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Indexed as:
C.S. (Re)

IN THE MATTER OF an appeal by C.S.
AICAC File No.: AC-98-146

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[1999] M.A.I.C.A.C.D. No. 34

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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: August 17, 1999.
Decision: August 23, 1999.
(16 paras.)

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Issue:

Whether Appellant entitled to resumption of chiropractic
treatments.

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Relevant Sections:

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

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Appearances:

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

The appellant, C.S., appeared on her 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] The combined effect of Section 136(1)(a) of the
MPIC Act and Section 5 of Regulation 40/94 may be simply
expressed: when medical or related care is medically
required, and the need for that care is made necessary by a
motor vehicle accident, the victim of that accident is
entitled to have her care paid for by MPIC. The foregoing is,
to some extent, an oversimplification of the statutory
language, but will suffice for purposes of this decision.

[para2] The only question before us is whether the chiropractic treatments received by C.S. after December 13th, 1996 (the date when MPIC discontinued paying for those treatments) were made necessary by her motor vehicle accident of April 10th, 1994.

[para3] C.S., aged [text deleted] at that time, sustained a soft tissue strain as a result of being jolted from side to side by the impact of a collision between her Park Avenue vehicle and another car which hit hers on the passenger side, toward the front. She did not sustain any fracture nor any apparent nerve root compression in that accident, although the medical and chiropractic evidence made it appear that her collision probably exacerbated a pre-existing, degenerative discopathy in her cervical spine.

[para4] C.S. has already appeared before this Commission on December 2nd, 1997, when she appealed from a decision of MPIC to quit paying for her chiropractic treatments as of December 13th, 1996. The Commission dismissed her appeal. Our decision, bearing date February 9th, 1998 is based very largely upon the fact that the argument that had been advanced on C.S.'s behalf relied upon a diagnosis of fibromyalgia syndrome caused by her motor vehicle accident. That decision arrived at the following conclusion:

For the purposes of arriving at our decision, it is not necessary for us to decide whether or not [C.S.'s] fibromyalgic condition resulted from her motor vehicle accident; we content ourselves, in that context, with the comment that such a causality is, at least, entirely possible. However, a careful re-examination of all of the medical and chiropractic evidence submitted to us persuades us that, although [C.S.] may continue to need, and to benefit from, intermittent chiropractic care, that need arises not from her motor vehicle accident but from her pre-existing condition. The nature and extent of her motor vehicle accident, while certainly exacerbating that condition, were not so severe as to have created a condition requiring ongoing chiropractic treatment for longer than that which she has already received. While [C.S.'s] other, physical problems may, perhaps, benefit from further, occasional chiropractic manipulation, that is not something for which the insurer can continue to be responsible. Her fibromyalgic syndrome appears to be a condition for which she should be referred back to Dr. Foad who, if he deems it appropriate, may wish to refer her again to Dr. McCarthy. They may well feel that a multi-disciplinary program, involving exercises, cognitive behavioural therapy, education and pharmacotherapy, are called for, but that is a matter for their professional judgment, not

ours.

[para5] The only new evidence that has emerged since our earlier decision is a report of a CT scan performed on C.S.'s lumbosacral spine on January 13th, 1998 at the Misericordia General Hospital. Since that CT scan forms the entire basis of C.S.'s current appeal, it is worth quoting in full:

CT Lumbosacral Spine Jan 13/98

TECHNIQUE: Multiple contiguous axial images were obtained through the lower three intervertebral disc spaces. These were supplemented with angled axial images throughout the lower intervertebral disc space.

L3/4: There is no significant disc herniation or protrusion. The central canal and lateral foramina are widely patent. A small posterior osteophyte is demonstrated emanating from the posterolateral aspect of the vertebral body on the left. This does not appear to affect the exiting nerve roots.

L4/5: There is diffuse annular bulging slightly more prominent on the left in the posterolateral aspect. Mild facet overgrowth accompanied by ligamentum flavum hypertrophy contributes to moderate-severe central canal stenosis. The lateral foramina are widely patent.

L5/S1: No significant disc herniation or protrusion. The lateral foramina and central canal are widely patent. Moderate productive degenerative changes are noted involving the facet joints.

IMPRESSION: Diffuse annular bulging at L4/5. Moderately severe central canal stenosis at this level.

[para6] It is the position of C.S., supported by the evidence of her chiropractor, Dr. Greg Stewart, that the CT scan report quoted above really renders the whole question of fibromyalgia syndrome irrelevant and should be accepted as clear evidence that the pain of which C.S. complains was indeed caused by her motor vehicle accident and can only be relieved by chiropractic.

[para7] The following factors emerged during the hearing of this appeal:

[para8] 1. C.S. described pain, radiating from her low back down through the left hip, leg and foot, with a very slight pain in her right leg as well. A text by Drs. D.J. Ogilvie Harris and G.L. Lloyd entitled "Personal Injury - a Medical Legal Guide to the Spine and Limbs", together with other relevant texts, tell us that pain of the kind that C.S.

describes would have its origin at the S1/L5 level - not an area to which the CT scan ascribes any noticeable source of trouble;

[para9] 2. C.S. testified that pain of this kind started to become noticeable, or to cause her major discomfort, in May of 1997. She was quite positive in this evidence, and was able to pinpoint the time of origin of this pain as being about three weeks prior to the death of her mother. It is significant this is approximately three years after the date of her motor vehicle accident;

[para10] 3. Dr. Stewart's notes of June 1st, 1995 speak of "continuing leg pain". The word "continuing" puzzled members of the panel, since Dr. Stewart's reports of October 27th, 1995, February 5th, 1996 and April 24th, 1996, make no mention at all of the Appellant's leg pain. In response to questions from the panel, Dr. Stewart testified that C.S.'s pain was essentially on the right leg but, he said, this had not caused him to vary the modality of his treatments since he had determined from the beginning that the source of C.S.'s discomfort was at the lower spine. He had always been treating the low back area and saw no reason to change. Dr. Stewart testified that he had known there was some neurological involvement related to C.S.'s condition since June of 1995, although there is no mention of any pain radiation into C.S.'s legs in any of Dr. Stewart's subsequent reports;

[para11] 4. C.S. herself mentioned that her physician, Dr. Mirzanejad, had told her that the pains that she was experiencing in both legs (much more on the left than on the right, she said) were due to pressure on her sciatic nerve caused by the annular bulging noted in the CT scan. She again emphasized that this had started in May of 1997;

[para12] 5. C.S. has been seen by a number of physicians and surgeons, including Dr. McCarthy (rheumatologist), Dr. Engels (orthopaedic specialist) and Dr. Fouad (general practitioner); as well, she was given an independent chiropractic examination in June of 1995 by Dr. Lecker, to whom she had been referred by MPIC. None of these practitioners has suggested that the condition of which C.S. now complains was brought about by her motor vehicle accident;

[para13] 6. in a review of the medical file of C.S., Dr. Neil Craton, medical director of MPIC's Claims Services Department, makes the following comment:

Annular bulging is a common phenomenon at the L4-5 disc. It is typically present in 25% of 25 year olds, and 50% of 50 year olds. The incidence of annular bulging or disc herniation at the L4-5 level often increases with

more demanding physical tasks. It is difficult to link annular bulging or central spinal stenosis to trauma in any case. It is difficult to identify an L4-5 annular bulge as a pain generator.

In this case, the patient's key symptomatology early appeared to be in the cervical spine. There has not been any significant documentation regarding the appearance of symptoms consistent with spinal stenosis, with the exception of Dr. Lecker's report. Spinal stenosis is a condition typified by long-standing degenerative changes at the intervertebral disc, the zygapophyseal joints, and the combination of disc narrowing, osteophyte formation, and Z-joint hypertrophy, leads to pressure on the spinal cord. In my opinion, based on the documents on file, there is insufficient evidence to link this woman's spinal stenosis to the motor vehicle collision of April 1994;

[para14] 7. Dr. Stewart testified that C.S. had presented for care some 22 times over the twelve months prior to March 29th, 1999. She was not on a scheduled treatment plan but, rather, treatment was dictated by how she was coping symptomatically. He did not anticipate any change in frequency of treatments.

[para15] We do not doubt that Dr. Stewart's treatments do, indeed, bring short-term relief to C.S. nor, in the context of this decision, do we question the nature or extent of his treatments.

DISPOSITION:

[para16] The only issue before us is one of causation and we are not persuaded of the reasonable probability that C.S.'s motor vehicle accident was the cause of the discomforts from which she now complains and which do not seem to have emerged until about three years after that accident. For that reason, C.S.'s most recent appeal must also fail.

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