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Indexed as:  
D.W.E. (Re)

IN THE MATTER OF an appeal by D.W.E.  
AICAC File No.: AC-98-104

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[1999] M.A.I.C.A.C.D. No. 22

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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: May 5, 1999.  
Decision: June 17, 1999.  
(17 paras.)

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Issue:

Whether the appellant is entitled to continued  
chiropractic benefits.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993,  
c. 36, s. 136(1).  
Regulation 40/94, s. 5.

@8

Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Keith Addison.

The appellant, D.W.E., 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 REMOVING  
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

#### REASONS FOR DECISION

[para1] D.W.E. was involved in a motor vehicle accident on  
February 27, 1997 and attended at his chiropractor, Dr. Gary  
J. Bourdon, on the same day. Dr. Bourdon diagnosed a  
post-concussion head syndrome and a flexion-extension type  
cervical whiplash sprain or whiplash associated disorder  
(WAD), at a III(a) classification. It has to be said that  
neither Dr. Bourdon's reports nor anything else on this file  
support a diagnosis of "post-concussion head syndrome" (a

phrase of which the meaning is less than clear) nor of a Grade III (a) WAD. D.W.E. does not appear to have sustained neurological damage as a result of his injuries. D.W.E., a [text deleted], was able to return to work at his full duties despite his symptoms, but was to avoid heavy lifting.

[para2] D.W.E. described his accident as follows: he was driving in his mini-van and stopped for flashing lights at a crosswalk. He was turned slightly to the left, watching a pedestrian standing in the median and apparently about to enter the crosswalk. He was rear-ended on the right rear side of his van and recalls forcing his right foot down hard on the brake to prevent the van from being pushed into the crosswalk, for fear that the pedestrian would begin to enter the crosswalk. Immediately after the impact, he experienced a short period of shock and then an immediate onset of pain in his neck and upper back. He reported significant damage to the van, which required the replacement of both the side sliding door and the back door. He said he did not recall hitting his head, but did remember pushing down hard with his right foot on the brake and, combined with the force from behind, the impact had put particular stress on his right leg.

[para3] D.W.E. stated that Dr. Bourdon's original treatments were for his neck and upper back and then, some three to four months after the accident, his right hip and leg became the primary area which was addressed through chiropractic treatment and prescribed exercises. The appointments were prescheduled by his chiropractor who believed that he required treatment at the frequency of three times a week until the end of 1998. Some time in August, 1998, D.W.E. sought another opinion from Dr. Chum, who concluded after an x-ray that there was no physical damage. D.W.E. testified that he had attended a chiropractor some years ago but had only had treatments in the several years prior to the accident on a maintenance basis and not because of any injury.

[para4] On May 13, 1997, D.W.E.'s adjuster, Mr. Brian Gurr, wrote to Dr. Bourdon, requesting a treatment plan report describing the type of care to be administered, the frequency and estimated discharge date. No treatment plan was forthcoming and an independent chiropractic examination was arranged for June 17, 1997 with Dr. William J. Rothman to assess the classification of injury, the treatment outline described in the initial health report from February 27, 1997 and the present status of D.W.E.'s health.

[para5] On July 15, 1997 another letter was sent to Dr. Bourdon requesting a report of the treatment plan that he was continuing to administer. On July 16th, Dr. Rothman provided his independent report which was forwarded to D.W.E. and to Dr. Bourdon for his response. Dr. Rothman's findings were

that D.W.E. still had signs and symptoms involving the right C4-C5 zygoapophyseal joint and right cervico-thoracic musculature; there were no neurological findings. Dr. Rothman concluded that the injury warranted a WAD II classification. D.W.E. appeared to be experiencing relief and improvement from Dr. Bourdon's treatments and, as a result, Dr. Rothman suggested that those treatments should continue with the addition of active care through exercises for cervico-thoracic stretches, stabilization exercises and ergonomic advice. Dr. Rothman anticipated a decline in frequency with continuing improvement and anticipated a discharge date of September 30, 1997.

[para6] D.W.E.'s file was transferred to a different MPIC adjuster, Mr. Stewart McEwen, some time in late 1997. The treatments were not terminated on the anticipated discharge date and D.W.E.'s treatment coverage continued. Dr. Bourdon who had not responded when sent a copy of Dr. Rothman's report, was again contacted on January 5, 1998 and asked to provide a report documenting the necessity for the continuing treatment. Dr. Bourdon reported on January 6, 1998 that D.W.E. received adjustments for his lower back and pelvis to relieve the symptomatic complications that arose in July 1997 when he experienced hip and leg pain and numbness in his right leg. Although there was noted improvement to his neck and upper thoracic spinal regions, treatments continued in this area as well at a frequency of three times a week. Dr. Bourdon recommended continued treatments, three times a week for an additional 4-6 weeks with a reduction of treatments to two times a week in mid-February and once a week in April until an anticipated discharge date of June 30, 1998.

[para7] A memo, dated January 13, 1998 from Dr. Russell Baron, an MPIC Chiropractic Consultant, referred to the reports of Dr. Bourdon and of Dr. Rothman. He concluded that D.W.E. had had an adequate course of chiropractic care and treatments should be reduced and discontinued by the end of January 1998. On February 3, 1998, D.W.E. was sent a letter from his adjuster stating that payment for the chiropractic treatments would be terminated in mid-February 1998; D.W.E. was invited to contact his adjuster if he was interested in pursuing a pain management program. D.W.E. filed an application for review on February 28, 1998 and declined the offer of a pain management program saying that he was more interested in treating the causes of his pain rather than merely the symptoms. The internal review officer's decision of April 21, 1998 confirmed the MPIC's adjuster's decision to terminate payments for continuing chiropractic care for D.W.E. and it is from this decision he is appealing.

[para8] The issue to be addressed is whether the injury problems experienced by D.W.E. with his low back and right hip and leg were caused by the motor vehicle accident and, if

there were a causal relationship, would D.W.E. have had sufficient chiropractic treatments by February, 1998 to address his level of injury. Despite some anomalies in the chiropractic evidence, we are not as quick to dismiss the causation factor as were MPIC's consultant, adjuster and Internal Review Officer. D.W.E.'s description of the mechanics of the motor vehicle accident, in particular, the pressure on his leg while braking to stop the van from being pushed into the crosswalk, has satisfied us that, on a balance of probabilities, there may well have been a causal relationship. However, what does concern us to a greater degree is the frequency of treatments that were undertaken from the date of the accident to the present.

[para9] Dr. Rothman, in his independent chiropractic evaluation, stated that considering the nature of D.W.E.'s injuries there was an expectation of a maximum therapeutic benefit by September 30, 1997. Despite several requests addressed to Dr. Bourdon, no medical reports were forthcoming until January 6, 1998 and D.W.E. was given a grace period allowing treatments until mid-February 1998.

[para10] Dr. Baron provided a more comprehensive opinion on April 9, 1998. He noted that, when reviewing Dr. Bourdon's initial medical report and the history and the findings, he could find no reference to an injury to D.W.E.'s low back, right hip or right leg. He concluded that D.W.E.'s condition was more indicative of a moderate WADII type injury and that there was a lack of modifying factors that would result in a delayed recovery. It was his opinion that 91 chiropractic treatments by the beginning of January 1998, were more than sufficient to relieve the neck complaints. He concluded that there were insufficient objective findings to support major ongoing chiropractic intervention with respect to complaints of the neck pain. In that there was a paucity of relevant clinical information to support the current complaints of the hip and leg he concluded that the chiropractic treatments were properly terminated in February 1998.

[para11] It is universally accepted that the goals of chiropractic care are to provide sufficient care to restore health, maintain it, and prevent the reoccurrence of injury and illness. There is an expectation that the caregiver provide an accurate diagnosis, establish goals for care with a treatment plan to achieve goals and assure the rehabilitation of the patient.

[para12] It is also a widely held tenet of the chiropractic profession that, should there be no improvement within an appropriate timeframe, the treatment plan should be changed or the patient discharged or referred to another caregiver.

[para13] Dr. Arthur C. Croft has suggested normal levels of care and frequency of treatment which are accepted by the Canadian Chiropractic Association. He describes five grades of severity of cervical acceleration/deceleration trauma. A grade II WAD describes the injuries as being "slight, limitation of motion, no ligamentous injury, no neurological findings"; a grade III WAD injury is described as "moderate, limitation of motion, no ligamentous injury, neurological findings present". Dr. Croft's guidelines, indicating frequency and duration of care for such injuries, suggest that a WAD II injury would involve 33 treatments over 29 weeks and for a WAD III injury, a total of 76 treatments over 58 weeks. We are, of course, fully aware that these guidelines, while receiving broad (though not universal) acceptance within the chiropractic profession, can not be applied rigidly; duration of treatment and recovery will, obviously, vary from one patient to another.

[para14] In Dr. Rothman's independent evaluation of June 19, 1997, he found that the appellant's injury fell into a WAD II category because there were no neurological symptoms or damage. Even if D.W.E. were to have had a WAD III(a) injury, as was diagnosed by Dr. Bourdon on the day of the accident, the appellant should, in our view, have reached maximum medical improvement long before the termination date.

[para15] In fact D.W.E. had received 118 chiropractic interventions over a period of 52 weeks, at a frequency of 9.8 visits per month as of the date of termination on February 19, 1998. The areas of pain of which he had initially complained (his neck, shoulder and upper back) had cleared up by about September or October of 1997, according to the appellant's evidence. The Commission is of the view, based on the level of injury sustained by D.W.E., that the maximum medical improvement should have been reached before February 19, 1998. In fact, by the time D.W.E.'s appeal came before this Commission he appears to have received well in excess of 200 treatments from Dr. Bourdon and his successor, Dr. Hiebert. In November, 1998, Dr. Bourdon was still prescribing another six months of chiropractic adjustments.

[para16] After reviewing all of the evidence we are not convinced that the appellant's treatments were required beyond the termination date.

#### DISPOSITION

[para17] For the reasons stated above we are obliged to dismiss the appeal and confirm the decision of the Review Officer dated April 21, 1998.

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