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

IN THE MATTER OF an appeal by J.C.K.
AICAC File No.: AC-00-20

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[2000] M.A.I.C.A.C.D. No. 33

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares,
and W. MacLennan
Heard: August 30, 2000.
Decision: September 1, 2000.
(6 paras.)

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Issues(s):
Entitlement to reimbursement for chiropractic expenses.

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Relevant Sections:
Section 136 of the MPIC Act and Section 5 of Manitoba
Regulation No. 40/94.

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Appearances:
Manitoba Public Insurance Corporation ('MPIC') was represented
by Joan McKelvey.
The appellant, J.C.K., 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] J.C.K., a doctoral student at the [text deleted]
then and now, was involved in a motor vehicle accident on June
4th, 1999. She sustained injuries, consisting for the most
part of cervical, thoracic and lumbo-sacral strain/sprain,
initially diagnosed by her chiropractic care-giver, Dr. Tim
Hiebert, as a Grade III(a) Whiplash Associated Disorder but,
shortly thereafter, downgraded to a WAD II.

[para2] J.C.K. received chiropractic adjustments from Dr.
Hiebert at a frequency of about three times per week from June

11th through to the end of November 1999. In December of that year, she received chiropractic treatments on the 1st, 3rd, 6th, 9th and 13th before receiving a letter from her adjuster at MPIC to advise her that the insurer would pay for no more chiropractic care. That letter enclosed a copy of a report from Dr. D. C. Chester, to whom MPIC had referred J.C.K. for an independent chiropractic examination. Dr. Chester, who had examined J.C.K. on November 25th, 1999, was of the view that, rather than continuing chiropractic care, what J.C.K. really needed was a program of exercise directed towards the conditioning and stabilization of her cervical, thoracic and lumbo-sacral spines. He noted that there had been no apparent, material change in J.C.K.'s overall symptomatology in the preceding six weeks, and he therefore felt that ongoing passive therapy should not continue.

[para3] The letter from MPIC's adjuster of December 13th, 1999, the contents of which were confirmed by MPIC's Internal Review Officer, did offer the exercise program suggested by Dr. Chester.

[para4] However, J.C.K. elected, instead, to continue with Dr. Hiebert's chiropractic treatments. She received one more adjustment from him on December 16th, another four from a chiropractor in her home province of [text deleted] over the Christmas holiday period, then another eight in January, four in February, three in March and one in April of the year 2000 from Dr. Hiebert. She was discharged from chiropractic care by Dr. Hiebert in April and testified that she is now back to her pre-accident condition.

[para5] J.C.K. undoubtedly had some spinal restrictions prior to her motor vehicle accident, and had been receiving treatments from Dr. Hiebert in that regard at a frequency of about one per month. The motor vehicle accident of June 4th, 1999, appears to have exacerbated her earlier problems, giving rise to what, we are constrained to say, was an unusual number and frequency of chiropractic treatments over the next six months. That number and frequency are difficult to reconcile with the Clinical Guidelines for Chiropractic Practice in Canada and would, in the ordinary course, militate against the Appellant's claim. They certainly make this a borderline case.

[para6] That said, the fact remains that J.C.K.'s election to continue with chiropractic care, rather than accepting MPIC's offer of a structured exercise program, seems to have worked; the results speak for themselves. Although it is open to speculation whether the natural history of J.C.K.'s accident-related condition would have produced the same results with or without the chiropractic treatments that are at issue in this case, we are prepared to say that, on a slender balance of probabilities, those additional treatments

were, in fact, medically necessary. It follows that J.C.K. will be entitled to payment by MPIC for the cost of the treatments she received from Dr. Timothy Hiebert from and including December 16th, 1999, to April 4th, 2000, subject only to the qualification that, if she is entitled to reimbursement for any of those treatments from [text deleted] provincial health plan, the reimbursement she receives from MPIC will be reduced by that same amount. She will be entitled to interest at the statutory rate, but only from the date of this Decision to the date of actual payment, since she is not yet out of pocket-the fees of Dr. Hiebert appear to remain unpaid. We have assumed that the first five chiropractic treatments J.C.K. received in December 1999 have in fact been paid for by MPIC already; if they have not, they must be added to her entitlement.

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