

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by N.C.H.

AICAC File No.: AC-98-45

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mrs. Lila Goodspeed
Mr. F. Les Cox

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

HEARING DATE: July 21st, 1998

ISSUE: Causation - whether costs of physiotherapy, chiropractic or other
rehabilitation were made necessary by motor vehicle accident
('MVA')

RELEVANT SECTIONS: Section 136(1)(a) and (d) and Section 138 of the MPIC Act, and
Section 5 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 Appellant, N.C.H., was involved in an MVA on November 8th, 1995 on Provincial Trunk Highway No. 6. Her vehicle, a Dodge Caravan, had stalled but she was able to pull over to the side of the highway. She got out of the van and waved to a passing motorist for assistance. Meanwhile, she noticed another vehicle approaching hers from the rear and, sensing an impending impact, jumped back into her van, backwards, burying her face against the head rest on the driver's side, wrapping her left arm tightly around that headrest and curling her right arm over the top of her head. Concurrently, she noticed that there was a second vehicle following closely behind the first one that had alerted her. The first vehicle, an Aerostar van, collided firstly with the left rear corner and then

with the door on the driver's side of her van; moments later, the second oncoming vehicle, a Ford Mercury car, struck the rear of her own.

While N.C.H. does not appear to have filed an Application for Compensation until some time in May of 1997, some eighteen months after the accident, the claim that she did file then describes her injuries sustained in the MVA as "a triangular cut on centre of right knee & aching bones".

Meanwhile, she had attended upon her family physician, Dr. Erwin Braun, on the 9th of November, 1995, having declined the offer of the RCMP officer attending the scene on November 8th to transport her to the emergency department of a hospital. Dr. Braun's initial health care report, rendered on July 2nd, 1997, indicates that N.C.H. had complained of pain in the occipital scalp area, in the left side of her shoulder and neck, and the right knee. On examination, Dr. Braun noted mild tenderness and slightly decreased range of motion of N.C.H.'s neck and left shoulder, with some abrasions and contusions to the right knee. He prescribed Robaxacet (a combination analgesic and muscle relaxant) for the muscle pain and Fucidin cream for the abrasions, advising rest and the use of cold and heat.

In a subsequent, narrative report prepared for MPIC on August 28, 1997, Dr. Braun says, in part:

I did not see her in this regard again. I did in fact see her on December 19th, 1995 for a bronchitis which I treated but there was no mention made of any further problems. I saw her on June 27th, 1996 at which time she complained of cramps in her feet and burning across the shoulders. There was nothing to find on examination, she was

reassured about this. I next saw her on March 12th, 1997 for a complete physical at which time she had a burning pain in the shoulders and feet as well as pain in the hips and was seeing a chiropractor. I actually sent her to Dr. John Wiens, an orthopaedic surgeon.

Dr. Braun's narrative report goes on to describe certain other aspects of N.C.H.'s medical history which are not relevant here, but concludes by saying:

Presently, this lady is complaining of some pain in both hips and has some mild decreased range of movement. [N.C.H.] indeed has been diagnosed with degenerative arthritis in her hips. I believe that there is no relationship between this diagnosis and her accident injuries.

N.C.H. testified that, on December 31st of 1995 she had been in some extreme discomfort and her husband had driven her to Seven Oaks Hospital where the Emergency Department had diagnosed, simply, "chest wall pain". She had been told by the hospital, when being discharged the same day, that she should make an appointment to see her own physician. She said "I thought that I had done so but, as I think about it and see the documentation, it doesn't look as if I ever did".

In May of 1996 N.C.H. apparently resigned voluntarily from her position as a regional manager for [text deleted], for whom she had worked since April of 1974. She gave, as the reason for her resignation, the fact that she was experiencing pain when walking and was unable to sit for any length of time when attending weekly sales meetings. She has apparently been working for [text deleted] ever since, but only on a part-time basis.

The report rendered by Dr. John L. Wiens to Dr. Braun, bearing date May 14th, 1997, does not directly address the question of causation. His principal findings were that N.C.H. appeared to have no varicosity nor incompetence of the valves of her leg veins, was able to toe and heel walk without difficulty, had straight leg raising to 70 degrees on the right and 75 degrees on the left side, had normal reflexes of her knees and ankles with good flexion-extension and power of her great toes. He found that N.C.H. had a fair range of motion of both hips, causing no apparent discomfort. He noted that N.C.H. did have "a little discomfort to palpation by the right Greater Trochanteric region (*that is to say, a boney prominence at the upper extremity of the femur*) but did not appear to have any significant tenderness of her lumbar spine. Dr. Wiens added that he had reviewed X-rays of N.C.H.'s hips and did not see any significant degenerative changes. "The patient just has a little boney prominence of the superior aspect of the acetabulum (*i.e. a cup shaped depression on the outer surface of the hip bone, into which the head of the femur fits*) bilaterally." Dr. Wiens added that N.C.H. would benefit from losing some weight, that she seemed to be getting some benefit from physiotherapy and that he recommended she be followed with observation. He could see no indication for surgery.

N.C.H. testified that, in December of 1996, some thirteen months after her MVA, she was on a shopping expedition with her sister when she experienced severe pains, whereupon her sister escorted her to the Mestdagh Chiropractic Clinic. Although she was seen at that clinic on December 10th, 1996 by Dr. Gary Eng, it was Dr. Brian Mestdagh who signed an initial health care report for MPIC bearing date May 26th, 1997. That report relates to the December 10th, 1996, examination and says, in part:

Patient presented herself with residual problems from the above dated auto accident (*November 8th, 1995*) which included hip pain, groin pain, numbness in the toes and ankle problems, leg problems and headaches along with low back pain and problems (*sic*). Paraspinal muscle spasms in the lumbar spine, dysfunctional hip joints with sacrum subluxation and secondary pubic misalignment subluxation. Ankle and lower leg misaligned within joints. Upper dorsal fixation with tenderness to touch on spinous percussion.

That report from the Mestdagh Clinic also notes that N.C.H. had not taken time off work because of a previous injury or health problem, but had been receiving physiotherapy under the direction of another caregiver. That report diagnoses a Grade II Whiplash associated disorder and classifies N.C.H. as having "full function with symptoms". It expresses the opinion that N.C.H. is able to work full duties, indicates that she should maintain her usual activities, prescribes chiropractic adjustments three times per week from December 10th, 1996 to February 20th, 1997, and adds that slower healing and more scarring could be anticipated due to altered thyroid function accompanied by high blood pressure.

Although Dr. Braun's report of August 28th of 1997 does not say so, he had, in fact, referred N.C.H. for physiotherapy to the D'arcy Bain Physiotherapy Athletic and Rehabilitation Clinic, where she first attended on the 16th of April 1997. By May 28th of that year the D'arcy Bain Clinic was able to report that she had been doing quite well, that her pain and mobility had improved and that "[N.C.H.] could probably go on a home program and if possible should include aquasize or hydro- therapy". Her treatments in physiotherapy appear to have consisted of the application of heat, exercises to increase her range of motion and general mobility, together with a series of home exercises. The physiotherapist's reported impression was of muscular tension or tightness in both the cervical and

lumbar regions, joint irritation/inflammation of the hips and lumbar spine; heavy lifting was to be avoided. The assessment of the attending physiotherapist appears to have been one of osteoarthritis of both hips with some decreased range of motion, obesity and some lumbosacral joint pain.

N.C.H., in her own oral evidence, testified that her physiotherapy had been largely directed toward her hip joints and legs, whereas her chiropractic treatments had been directed, she thought, to her back, her hips and her ankle.

It is noteworthy that both Dr. Braun and N.C.H.'s chiropractor diagnosed a Grade II Whiplash associated disorder - a condition whose natural history would, in the ordinary course, have seen a complete recovery within six months, at the outside. The various reports on file do not indicate whether any of N.C.H.'s caregivers, whether medical, chiropractic or physiotherapeutic, was aware of the mechanics of her accident and, in particular, whether any of them knew the manner in which she was braced against the back of her driver's seat at the time of the two impacts. It is difficult to see how someone in the position described by N.C.H. could have received a whiplash type of injury.

In Dr. Braun's report of his November 9th, 1995 examination of the Appellant, he makes no mention of low back pain or pain in the hips. At the hearing of her appeal, N.C.H. indicated a belief that she might have hit her hip on the steering wheel in the course of one of the impacts, but there is no medical evidence of such an impact to support that belief nor any earlier mention of the possibility by N.C.H. herself.

N.C.H. attended at the Pan Am Sports Medicine Centre on the 10th of June 1998, where she was seen by Dr. Lukie. While his report is difficult to decipher, he appears to have noted four problems from which N.C.H. was suffering: early osteoarthritis of both hips, with the left more predominant than the right; spondylolisthesis, which is a forward displacement of the body of one of the lower lumbar vertebrae on the vertebra below it; mechanical back pain secondary to MVA; and a problem with one of her ankles (the exact problem is illegible), secondary to weight. He recommended emphasis on progressive conditioning, and hip and back stretching exercises "despite pain", together with weight loss. N.C.H. added that Dr. Lukie had prescribed Tylenol 3 but had told her that she might have to get used to pain.

Although both the chiropractic clinic and Dr. Lukie speak of N.C.H.'s problems, or some of them at least, being "secondary to MVA", it is clear that, when making that comment, each of them is merely repeating information given by N.C.H. herself rather than making a finding based upon objective evidence, since a great deal of time had elapsed between the original MVA and the dates of their respective examinations of the Appellant. As well, a number of the matters that were being dealt with at the chiropractic clinic and at the Pan Am Clinic had arisen a considerable time after N.C.H.'s accident, and had not even been mentioned by her to Dr. Braun on November 9th or December 19th of 1995, nor on June 27th, 1996. The problem with her hips is, patently, of a long standing and early degenerative nature, almost undoubtedly unrelated to her motor vehicle accident. The problem with her feet and legs seems, equally clearly, to be secondary to her weight or to the osteoarthritis, or both.

Dr. Braun expressed the view, on several occasions, that there was no objective evidence linking

N.C.H.'s automobile accident of November 8th, 1995 to her ongoing musculoskeletal pains. That view was confirmed by an investigation committee established by the College of Physicians and Surgeons of Manitoba as the result of a complaint filed by N.C.H. against Dr. Braun, alleging inappropriate or substandard care on Dr. Braun's part.

Even the report of the Mestdagh Chiropractic Clinic, and a letter written by that clinic to N.C.H. on April 7th, 1998, does not go so far as to conclude that the problems of which N.C.H. was complaining when she first presented herself there in December of 1996, thirteen months after her accident, were directly related to that accident. N.C.H. appears to have received approximately nine chiropractic adjustments from Dr. Eng between December 10th, 1996 and February 20th, 1997 (the date to which Dr. Eng had anticipated adjustments would be needed) and a further ten manipulations from September 11th, 1997 to March 23rd, 1998, inclusive. Dr. Eng's last letter to N.C.H., of April 7th, 1998, concludes by saying:

With regards to future ongoing care, it appears that your current complaints have developed into a chronic type problem which, at best, may resolve in the near future or, on the downside, may continue permanently in varying degrees either on a constant or intermittent basis. It is difficult at this time to predict your future health status with any degree of certainty.

We do not doubt that the Appellant is suffering from the problems of which she complains. We are quite prepared, also, to accept that those problems are of a physical nature, as medically documented, and not "in her head" as she felt was the judgment of one practitioner. While, as we have noted above, it is hard to understand how she could have sustained a whiplash associated disorder in the course of the MVA that she describes, we can only say that if her accident caused such a disorder the

natural history of such an injury would have seen it healed within a short time and almost undoubtedly prior to her termination of her managerial position with [text deleted].

In consequence, we are not persuaded that N.C.H.'s problems, or any of them, as they now exist or as they existed in December of 1996 were caused by her motor vehicle accident of November 8th, 1995, and we are therefore obliged to deny her claim for reimbursement of her chiropractic and physiotherapy expenses.

Dated at Winnipeg this 17th day of August 1998.

J. F. REEH TAYLOR, Q.C.

LILA GOODSPEED

F. LES COX