

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by L.A.B.
AICAC File No.: AC-97-145**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Ms Joan McKelvey
the Appellant, L.A.B., appeared on her own behalf

HEARING DATE: May 5th, 1998

ISSUE: Causation - entitlement to chiropractic treatment

RELEVANT SECTIONS: Section 136 of the MPIC Act and Sections 5 and 8 of Regulation
40/94

**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:

In February of 1994 the Appellant, L.A.B., sustained a whiplash injury when her vehicle was rear-ended. She was treated by her chiropractor, Dr. John Kos, for three or four months and discharged from his care having apparently been restored to pre-accident condition.

On February 18th, 1996 she was involved in another accident, when another vehicle emerged from a parking lot without stopping and collided with the front of her vehicle. She returned to Dr. Kos, who treated her some thirteen times between February 20th and April 23rd of 1996. Once again, she was discharged from Dr. Kos's care, apparently fully recovered.

In December of 1996 her symptoms reappeared. She thought that they would go away in time, so she contented herself with performing some simple, home exercises. Those exercises did not help much, if at all, and on June 7th, 1997 she consulted another chiropractor, Dr. M. J. Kucheravy. We note that the reason L.A.B. had not returned to Dr. Kos was, simply, because his hours were inconvenient for her and she had difficulty getting away from her workplace at appropriate times. Dr. Kucheravy's hours of work were more flexible and convenient for her.

Dr. Kos's treatments had consisted, for the most part, of laser and ultrasound therapies, with occasional spinal adjustments; Dr. Kucheravy appears to have used spinal manipulation almost exclusively.

Drs. Kos and Kucheravy, as well as MPIC's own chiropractic consultant, Dr. Russell Baron, are unanimous in their view that L.A.B. sustained a Grade 2 Whiplash Associated Disorder at the time of her motor vehicle accident in February of 1996. While Dr. Kos's report is brief in the extreme, referring only to "whiplash injury, CT sprain, sprain right shoulder" and prescribes chiropractic adjustment and electro-therapy, Dr. Kucheravy's initial health care report is a great deal more detailed. He refers to "chronic traumatically induced lateral cervical upper dorsal and lumbopelvic subluxations sprain/strain with associated aberrant spinal joint biomechanics and resultant reactive myospasms, myalgia, radiculitis and inflammation. Chronic traumatically induced right shoulder sprain/strain with associated aberrant joint biomechanics and resultant reactive myospasms, myalgia, joint crepitation and inflammation".

Dr. Kucheravy added:

This patient may have a number of possible recovery delaying factors. However it is too early in the care program to know if they will be a problem.

One risk factor was a previous failed treatment program.

This person is a WAD 2 and I anticipate it will take approx. three months of care to have her at pre-accident status.

Dr. Kucheravy added that he anticipated twelve to fourteen visits a month for three months and, if all went well, a release from care at the end of that time. That report was dated July 2nd, 1997.

By September 25th of 1997 Dr. Kucheravy, in a report of that date addressed to MPIC, indicated that he was adjusting L.A.B. approximately twice each week and that the present course of treatment should continue for a further four to six weeks. He anticipated that she would need to remain under care for another two to three months, with the number of visits per week being reduced systematically based upon her continued improvement. L.A.B. testified that it was not until the end of February of 1998 that she ceased visiting Dr. Kucheravy twice a week and that, since that time, she had been seeing him approximately once every two weeks.

The reports presented to MPIC by Drs. Kos and Kucheravy were examined by Dr. Russell Baron who, after analysing those reports, arrives at certain conclusions and opinions, the essence of which may be summarized this way:

- (a) L.A.B.'s initial injury was confined to a relatively minor cervical spine sprain/strain injury as well as a relatively minor right shoulder sprain/strain injury;
- (b) those injuries were resolved with the care that was received from Dr. Kos and that resolution occurred within a normally expected time frame;
- (c) a relatively moderate cervical injury should recover completely if subjected to about 30 proper treatments over a course of about six months;

- (d) the description of L.A.B.'s injuries, or those of which she complained more than one year following her motor vehicle accident, were more consistent with findings that might be expected in an acute injury rather than for an exacerbation of a chronic injury. That is to say, swelling, muscle spasm and inflammation might well have been expected to arise during the first few weeks following the accident, but to see them arise a year afterwards is, while possible, highly unlikely;
- (e) Dr. Kucheravy's treatment plan provided for almost three times the frequency and amount of treatment that had originally been received from Dr. Kos.

Dr. Baron, while emphasizing that, in his view, a strong balance of probabilities militates against the Appellant's most recent symptoms having been caused by her motor vehicle accident, adds that much modern literature points to the fact that idiopathic neck pain in the general population is relatively common; he implies that the neck and shoulder discomfort suffered by L.A.B. is probably idiopathic in nature - that is to say, occurring naturally without the application of any external trauma.

THE ISSUE:

The issue is simply stated: were the signs and symptoms being treated by Dr. Kucheravy caused by the motor vehicle accident of February 1996 or do they arise from some other, as yet undetermined cause?

DISCUSSION:

We are faced with certain difficulties arising, in part, from the comparative paucity of information

contained in the report of Dr. Kos and partly from the strongly expressed differences of opinion between Dr. Kucheravy and Dr. Baron. Although, as noted above, Dr. Kucheravy suggests there might be a number of factors that would delay L.A.B.'s recovery, the only one that he specifically mentions was a "previous failed treatment program", for which we can find no evidence. If Dr. Kucheravy is referring to Dr. Kos's treatment, we have to say with deference that it appears to have been wholly successful - L.A.B. certainly went for about six months feeling that she had been completely cured.

All of the signs and symptoms described by Dr. Kucheravy, when analysed carefully, do seem to indicate that L.A.B.'s injuries were of a moderate nature which, in our respectful view, is not commensurate with the length and frequency of treatment actually undertaken.

Counsel for the insurer has referred us to the following texts:

Foreman and Croft on *Whiplash Injuries* at pages 458 and 459;

Lawrence Nordhoff Jr. on *Motor Vehicle Collision Injuries* at pages 171, 172 and 233;

and

Gunzburg and Szpalski on *Whiplash Injuries* at pages 53 et seq.

In addition, counsel refers to the report of the Quebec Task Force on *Whiplash Associated Disorders*.

Despite the disparity of descriptions offered by Drs. Kos and Kucheravy, which we attribute primarily to their different approaches to and standards of reporting, we are prepared to accept the proposition that the problems for which Dr. Kucheravy was treating L.A.B. were, in fact, caused by her 1996 motor vehicle accident. We are primarily persuaded to this view by L.A.B.'s own evidence,

which was patently honest, undramatic and, if anything, understated. While it is true that she did not see Dr. Kucheravy until over a year following her accident, the fact is that her earlier symptoms started to recur in December of 1996 and it was only when they became unbearable that she sought treatment again. Her description of those recurring symptoms indicates that, from her viewpoint and no matter how those symptoms and their underlying signs were respectively described by her caregivers, the problems from which she was suffering in December of 1996 were, for all practical purposes, identical to those which immediately followed her accident.

Having said that, we also note that the relevant chiropractic literature suggests that, in the absence of complicating factors (and the only one that we could discern was her 1994 accident) a course of 33 treatments over a period of 29 weeks would, in the ordinary course, have been adequate to restore L.A.B. to her pre-accident condition. She has, by now, received something close to 80 treatments from Dr. Kucheravy, a number far in excess not only of the expectations of Dr. Kos but even those of Dr. Kucheravy himself.

It is axiomatic in the field of chiropractic that treatment should never exceed the natural history of an untreated injury, although that, in our respectful view, is what appears to have occurred in L.A.B.'s case.

DISPOSITION:

In light of the foregoing, we find that L.A.B. has established a sufficient nexus between her motor vehicle accident and the symptoms which started to reoccur in December of 1996. We therefore find that she is entitled to have the first 33 treatments that she received from Dr. Kucheravy paid for by

the insurer at MPIC's standard rates for those treatments. The decision of MPIC's Internal Review Officer will therefore be varied accordingly and the matter referred back to L.A.B.'s Adjuster who, upon being provided with suitable evidence of the attendances referred to above, will be able to arrange for reimbursement to the Appellant of the fees in question.

Dated at Winnipeg this 6th day of May 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED