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Indexed as:
C.M. (Re)

IN THE MATTER OF an appeal by C.M.
AICAC File No.: AC-99-90

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[2000] M.A.I.C.A.C.D. No. 4

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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: January 24, 2000
Decision: February 3, 2000
(18 paras.)

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Issues(s) :

Whether Appellant entitled to reimbursement for certain
chiropractic treatments.

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Relevant Sections:

Section 136(1) (a) of the MPIC Act and Section 5 of
Manitoba Regulation No. 40/94.

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Appearances:

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

The appellant, C.M., appeared on his own behalf accompanied by
Mrs. M.

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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] Although the Appellant, C.M., has been the victim
of three rear-end collisions, and the decision of MPIC's
Internal Review Officer, dated May 6th, 1999, deals with more
than one issue, the only matter that is before us by way of an
appeal stems from MPIC's refusal to pay for chiropractic
adjustments received by C.M. from Dr. Paul W. Kowall between
October 31st, 1998 and April 30th, 1999. Dr. Kowall's
treatments of C.M. were for injuries sustained by C.M. in an

accident on October 16th, 1996.

[para2] Following that accident, C.M. consulted his chiropractor, Dr. Kowall, from whom he had been receiving chiropractic adjustments on an 'as needed' basis since earlier accidents in July, 1991, and December, 1995. In a report of December 18th, 1996, Dr. Kowall gave his opinion that C.M. was suffering from 'whiplash syndrome'. On January 4th, 1997, Dr. Kowall had diagnosed the Appellant with a Grade 2 Whiplash Associated Disorder (WAD 2) and recommended the continuance of manipulative treatments twice weekly until the end of September of that year.

[para3] On January 21st, 1997, Dr. Kowall provided MPIC with a progress report, diagnosing whiplash syndromes of both Grades 2 and 3a, indicating that the projected discharge date from treatment of the Appellant was "unknown at this time".

[para4] On March 10th, 1997, Dr. Kowall, noting that C.M. was showing signs of improvement in his cervical range of motion but was still experiencing pain in his neck, shoulder, arm and lower back, diagnosed a WAD2 and recommended a series of three weekly adjustments for the following four to six weeks, reducing to twice weekly thereafter with, again, an unknown discharge date.

[para5] Dr. Kowall responded on May 5th, 1997, to an enquiry from C.M.'s adjuster at MPIC by providing a treatment plan calling for three treatments per week for the following six to eight weeks, in order to improve range of motion and reduce pain, twice weekly for the subsequent eight to ten weeks in order to increase flexibility of tissues and further reduce pain, then once a week for a further ten to twelve weeks in order to create stability. He estimated a discharge date of some time in November, 1997. MPIC responded by approving Dr. Kowall's treatment plan, but only up to July 5th, 1997, at which point the plan would then be reconsidered once Dr. Kowall had given a further progress report.

[para6] On August 6th, 1997, MPIC wrote to Dr. Kowall and C.M., approving a further treatment plan report calling for two adjustments per week, with a discharge date of September 30th, 1997.

[para7] On September 2nd, 1997, MPIC approved a revised discharge date of November 30th, 1997.

[para8] On November 26th, 1997, Dr. Kowall again found it necessary to revise his treatment plan, and recommended a further four to six months of treatments at a frequency of once or twice per week "until further stabilization of condition is reached and symptoms resolve". He anticipated a new discharge date of April, 1998. At this point, MPIC's

adjuster referred C.M.'s file to a chiropractic consultant, Dr. Partridge, who apparently expressed the view that, in light of C.M.'s prior history of motor vehicle accidents, the April, 1998, discharge date was reasonable. Dr. Partridge added that "this patient may be a candidate for functional reconditioning" for four to six weeks. MPIC therefore advised the Appellant on December 23rd, 1997, that Dr. Kowall's revised treatment plan was approved, calling for one or two treatments per week with a gradual decrease in frequency, monthly monitoring and an anticipated discharge date of April 30th, 1998.

[para9] In May of 1998 Dr. Kowall called C.M.'s adjuster and requested approval for further treatments as C.M. had had a "relapse about a week ago due to fishing activity, with pain symptoms in left heel". Dr. Kowall apparently advised the adjuster that C.M. had been "non-compliant with a home reconditioning program" and, although given some questionnaires to record the progress of his pain symptoms, had taken them home but never returned them. At that juncture, MPIC decided to refer C.M. for an independent chiropractic examination to Dr. D. Chester, who examined C.M. on June 25th, 1998. Dr. Chester's report of July 10th, 1998, may be summarized this way:

- (a) he felt that the Appellant had probably suffered a cervical, thoracic and lumbosacral muscular ligamentous strain/sprain type of injury in his motor vehicle accident of October 16th, 1996;
- (b) at the date of examination, C.M. had a "mild limitation of left cervical rotation and cervical extension"; there was also weakness in the left gluteal and sacrospinalis musculatures;
- (c) there were no pre-existing conditions that had been aggravated or enhanced by the 1996 accident;
- (d) C.M. had only received manipulative chiropractic therapy and should be instructed in a basic exercise for the gluteal musculature, which needed to be stretched and strengthened. Similarly, he should be working on strengthening exercises for his sacrospinalis musculature and exercises for stretching his trapezius and cervical paravertebral musculatures. While performing the foregoing exercises he should maintain the manipulative therapy on a reducing basis for about six to eight weeks. If, at the end of that time, he was still experiencing headaches and gluteal discomfort "then one would have to consider him at a maximum medical benefit with manipulative therapy";

- (e) Dr. Chester did not feel that C.M. had any measurable impairment with regard to the injuries noted above (Dr. Chester's letter actually says "at this time I do not feel [C.M.] has no measurable impairment with regard to the injuries date above" but two of those words are obvious typographical errors).

[para10] On July 28th, 1998, MPIC wrote to C.M. to tell him that the Corporation would fund six to eight weeks of reconditioning program in conjunction with chiropractic care of one to two treatments per week. They also recommended that he consult his own medical doctor prior to attending for reconditioning. They gave him the addresses of four different clinics, including the Ellice Chiropractic Centre, where reconditioning programs were offered; C.M. elected to attend at the Ness Physiotherapy and Sports Injury Clinic. He was evaluated there on August 21st, 1998, and the Clinic recommended a four to six week trial of reconditioning at a frequency of three times per week for four weeks, re-evaluation at that point, and a possible extension to a six or eight week program thereafter. Chiropractic treatment at a frequency of twice per week for two weeks and once per week thereafter was felt to be appropriate. That proposed program was approved by MPIC; C.M. and the Ness Clinic were advised accordingly.

[para11] On September 26th, 1998, Ness Clinic reported that C.M.'s strength and function had improved significantly, but that although the frequency of his painful episodes had abated somewhat the reported intensity of his discomfort had only changed minimally. They recommended the continuance of his exercise program to a total of eight weeks, along with the adaptation of his exercise program for home use.

[para12] On October 27th, 1998, Dr. Kowall provided a further progress report to MPIC. That report noted that C.M. had just finished his rehabilitation program at the Ness Clinic, had improved significantly but "does seem to present with symptoms that have yet to correct". He requested further chiropractic care at a frequency of once or twice per week in order to determine if symptoms related to his accident resolved entirely. If not, said Dr. Kowall, it was possible that C.M. could be a candidate for supportive care over the next three to six months at a frequency of twice per month until his symptoms had resolved completely.

[para13] Since MPIC had refused to extend C.M.'s chiropractic treatments from Dr. Kowall past his eight week reconditioning program at the Ness Clinic, C.M. appealed, on November 23rd, 1998, to MPIC's Internal Review Officer who, before attempting to decide the matter, wrote to Dr. Chester for a further report. Dr. Chester, in his response of January

27th, 1999, expressed the following opinions:

- (a) C.M. had reached maximum therapeutic benefit under manipulative therapy. Ongoing, passive therapy at its then current frequency of once or twice a week for the purposes of short term pain relief was not considered in C.M.'s best interest and, indeed, was likely to induce physical therapy dependency;
- (b) C.M. might not necessarily have reached maximum medical improvement, since only one therapeutic approach had been attempted; (Dr. Chester's meaning here is not clear to us since, by that time, C.M. had received a reconditioning program as well as chiropractic adjustments);
- (c) since most of the Appellant's symptoms were myofascial in nature, he should be referred to a specialist in sports medicine for an assessment and recommendation for any ongoing treatment;
- (d) C.M. might well be a candidate for chiropractic, supportive therapy. In the latter event, he should be assessed with a different discipline, manipulative therapy should be withdrawn for a period to see whether a regression of therapeutic gains occurred and, if he was then felt to qualify for supportive therapy, a frequency of once each four to six weeks might be the norm.

[para14] Following Dr. Chester's recommendation, C.M. was then referred to Dr. Thomas Lesiuk, a physiatrist (specialist in physical medicine and rehabilitation), who examined C.M. on March 19th, 1999, and whose resultant, sixteen page report bears date April 12th, 1999. At the risk of some over-simplification, we may summarize Dr. Lesiuk's conclusions as follows: he diagnosed musculoskeletal deconditioning, a mild mechanic neck pain, an irregular heart rate and a thickening of the fibrous bands of the right fourth finger (unrelated to the accident). C.M. had been inactive for so long that his musculoskeletal tissues had become deconditioned, but the condition was reversible with proper motivation and rehabilitative conditioning. The prognosis for complete resolution of C.M.'s pain was good. There was no significant impairment other than mild cardiovascular impairment. Dr. Lesiuk recommended a referral for cardiac assessment and, given no contra-indications, a trial of trigger point injections of the acupuncture type, to be followed or accompanied by general physical reconditioning.

[para15] On May 6th, 1999, MPIC's Internal Review Officer issued a decision, denying payment for any chiropractic

treatments beyond October 24th, 1998. It is from this latter decision that C.M. now appeals to this Commission.

[para16] In support of his appeal, C.M. has been furnished with letters from Dr. Kowall addressed, initially, to C.M.'s adjuster at MPIC and, more latterly, to this Commission. Dr. Kowall advances two points: firstly, he says, he was not informed of MPIC's decision to terminate treatments for C.M. until April of 1999. With deference, we have to say that this is simply not correct. Dr. Kowall received a copy of MPIC's letter to the Appellant on July 28th, 1998, limiting the Corporation's payment for chiropractic care to the duration of a six to eight week reconditioning program; he received a copy of the Corporation's letter to C.M. on August 28th, 1998, specifying the number and frequency of chiropractic treatments for which the Corporation was prepared to pay; there is a record of a telephone discussion between C.M.'s adjuster and Dr. Kowall on October 21st, 1998, when Dr. Kowall was advised, again, that the Corporation would continue to fund one chiropractic adjustment per week during the rest of C.M.'s reconditioning program; there is a letter from Dr. Kowall to MPIC of December 1st, 1998, which clearly indicates that MPIC has discontinued payments for chiropractic care, since Dr. Kowall seeks approval to extend treatments for C.M. at a frequency of once a week for a further six to eight weeks or, possibly, longer. That approval was never forthcoming.

[para17] Dr. Kowall's second point is that C.M. was still presenting with symptoms related to his 1996 accident and he, Dr. Kowall, felt it his duty to continue treatment until C.M.'s appeal had been concluded or until another practitioner had been arranged to undertake alternative treatment. Unfortunately, and while Dr. Kowall's dedication to the well being of his patient is commendable, the obligation of MPIC to pay for chiropractic care only arises when that care is medically necessary. In the circumstances, the continuance of chiropractic adjustments more than two years after the date of C.M.'s accident was not, in our view, medically necessary. We share the opinion of Dr. Chester that, under the circumstances, the continuance of passive therapy was more likely to have been counterproductive by creating a dependency. Both Dr. Chester and Dr. Lesiuk recommended a more active program of physical rehabilitation, including strengthening and stretching of the musculature from which the sources of C.M.'s discomfort seemed to originate.

[para18] We do not imply that C.M. had necessarily reached maximum medical benefit; indeed, MPIC appears to have followed Dr. Lesiuk's recommendations. Rather, we address only the question put to us, namely whether C.M. should be reimbursed for the cost of chiropractic treatments between October 31st, 1998 and April 30th, 1999. We are obliged to conclude that such treatments were not "medically required" within the

meaning of Section 5 of Manitoba Regulation No. 40/94, and
C.M.'s appeal must therefore fail.

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