

@B00000238,MAIC
@1
@Z20000901
@2

Indexed as:
K.J.V. (Re)

IN THE MATTER OF an appeal by K.J.V.
AICAC File No.: AC-99-33

@3

[2000] M.A.I.C.A.C.D. No. 32

@4

Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares,
and F.L. Cox
Heard: August 29, 2000.
Decision: September 1, 2000.
(26 paras.)

@6

Issues(s):
Whether chiropractic treatments terminated prematurely.

@5

Relevant Sections:
Section 136 of the MPIC Act; Section 5 of Manitoba
Regulation 40/94.

@8

Appearances:
Manitoba Public Insurance Corporation ('MPIC') was represented
by Keith Addison.
The appellant, K.J.V., and her husband attended the hearing by
long-distance telephone.

@7

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 motor vehicle accident in which K.J.V. was
involved on August 10th, 1994, in addition to causing her a
cracked pelvis and multiple contusions, resulted in soft
tissue injuries of a kind, and to an extent, that appear to
have baffled her care-givers throughout the six, intervening
years. In the course of her accident, K.J.V. had apparently
left a Stop sign before it was safe to do so, with the result
that her vehicle had been broad-sided on the driver's side by
another vehicle; the door of her car had been badly damaged

and K.J.V., herself, had been rendered unconscious, having little, if any, recollection of the event until shortly before being discharged from Seven Oaks Hospital some few hours after being taken there by ambulance.

[para2] K.J.V. was initially seen by Dr. Polimeni who, in successive reports, diagnosed lumbar back strain and left hip strain; she prescribed physiotherapy and indicated that K.J.V. would be unable to return to work until early December of 1994.

[para3] In early November of that year, X-rays disclosed that K.J.V. had sustained a cracked pelvic bone. That her motor vehicle accident (MVA) was the cause of this undisplaced fracture is not disputed.

[para4] K.J.V. received physiotherapy at a frequency of about three times per week until early 1995, when the emphasis in her therapy became directed more towards a work-hardening program.

[para5] In April 1995, K.J.V. started consulting her physician, Dr. Anna Rothova, and in addition to continuing with her physiotherapy started receiving treatment from Dr. Henry Pops at Kildonan Chiropractic Clinic. Dr. Pops treated her cervical and lumbar regions; her physiotherapist, Ms. Robertson, was treating her hip and attempting to build leg strength and standing tolerance. A consensus seems to have been reached between K.J.V.'s care-givers and MPI that she could commence a graduated return to work in early July of 1995. At the same time, Dr. Rothova was recommending five physiotherapy sessions per week for an indeterminate period.

[para6] By August of 1995, Dr. Rothova was recommending two to three physiotherapy sessions per week, indefinitely, while noting that K.J.V. was currently working two hours per day with the expectation of increasing that to about four hours daily over the following few weeks.

[para7] By the beginning of October 1995, however, K.J.V.'s condition appears to have deteriorated rather than improved. Dr. Pops was recommending that she remain off work entirely for two months. Ms. Robertson, due to her own pregnancy, was not as available as K.J.V. appeared to need, but K.J.V. was seeing Dr. Pops at a frequency of three to four times weekly. By early November of 1995 Dr. Rothova and Ms. Robertson felt that the Appellant should move into a structured work-hardening/conditioning program, rather than have physiotherapy twice a week and chiropractic adjustments three to four times a week; that work-hardening program was to have taken place at the Wellness Centre at Seven Oaks General Hospital. However, K.J.V. elected not to participate in that program but, instead, to continue receiving chiropractic

adjustments from Dr. Pops.

[para8] By November 27th, 1995, Dr. Pops was forecasting a return to work for K.J.V., albeit on reduced hours, by January 2nd, 1996. MPIC's adjuster then in charge of the case agreed to extend Income Replacement Indemnity and other benefits to K.J.V. to February 15th, 1996, in order to allow a graduated return-to-work ('GRTW') schedule to be implemented. Thereafter, chiropractic treatment would be continued but, the adjuster was led to believe, only a maintenance program would then be needed. K.J.V. did return to work on February 11th, 1996, working for 16, 21 and 22 1/2 hours in each succeeding week. She still seemed to be having some discomfort and, as a result, Dr. Pops extended the period of her restricted work hours to March 23rd, 1996. Meanwhile, MPIC retained the services of Ms. Marte Bachynski, Occupational Therapist, to perform a Selective Functional Capacity Evaluation of the Appellant.

[para9] Ms. Bachynski felt that a further extension of her GRTW needed to be negotiated for K.J.V. with her employer, [text deleted], and that a plan should be developed for increasing K.J.V.'s resistive capacities, to be managed in conjunction with her work time. She noted, in a report of March 19th, 1996, that Dr. Pops was not providing relief for K.J.V.'s neck symptoms, although was apparently successfully treating her lumbar complaints.

[para10] After a brief period during which [text deleted] seems to have found it difficult to accommodate K.J.V.'s need for reduced hours of work, that problem was resolved and K.J.V.'s hours of work increased, on a weekly basis, until by the week of May 26th, 1996, she was able to work a total of 25 hours. Prior to her accident, her regular work week had consisted of 26 hours.

[para11] MPIC had offered K.J.V. a membership in a gymnasium but, instead, she elected to follow the advice of Drs. Pops and Rothova by starting 'aquacises' at a local swimming pool. MPIC paid for that. At this point, in May of 1996, K.J.V. was still attending for chiropractic manipulations at a frequency of two or three times per week.

[para12] K.J.V. and her husband moved to [text deleted] in early June, 1996. There, on the advice of Dr. Pops, K.J.V. started attending upon new chiropractic care-givers, Dr. Krizsan initially and, on a more long-term basis, Dr. McIver, from whom MPIC sought and obtained a narrative report. On December 2nd, 1996, almost two and one-half years after her motor vehicle accident, Dr. McIver reported that K.J.V. continued to complain of "continuous cervical spine stiffness and pain, headaches with pain bilaterally in the occipital region occurring approximately twice per week, bilateral TMJ

pain, pain between the shoulder blades and lower back pain with the left side being worse". She was, he said, capable of doing all her own housework but was "unable to lift heavy". The combined reports from Dr. Krizsan of July 12th, 1996, and of Dr. McIver from December 2nd, may be summarized this way:

they found posterior facet fixations in the upper cervical and lower cervical spine at the C2-C3 and C7-T1 levels, and in the thoracic spine at levels T3-T4. There were bilateral sacroiliac joint fixations. Range of motion of K.J.V.'s cervical and lumbar spine showed restrictions in flexion, extension, left and right lateral bending and left and right rotation. Her upper and lower extremity reflexes were normal. Her straight leg raising was bilaterally 60 [degrees] restricted by hamstring hypertonicity. K.J.V. displayed tenderness to palpation of the upper cervical joint structure, with attendant hypertonicity of the sub-occipital muscles. Treatments consisted of manipulation to the affected joints and trigger-point massage of the hypertonic muscles.

Dr. McIver, expressing the belief that a considerable portion of the Appellant's pain was of soft tissue in origin, said quite candidly that he was unsure how to proceed with K.J.V. He wondered whether the insurer would be prepared to pay for a course of massage therapy and invited MPIC's adjuster to put forward any alternative suggestions or recommendations that might return K.J.V. to a more functional, pain-free state.

[para13] MPIC's adjuster responded that massage therapy was not covered under the current Personal Injury Protection Plan. He noted that, prior to her move to [text deleted], K.J.V. had received 90 physiotherapy treatments, 204 chiropractic treatments and a further 97 physiotherapy treatments in conjunction with acupuncture. He had no recommendations to offer, other than that exercise should be the main treatment modality for K.J.V.'s problems. He noted that there was nothing on file to suggest that the Appellant was left with any permanent impairment, and said that MPIC would keep its file open for a maintenance program of treatment, if required, along with supervision of a home regimen to be maintained by the Appellant herself.

[para14] By the end of May 1997, K.J.V. was continuing to attend for chiropractic treatments two to three times every week, her main complaint being of pain in the left side of her mid- to lower- back area.

[para15] On June 20th, 1997, Dr. McIver, in response to a demand from a new adjuster who had taken over K.J.V.'s case for MPIC, responded that

[K.J.V.] is one of those unfortunate patients who continues to suffer from cervical and thoracic pain after many treatments from chiropractors and physiotherapists. I am able to keep her working and she states she feels relatively good for four to five days post manipulation but I am not able to return to [sic] the joint structure of the cervical and thoracic spine to a functioning state.....Thus she is able to work, but she is not pain free for prolonged periods of time.

.....Although manipulation is not "fixing" her problems, it is my opinion that if she discontinued treatment, she would start to experience a decreased cervical spine range of motion and increased intensity and frequency of her complaints. (When she initially presented at our office she had not received manipulation treatments for several weeks and presented with a decreased range of motion which, it is my understanding, her Winnipeg chiropractor had restored.)

No further developments, nor any correspondence between the insurer and either the Appellant or her chiropractors, are recorded until June 16th, 1998, when, in response to a request from yet another, new adjuster at MPIC, Dr. McIver reported that, despite weekly chiropractic manipulations, he could see no improvement in K.J.V.'s conditions. "I treat her", he said, "to enable her to continue working and prevent an increase in the cervical spine range of motion loss." He reported almost identical conditions, treatment and indeterminate duration of care in a further report of October 21st, 1998. By that time, K.J.V. had had in excess of 400 chiropractic treatments in addition to the physiotherapy referred to earlier.

[para16] On November 2nd, 1998, MPIC's adjuster wrote to K.J.V. to say that the Corporation was not prepared to fund any further chiropractic care since, in the view of the insurer, further treatment of that kind was unlikely to be of therapeutic benefit.

[para17] K.J.V. obtained a decision from MPIC's Internal Review Officer who, primarily upon the advice of Dr. Russell Baron, concurred in the adjuster's position. Dr. Baron's opinion, stated briefly, was that although the care provided by Dr. McIver appeared to be reasonable, since it gave symptomatic relief for K.J.V.'s complaints, it could not be considered therapeutically necessary with respect to her motor vehicle accident.

[para18] We note, in passing, that there is a semantic distinction between the opinion expressed by Dr. Baron and the language used by the Internal Review Officer when confirming

the adjuster's decision. Dr. Baron refers to further treatment as not being "therapeutically necessary"; the Internal Review Officer speaks of further chiropractic treatment as no longer "medically necessary"-the latter being the language of the statute. While it is quite clear from the very candid views expressed by Dr. McIver that further chiropractic treatments were not "therapeutic", in the sense of being curative, Dr. McIver also makes the point that those treatments were palliative and at least enabled the Appellant to get on with her life.

[para19] K.J.V. testified that, while she had certainly seen improvement in her overall condition since moving to [text deleted], since she had progressed from needing three treatments per week to the point at which she now only receives chiropractic adjustments once or twice per month, she has still not reached pre-accident status. The reduction in frequency of treatments seems to have coincided with the commencement of 'cranial sacral massage therapy' which she receives from [text deleted] in [text deleted] at a cost of \$65 per treatment. She describes this as a non-manipulative form of massage, involving extremely light touching by the therapist at specific tender points on the body of the patient. K.J.V. testified that she had started chiropractic treatments because she was receiving no further benefit from physiotherapy. She speculated that she had, perhaps, reached a point at which she was receiving no further benefit from chiropractic and would achieve maximal improvement from this cranial sacral massage. Having no experience with nor any knowledge of this latter form of therapy, we are unable to comment, save only to say that it is not within the purview of the MPIC Act and Regulations.

[para20] K.J.V. seeks reimbursement for the chiropractic treatments that she has received between November 2nd, 1998, and July 12th, 2000, in the total amount of \$1,509.66-covering something between 55 and 60 chiropractic adjustments.

[para21] In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. If we accept, for purposes of these Reasons, the causal relationship between K.J.V.'s accident six years ago and her present condition, it remains to inquire whether the treatments for which she seeks reimbursement were "medically necessary". In this context, we have reference to the Clinical Guidelines for Chiropractic Practice in Canada, published as a supplement to the Journal of the Canadian Chiropractic Association, Volume 38, Number 1, in March of 1994. Those Guidelines, adopted not only by the national association but also by most, if not all, of the provincial chiropractic associations, contain some recommended time-frames within which maximum chiropractic benefit may

usually be anticipated both for 'normal' and for more difficult cases. They also offer the following advice, *inter alia*, to the practitioner:

- *failure to achieve therapeutic objectives requires that it (i.e. the treatment modality) should be re-evaluated. A change in treatment procedure, or the obtaining of a second opinion, is indicated. Continued failure should result in the patient being discharged either as being inappropriate for active chiropractic care, or for having achieved maximum therapeutic benefit.
- * There is a natural history of recovery for uncomplicated cases (Waddell 1984) that can serve as a timeframe from which to evaluate and shape a successful treatment plan.
- * Of the adult population that experiences an acute episode of lower back pain, 50% recover and return to work within two weeks. Within six weeks, 80% have returned to work. The remaining 20% provide a clinical and socio-economic challenge (Halderman 1992).
- * (for complicated cases).....continued failure to show initial improvement or failure to show additional improvement over any period of six weeks of treatment, should result in patient discharge or appropriate referral, or the patient will be deemed as having achieved maximum therapeutic benefit (MTB). If MTB has been reached, maintenance or supportive care may be considered.
- * Patients at risk for becoming chronic should have treatment plans altered to de-emphasize passive care and refocus on active care approaches.
- * Alone, the repeated use of acute care measures generally fosters chronicity, physician dependence and over-utilization (Riley et al 1988).

[para22] While fully realizing that K.J.V. undoubtedly falls into the 'remaining 20%' referred to in the above extract from the Guidelines, we cannot find enough evidence upon which to base a decision that would allow this appeal. We recognize that the Guidelines are just that-that is to say, a basic set of principles by which the practitioner should be guided, rather than a rigid set of rules. Nevertheless, there has been no suggestion from either of the practitioners from whom K.J.V. has received care that some other modality of chiropractic treatment should be tried, nor any apparent thought given to referring the patient out to some other

discipline.

[para23] Even if we disregard the opinion expressed by Dr. Rothova on June 24th, 1996, that "[K.J.V.] has recovered from the injuries sustained in the MVA of August 10th, 1994" we are of the opinion that MPIC was justified in terminating payments for further chiropractic care for K.J.V. on November 2nd, 1998, as it did. We are bolstered in that view by the knowledge that it was not until she started attending the [text deleted] that K.J.V.'s perceived need for chiropractic treatments decreased to their present frequency; this indicates that there are, indeed, other forms of therapy that should, in due course, remove any existing patient/practitioner dependency-if that is what has, in fact, developed.

[para24] K.J.V. expressed concern that, were we to dismiss her present appeal, she would be forever precluded from seeking any further benefits from MPIC as a result of her 1994 motor vehicle accident. We have assured her that if, at any time in the future, symptoms arise that can, on a reasonable balance of probabilities, be attributable to that accident, she will have a perfect right to ask MPIC to re-open her claim file in order to deal with those new or resurfacing problems. Meanwhile, the only issue before this Commission is whether MPIC should be ordered to reimburse K.J.V. for the chiropractic expenses referred to above. We find that it should not be so ordered.

[para25] It may be that K.J.V.'s general medical practitioner, Dr. Holton, can suggest some further diagnostic procedure that might enable K.J.V. and her care-givers to determine the cause of her ongoing discomfort, should that persist in spite of the new form of therapy that she has been receiving.

[para26] In sum, therefore, K.J.V.'s appeal must be dismissed but her claim file is not permanently closed; the effect of this decision is, simply, to deny her reimbursement for her chiropractic treatments received since November 2nd, 1998.

@1

@XQL @XUpdate: 20001016
qp/d/qlrds
@H
MVRT
@1<QLDATE C=20001016 U=20010501>