accident of April 19th, 1995. Dr. Naherniak did suggest that G.S. might benefit from massage therapy, but nothing more.

[para7] G.S. then went back to see Dr. Moorhead who, having examined him on January 9th, 1998, provided a report

that:

It was my impression that there was significant post-traumatic subluxation sprain and myofascial hypertonicity involving his cervical and costovertebral joints at the following areas: intervertebral joints C1, 2, C5-7, and L4, 5 areas. Costovertebral joint subluxations was (sic) noted at T1-10 on the left associated with myofascial hypertonicity.

[G.S.'s] chief complaint at this time involves his neck, upper thoracic area on the left side associated with headaches. It is my opinion that [G.S.] is suffering from joint dysfunction and pain caused by his motor vehicle accident. Although he is able to maintain his present work duties his (sic) is not fully asymptomatic. It is felt that his condition can be further stabilized reducing the present pain intensity. This patient will be re-evaluated in eight weeks.

[para8] Dr. Moorhead furnished a further, narrative report to this Commission, bearing date June 12th, 1998. That report is lengthy and detailed but, in our respectful view, the most significant aspects of it may be summarized this way:

- (a) G.S. reported to Dr. Moorhead that, at the time of the accident, he was wearing his seatbelt with shoulder harness, was sitting square in his seat with no rotation at the time of the accident. He reported having similar symptoms and residual complaints following his February 17th, 1994 accident;
- (b) G.S. had reported his chief complaint as left low back stiffness and pain which started to flare up. There was no radiation of pain. He had intermittent pain with episodes of no pain at all, the pain being described as "a mild dull ache aggravated by forward bending and relieved by rest";
- (c) the cervical range of motion was full and painless; all tests of provocation were essentially negative; sensory, motor and reflexes were within normal limits; bony palpation findings revealed no specific joint restrictions; soft tissue findings revealed mild localized myofascial trigger points on the right upper cervical and left terse musculature; thoracic spine revealed full and painless range of motions, with all tests of provocation proving negative; examination of the lower back revealed full range of motions other than forward flexion being stiff and sore at the end range;

- (d) on March 10th, 1995 G.S. was noted to be asymptomatic for injuries sustained in the February 14th, 1994 motor vehicle accident. This finding seems to be in direct conflict with G.S.'s own evidence, which was to the effect that "my back has never been right since the 1994 accident";
- (e) G.S. reported to Dr. Moorhead that, by June of 1998 at the very latest, his neck and lower back were essentially asymptomatic, except for occasional, mild tenderness in his left interscapulae region, and that he was able to maintain full normal work duties and activities of leisure.

[para9] G.S., in giving his evidence, testified candidly that "Until last Christmas I really hadn't gotten any better since the first accident. Since then I've been getting much better; the only pain I have now is in my neck and upper back from time to time."

[para10] Dr. Russell Baron, MPIC's chiropractic consultant, offers the following comment:

It appears that it is now approaching nearly three years post-motor vehicle accident and this claimant continues to suffer from neck and upper thoracic spine complaints. This, despite numerous chiropractic interventions provided by several different caregivers. It would be my opinion, at this point, that based on Dr. Moorhead's report, there is a lack of specific objective findings to draw a clear causal relationship between the claimant's current symptoms and the motor vehicle accident in question. Dr. Moorhead's primary findings are of myofascial hypertonicity as well as subluxations of C1-2, C5-7, L4-5, T1-10, and the costal vertebral joints. There is little in the way of evidence to suggest that the presence of these subluxations can be directly related to the motor vehicle accident in question.

We have to agree with Dr. Baron. Although it may well be that G.S. does require occasional chiropractic adjustments, we find that, by December 6th, 1997 G.S. had reached at least the condition that he had enjoyed immediately prior to his accident of April 19th, 1995. We find, from a careful review of all of the medical and chiropractic evidence as well as G.S.'s own testimony, that on a strong balance of probabilities any residual problems from which G.S. may have been suffering after December 6th, 1997 do not have their origins in his motor vehicle accident of April 19th, 1995.

DISPOSITION:

[para11] In light of the foregoing finding, we must dismiss G.S.'s appeal and confirm the decision of MPIC's Internal Review Officer.

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