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Indexed as:
A.L.L. (Re)

IN THE MATTER OF an appeal by A.L.L.
AICAC File No.: AC-00-35

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[2001] M.A.I.C.A.C.D. No. 7

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares, and
C.C. Settle, Q.C.
Heard: December 19, 2000.
Decision: January 31, 2001.
(14 paras.)

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Issues(s):
Whether benefits terminated prematurely.

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Relevant Sections:
Section 136(1) 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, A.L.L., 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 Appellant in this matter seeks reinstatement
of chiropractic treatments and reimbursement for the cost of
certain medication.

[para2] The Appellant, A.L.L., has an extensive
pre-existing condition. She has been diagnosed with
Arnold-Chiari malformation, astrocytoma in the cervical spine,
and pseudo-tumor cerebri. As a result of this situation, she
has had extensive, multiple surgical procedures to her
cervical spine. She underwent an extensive laminectomy of the
cervical spine (C1-C7) and radiation therapy for the

astrocytoma. Unfortunately this resulted in a post-laminectomy kyphotic deformity. In 1995, a fusion was performed from C4 to C7. Subsequently, she developed kyphosis in the upper cervical spine and underwent a posterior fusion at C3-C4 in September 1996. Afterward, she developed kyphotic deformity at C2-3 and in February 1997 underwent a fusion procedure from C4 to the occiput.

[para3] The Appellant has also had a laminectomy in the lumbar spine involving three lumbar segments for the facilitation of a CSF shunt. In addition, there have been multiple other surgeries, which are not directly significant to the matter before us. The Appellant also stated that she has a history of recurring pneumonia as a result of a partial paralysis of the diaphragm and a chronic history of aspirating foreign material due to the position of the trachea as a result of the surgical procedures. She currently faces further surgery in order to stabilize her neck.

[para4] On June 11th, 1998, A.L.L. was a passenger in a City of Winnipeg transit bus which came to a sudden stop. A.L.L. appears to have been thrown forward into her backpack which, in turn, had hit the back of the seat immediately in front of her. The upper part of her body was then immediately snapped backwards. What would presumably have been a comparatively mild whiplash for the average passenger sustaining that kind of an injury was apparently made much more severe by A.L.L.'s medical history.

[para5] Following the incident in question, A.L.L. attended upon her chiropractor Dr. Toth, complaining of headaches, nausea, vomiting, severe neck and upper back pain bilaterally and numbness and burning sensations in her arms, her left hand, her low back and buttocks. Dr. Toth examined her, took X-rays of her cervical and thoracic spine and initiated a course of chiropractic therapy for her discomfort. Treatment included soft-tissue technique to the cervical thoracic musculature, trigger-point massage activity and manipulative procedures to the thoracic spine. Exercise activities were also encouraged. She was diagnosed with acute moderate sprain/strain of the cervicothoracic and thoracic region.

[para6] The Appellant stated that following the MVA, she noted an increase in her cervical symptoms and initiation of thoracic discomfort/trigger-point phenomena. She noted that there was an increase in her trigger-point injections, number and frequency. She also stated that there was a general increase in her narcotic-based medication to control pain.

[para7] On August 30th, 1999, Mr. Roy Thurston, claims examiner, wrote to the Appellant to advise her that "MPI will no longer fund expenses incurred to treat your ongoing condition insofar as in the opinion of our medical

consultants, the condition is a natural progression of pre-existing degeneration/deterioration which is not causally related to the motor vehicle accident of June 11, 1998."

A.L.L. filed an application for review of that decision on October 18th, 1999. In his decision dated February 1st, 2000, the Internal Review Officer upheld the claims decision of August 30th, 1999. It is from this latter decision that A.L.L. now appeals.

[para8] There are two issues before the Commission which require determination as a result of the present appeal. Firstly, there is the question of causation, that is to say whether the apparent subluxation at the C7-T1 region of A.L.L.'s spine was caused or exacerbated by the incident on the bus; secondly, if causation can be established, whether the chiropractic treatments that she has been receiving from Dr. Toth can reasonably be regarded as medically necessary.

[para9] Insofar as the issue of causation is concerned, this Commission accepts the evidence put forward by the Appellant's treating chiropractor, Dr. Toth, and her medical care-givers, Dr. Tator and Dr. Ian Sutton. In his report of April 5th, 2000, addressed to the Commission, Dr. Sutton expressed his opinion that,

Her reported levels of pain have been significantly higher and there have been a documented increase in the number of trigger points of physical examination. This would suggest that at the time of the injury, she had a significant strain to her cervical spine which would not have been capable of distributing forces across the tissues due to the previous fusions.

[para10] Dr. D. Chester, chiropractor, who performed an independent assessment of the Appellant's condition at the request of this Commission, wrote in his report dated January 8th, 2001, that,

The extensive cervical paravertebral muscular atrophy, cervical laminectomy with multiple surgeries to fuse cervical spine from the occiput to C7 in my opinion would play a role with regard to the nature/degree of injury. The cervical/thoracic muscles would not have the strength, normal elasticity or properties of a normal muscle making them more susceptible to injury from the mechanical forces involved. As a good deal of these muscles take their origin from the occipital region and have their insertion in mid thoracic spine this may account for the increase in thoracic pain levels. There were also be [sic] cervical spine and skull moving as a fixed unit during the course of the incident which would not have the similar mechanical properties as a normal cervical spine. Recovery from myofascial injuries can cover time frames that are longer than the average.

[para11] Consequently, this Commission finds that A.L.L.'s prior condition was exacerbated by, and her increased levels of pain and discomfort are directly attributable to, the MVA of June 11th, 1998.

[para12] With regard to the second question before us, that being whether the chiropractic treatments that she has been receiving from Dr. Toth can reasonably be regarded as medically necessary, we have regard to the opinions of both Dr. Chester and Dr. Timothy Pethrick, chiropractic consultant, Healthcare Services for MPIC. In his report dated January 8th, 2001, Dr. Chester comments that, "In my opinion the therapy administered by Dr. A. Toth would be medically necessary to assist [A.L.L.] with her current situation. [A.L.L.'s] chiropractic therapy in my opinion should continue to the date of her proposed surgery." In Dr. Pethrick's interdepartmental memorandum dated January 23, 2001, "The mechanism of pain relief as a result of chiropractic manipulation is not fully understood. However, according to the bulk of information on file, pain relief, although temporary, is significant. I would therefore consider this an appropriate therapeutic intervention."

[para13] Accordingly, this Commission finds that the Appellant should be reimbursed for her chiropractic therapy from the date MPIC terminated her benefits to the date of her proposed surgery, which we understand to be February 7th, 2001.

[para14] The Appellant also sought coverage for her Nabilone medication. On that point, this Commission finds that there is insufficient clinical evidence to relate the use of that medication directly to the motor vehicle accident in question.

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