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Indexed as:  
J.H. (Re)

IN THE MATTER OF an appeal by J.H.  
AICAC File No.: AC-98-128

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[1998] M.A.I.C.A.C.D. No. 42

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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: November 19, 1998.  
Decision: December 15, 1998.  
(10 paras.)

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Issues(s) :

Who should pay for additional program of chiropractic  
care recommended by a second chiropractor?

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Relevant Sections:

Section 136(1), 138 and Regulation 40/94 of the MPIC Act  
( 'the Act' ).

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Appearances:

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

Appellant represented by himself.

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#### REASONS FOR DECISION

THE FACTS:

[para1] The facts of this case are clearly set out in  
Acting Review Officer's letter dated September 3rd, 1998 and  
we incorporate them into this decision. The letter is  
attached to and becomes part of our Reasons as it relates only  
to the facts of this case.

THE ISSUE(S) :

[para2] The Appellant decided that after one year of  
treatments with his chiropractor, Dr. Scott-Herridge, his

condition was not improving. He felt he had not returned to his pre-accident status and wanted a second medical opinion to see if there was another method of treatment that would help return him to normal.

[para3] Dr. Scott-Herridge reported that when he last treated J.H. on April 30th, 1998 the Appellant was experiencing moderate intermittent pain in his low back and moderate infrequent pain in his neck and that he had attained 80% of his pre-accident status in these two areas of injury. He had recovered fully from all other injuries he had sustained in the accident.

[para4] Dr. Pethrick, a chiropractic consultant for MPIC, stated in his report of November 12th, 1998 after reviewing all of the medical evidence on this file that he did not deny that J.H. had some residual symptoms resulting from the auto accident and that they had appeared to stabilize with the treatment of Dr. Scott-Herridge. He also believed that J.H.'s condition had plateaued as a result of this treatment and that he had achieved maximum benefit from this program.

[para5] J.H. wanted to improve and consulted a second chiropractor to see if a different course of chiropractic treatment could return him to his pre-accident status. He saw Dr. Lodewyks, of the Corydon Chiropractic Centre, on May 27th, 1998 and started an intensive treatment program receiving two chiropractic treatments in May, eight in June, three in July, four in October and four in September. Dr. Lodewyks states in a report dated September 28th, 1998 that "[J.H.] has attained a near accident status. . . . . In the months of October and November [J.H.] will attend on a tri-monthly to semi-monthly schedule and it is felt that by December 31st, 1998 that he will have attained the additional 20 % to achieve a pre-accident health status". He felt that J.H. needed only another 8 - 10 treatments to return him to his pre-accident status.

[para6] We have been told countless times by many different caregivers that when a program of treatment is established for a patient a series of objectives or goals should be set and a time frame should be established in which they are to be accomplished. In the event these goals or objectives are not met, or the patient is not responding, or the patient has plateaued but not at the desired level, then the patient and the program should be re-evaluated. Either a different treatment program should be implemented or the patient should be referred to another medical caregiver for evaluation and possible different treatment program. This concept has been accepted by this Commission.

[para7] According to the evidence supplied at the hearing J.H. received a different type of chiropractic treatment from

Dr. Lodewyks than the one he received from Dr. Scott-Herridge.

Both J.H. and Dr. Lodewyks felt there was a marked improvement in his condition and believed that by December 31st, 1998 he would attain his pre-accident status.

[para8] Under the circumstances of this case we are of the view that the quest for a second opinion and subsequent treatment was the correct way to proceed and agree that MPIC should pay for this treatment and related expenses.

[para9] The last visit by J.H. to Dr. Scott-Herridge was on May 21st, 1998 and if he had continued with Dr. Scott-Herridge he would have received another two treatments by June 30th, 1998. MPIC paid J.H. for these two treatments and they will be credited against the two treatments he received from Dr. Lodewyks in May 1998. Dr. Lodewyks advised that he would be treating J.H. tri-monthly to semi-monthly in October and November and we presume in December and this should work out to eight treatments. Therefore J.H. should receive compensation for 27 treatments for the period of June 1st to December 31st 1998 plus the cost of one set of X-rays taken by Dr. Lodewyks. J.H. shall also be paid interest on these funds as set out by the Act and Regulations.

DISPOSITION:

[para10] The Acting Review Officer's decision of July 22nd, 1998 is, therefore, rescinded and the foregoing is substituted for it.

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qp/s/qlrds

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