

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.S.
AICAC File No.: AC-00-112**

PANEL: **Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Ms. Deborah Stewart**

APPEARANCES: **The Appellant, M.S., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.**

HEARING DATE: **August 27, 2002**

ISSUE: **Entitlement to reimbursement of chiropractic treatments
beyond January 31, 2000.**

RELEVANT SECTIONS: **Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act (the 'MPIC Act') and Section 5 of
Manitoba Regulation 40/94**

Reasons For Decision

The Appellant, M.S., was involved in two motor vehicle accidents on December 30, 1998, and January 20, 1999. As a result, she suffered injuries to her neck and back and was assessed in respect of her injuries by Dr. Lambos, a chiropractor. In his Initial Health Care Report dated January 25, 1999, Dr. Lambos indicated that the Appellant had the following symptoms: neck and upper back pain; nausea; lower back pain; headaches; right arm weakness. Dr. Lambos concluded that the Appellant had sustained acute cervical and lumbar spine strain with tension headaches and with a whiplash-associated disorder with a 3a classification.

The Appellant attended Dr. Lambos for chiropractic treatments between December 1998 and January 31, 2000. During this period of time, she received 100 chiropractic interventions. She also attended for a six-week reconditioning program at Associated Rehabilitation Consultants of Canada, Ltd. ('ARCC').

At the request of MPIC, Dr. Kowall, a chiropractor, performed an independent chiropractic assessment of the Appellant on September 7, 1999. In his written report to MPIC, dated September 17, 1999, Dr. Kowall concluded that:

It is my opinion that [M.S.] sustained a mild sprain/strain injury and subluxations to her cervical thoracic and lumbar spine. I feel that this is consistent with the symptoms that she is describing. At the time of the examination, the examinee stated that she has not improved significantly and by her own admission may even be feeling worse with her symptoms. Since the beginning of her accident there has been no change in her headache expression and there have been no significant changes in the past several months.

Dr. Kowall further stated:

It is my recommendation at this time that the Chiropractic treatment be re-evaluated. I feel that this woman would best be served with a reconditioning program with emphasis on active exercises under supervision as well as stretches and posture modification so that she can conduct herself in her home and recreational activities with minimal difficulties. At the present time she is unemployed and I feel that attending these sessions should not be a problem. During the recondition phase, I feel that the Chiropractic treatments may compliment the reconditioning at a frequency of once a week during the course of the reconditioning program. I also recommend a multi-disciplining rehabilitation program which offers proper and appropriate psychological evaluation and assistance with chronic pain disorders and associated behaviours. Such programs are available through the Health Sciences Centre or the Wellness Institute at the Seven Oaks General Hospital. Upon completion of this reconditioning program, if no changes are made in her subjective complaints and objective findings do not change over the next 3 months, I estimate that she will not benefit from any further Chiropractic care regarding these injuries. I do not think that there is any significant disability and do not feel there will be any permanent impairment from this accident....

MPIC requested Dr. Darrell E. Minuk, its chiropractic consultant in the Claims Services Department, to evaluate Dr. Kowall's third-party examination report. In his report to MPIC, dated October 4, 1999, Dr. Minuk indicated that he concurred with the recommendations provided in Dr. Kowall's report and suggested to MPIC that the Appellant be directed to a multidisciplinary facility which could provide her with strength rehabilitation as well as a program designed to aid her with her chronic pain and potential chronic pain disorder. With respect to ongoing chiropractic care, Dr. Minuk indicated that he expected the one treatment per week during the rehabilitation program would be appropriate and reasonable.

As a result, MPIC arranged for the Appellant to attend such a rehabilitation program at ARCC. In a report dated October 21, 1999, from ARCC to MPIC, Dr. Eugene Capitano, a chiropractor, and Mr. Joel Saltel, a physiotherapist, who had both evaluated the Appellant, recommended her participation in the six-week active rehabilitation program and indicated that, physically, there was no reason the Appellant should not reach full and eventual recovery.

On December 15, 1999, Dr. Capitano and Chris Lillies, an exercise therapist, provided a report to MPIC and made the following recommendations and future plan of management:

1. Discharge from our active rehabilitation program as of **December 13, 1999**.
2. We do not make any further recommendations for any formal physical rehabilitation, or any further diagnostic testing related to her injuries sustained in the motor vehicle accident. [M.S.] has not sustained any significant impairment from this accident.
3. Her perception of her pain and disability are not reflective of her physical condition. We cannot explain her clinical presentation on a physical basis at this point in time. We have taught [M.S.] proper exercise techniques and self-management. The behavior therapist has taught [M.S.] some independent pain coping skills. [M.S.] should be capable of exercising independently and

providing herself with some independent pain management at this time. [M.S.] is not a good candidate for any further passive forms of treatment. This may reinforce her perception of her chronic condition and disability. The scientific literature certainly does not support this. There are no practice guidelines that would also support ongoing treatments at this stage of her recovery.

PROGNOSIS

Good. [M.S.] has made substantial functional gains and physically is at pre-accident status. At this time, she should be capable of carrying on with her normal activities of daily living and will continue to improve as she continues to work hard at her exercise program.

On December 28, 1999, the case manager wrote to the Appellant and informed her that MPIC had received a medical consultant's review of Dr. Steven Lambos's most recent treatment plan dated December 8, 1999, and a report from ARCC dated December 15, 1999. MPIC advised the Appellant that the medical consultant recommended chiropractic care for one treatment per week in December 1999 to a maximum of two treatments in January 2000 and discharge from further care on January 31, 2000. The case manager further informed the Appellant that if Dr. Lambos felt that further treatment is required, he should supply MPIC with a new treatment plan outlining his objective findings for review by MPIC's Health Services team by January 15, 2000.

Dr. Lambos provided a further treatment plan dated February 1, 2000, to MPIC. MPIC requested Dr. Russell Baron, its chiropractic consultant with the Claims Services Department, to review the treatment plan report extension request submitted by Dr. Lambos. In his report, Dr. Lambos was requesting a treatment of one time per week for the next 8 to 12 weeks. Dr. Baron, in his report to MPIC dated February 16, 2000, stated that the Appellant had received approximately 100 chiropractic interventions, as well as a physical reconditioning program at ARCC. After reviewing the entire file, including the report from ARCC and Dr. Lambos's

report dated February 1, 2000, Dr. Baron concluded that in his opinion, the Appellant had had adequate exposure to chiropractic care and had likely reached maximum therapeutic benefit from such treatment as it would relate to the motor vehicle accident in question.

On February 16, 2000, the case manager wrote to the Appellant, advising her that MPIC was not prepared to change their decision, as outlined in their letter to her dated December 28, 1999, wherein they indicated they would cover chiropractic treatments up to January 31, 2000.

On April 7, 2000, the Appellant made Application to Review the decision of the case manager to terminate reimbursement of chiropractic treatments after January 31, 2000.

On August 12, 2000, Dr. Lambos submitted a medical report to the Internal Review Officer and recommended chiropractic treatment of one time per week for a further period of 8 to 12 weeks. Dr. Lambos's report was provided to Dr. Minuk, chiropractic consultant, Health Care Services, for his review. Dr. Minuk reviewed Dr. Lambos's report as well as a report from Ms. Cheryl Marks, a behaviour therapist. Ms. Marks provided counselling to the Appellant on three separate occasions and in her report to MPIC, dated January 21, 2000, had discharged the Appellant from any treatment.

In his report to the Internal Review Officer, dated August 23, 2000, Dr. Minuk stated:

I have reviewed the most recent reports by Cheryl Marks and by the claimant's treating chiropractor.

In the claimant's treating practitioner's most recent report, he suggests that the claimant continues to suffer because she needs more time to heal. It is his feeling that this claimant is suffering from myofascial fibrositis. He provides no specific

schedule or treatment plan for the resolution of the claimant's condition.

There is information on file that suggests: that further passive therapy will perpetuate and further strengthen the claimant's perception of her chronic condition, and that the claimant should be discouraged from attending passive forms of therapy. The new reports do not challenge these suggestions.

I continue to feel that the information on file finds that this claimant has reached maximum therapeutic benefit from the chiropractic care that she has received. I feel that the claimant will hopefully slowly continue to improve irrespective of the further chiropractic care, which she continues to receive. It would be my suggestion for this claimant, that she continue to be active and maintain a positive attitude. Any further gains, which she receives, will likely be brought on by her persistence to stay active rather than further chiropractic care.

In a decision dated August 31, 2000, the Internal Review Officer rejected the Application for Review and confirmed the case manager's decision to terminate the reimbursement of the cost of chiropractic treatments on January 31, 2000. The Internal Review Officer indicated in her decision that she had received the reports from Dr. Lambos and the Discharge Report from the behaviour therapist, Ms. Marks, and had provided these reports to one of MPIC's chiropractic consultants for review. In the reasons for her decision, the Internal Review Officer stated:

I agree with Mr. Aitkenhead's assessment of your injuries and his determination that further chiropractic care is unnecessary. After reviewing the information provided by Dr. Lambos and Cheryl Marks and by Manitoba Public Insurance Chiropractic Consultant, Dr. Darrell E. Minuk, I agree with Dr. Minuk's assessment of August 23, 2000, which states that future improvements in your physical condition will likely be gained irrespective of chiropractic care. I also agree that any further gains will be obtained by your persistence in staying active, rather than through further chiropractic care.

Dr. Minuk points out that there is information on the file that suggests that further passive therapy, like chiropractic treatment, will perpetuate and strengthen your perception of experiencing a chronic condition. Therefore, treatment such as chiropractic should be discouraged.

I support Dr. Minuk's view that the information provided by Dr. Lambos in his most recent report does not represent significantly new information and that you have obtained the maximum therapeutic benefit from chiropractic care.

Therefore, you will no longer be provided with chiropractic care by the Manitoba Public Insurance Corporation. For your information, I am attaching the following medical information:

1. Report of Dr. Lambos, dated August 12, 2000.
2. Report of Dr. Minuk, dated August 23, 2000.
3. Report of Cheryl Marks, dated January 21, 2000.
4. Report of Chris Lillies, dated December 15, 1999.

As a result thereof, the Appellant filed a Notice of Appeal from the decision of the Internal Review Officer dated August 31, 2000.

On March 9, 2002, Dr. Lambos provided a medical report to this Commission in respect to the Appellant. In his report, Dr. Lambos stated that as of January 31, 2000, the Appellant was receiving treatment at a frequency of approximately one treatment per week. It was Dr. Lambos's clinical opinion that as of January 31, 2000, the Appellant's condition would continue to show both subjective and objective improvement in her condition. Dr. Lambos further indicated that he disagreed with Dr. Minuk's statement in his report dated August 23, 2000, that the Appellant should discontinue chiropractic care and that the Appellant had obtained maximum therapeutic benefit from chiropractic care. Dr. Lambos also disagreed with Dr. Minuk's statement that future improvements in the Appellant's condition would be gained irrespective of chiropractic care. Dr. Lambos also indicated that during the course of the Appellant's treatments, symptomatology increased in severity, and the Appellant continued to suffer from back pain and stiffness.

MPIC once again requested that Dr. Baron review the Appellant's entire medical file and Dr. Lambos's report dated March 9, 2002, and advise whether chiropractic treatment was medically

required beyond January 31, 2000, as a result of the injuries sustained in the motor vehicle accident of January 20, 1999.

After reviewing the entire medical file, including Dr. Lambos's report dated March 9, 2002, Dr. Baron provided a medical report to MPIC dated May 23, 2002, wherein he stated:

After reviewing the information on file, it would appear to me that by January 2000, this claimant had had an extensive exposure to chiropractic care following the above noted motor vehicle accidents and although she may have continued to suffer from residual discomfort, had, on the balance of probability, reached both maximum therapeutic benefit and maximum medical improvement with respect to those motor vehicle accidents.

It is clear from a review of the file that prior to the December 1998 accident, she had suffered from similar symptoms, had similar findings and a similar diagnosis with respect to a previous accident. The information on file details this information until March 1996. There is no file information between March 1996 and December 1998.

With the above in mind, it is my opinion, the file contents are not supportive of care beyond January 31, 2000 as being a therapeutic necessity related to the motor vehicle accidents of December 1998 or January 1999. As previously stated she had, on the balance of probabilities, reached her maximum medical improvement.

At the hearing of this appeal, the Appellant submitted that the decision to terminate her entitlement to chiropractic care as of January 31, 2000, was premature. The Appellant argued that she continued to suffer from pain in her neck and back as a result of the injuries sustained in the motor vehicle accidents and required chiropractic care on a regular basis. She further asserted that, as a result of receiving chiropractic care from Dr. Lambos, her condition improved, she was feeling better, and she was receiving chiropractic treatments approximately once per month.

The Appellant, therefore, submitted that MPIC should reimburse her for the chiropractic treatments she received from Dr. Lambos subsequent to January 31, 2000, and until May 26, 2001. It should be noted that the Appellant had selected May 26, 2001, as the termination date for receipt of reimbursement of the cost of chiropractic treatments from MPIC because Dr. Lambos, in his report to the Commission on March 9, 2002, stated in his clinical opinion as of May 26, 2001:

The appellant's condition was permanent and stationary and that further regularly scheduled chiropractic care would not necessarily enhance further subjective or objective improvements.

In reply, counsel for MPIC submitted to the Commission that the medical documentation on file supported MPIC's decision to terminate reimbursement for chiropractic coverage beyond January 31, 2000.

Decision

The issues under appeal are governed by Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94.

Section 136 (1)(a) of the MPIC Act provides:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care.

Section 5(a) of Manitoba Regulation 40/94 provides:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician:

The Commission accepts the medical opinions of Dr. Kowall, Dr. Minuk, and Dr. Baron, and also the reports from ARCC, all of whom disagree with the medical opinions of Dr. Lambos. Having regard to the medical opinions of Dr. Kowall, Dr. Minuk, and Dr. Baron and the testimony of the Appellant at the appeal hearing, the Commission is satisfied the Appellant has not established, on the balance of probabilities, that MPIC was not justified in terminating payments for further chiropractic treatment beyond January 31, 2000. Accordingly, for these reasons the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date August 31, 2000.

Dated at Winnipeg this 13th day of September, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

DEBORAH STEWART

[Ed. Note: The note "[Text deleted]" indicates the removal of information which may identify individuals.]