

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B. M.
AICAC File No.: AC-01-109**

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Bill Joyce
Mr. Wilson MacLennan

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

HEARING DATE: December 2, 2002

ISSUE(S): Entitlement to further chiropractic treatment benefits.

RELEVANT SECTIONS: Sections 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 was involved in an incident on March 5, 2000, which resulted in injuries of pain and bruising to her left knee, left elbow, right knee, right buttock pain and tenderness to the anterior superior iliac spine area. As a result of these injuries, the Appellant attended at the offices of Dr. Colmer, a chiropractor, and commenced receiving chiropractic treatments, the cost of which was paid for by Manitoba Public Insurance Corporation ("MPIC").

On December 5, 2000, Dr. Colmer provided a report to MPIC. In this report Dr. Colmer states that the Appellant's problems presently are related to her lower back and are primarily soft tissue in nature. Dr. Colmer recommended to the Appellant that she follow an extensive active rehabilitation program at home on a daily basis. Dr. Colmer further advised MPIC that he

believed that the Appellant had reached maximum medical improvement and that she could benefit from periodic chiropractic adjustment. As a result of receiving that medical report, MPIC wrote to the Appellant by letter dated December 13, 2000, and informed her that MPIC would terminate reimbursement of any further chiropractic treatments. In response on January 26, 2001, the Appellant made application to the Internal Review Office to review the decision of the case manager.

The Internal Review Officer noted that the Appellant had not requested a hearing in the matter and therefore, reviewed the entire file and by letter dated February 22, 2001, informed the Appellant that the application for review was dismissed and the Internal Review Officer was confirming the decision of the case manager dated December 13, 2000.

In her decision the Internal Review Officer stated:

"Dr. Colmer's report of December 5, 2000, recommends that you follow an extensive active rehabilitation program at home. He also advises that you have reached maximum medical improvement with your low back problem. This means that chiropractic adjustments would no longer be a medical necessity in your circumstances.

Dr. Colmer suggests that you receive periodic chiropractic adjustments to enable normal biomechanics of your low back. You also advised in your Application for Review letter dated January 26, 2001, that you require chiropractic adjustments to maintain your current condition. In my opinion, both you and Dr. Colmer are suggesting that you require maintenance adjustments which are elective in nature. Maintenance adjustments are not a medical necessity because this will not improve your condition and are not funded by the Manitoba Public Insurance Corporation. Only treatment that is a medical necessity will be funded according to Section 5(a) of Manitoba Regulation 40/94 which states:

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.

As you have reached maximum medical improvement in the opinion of your treating chiropractor, it is my decision that chiropractic treatments are no longer medically required and therefore you will receive no further funding for that therapeutic intervention as a result of your accident of March 5, 2000. As a result, I am confirming your Case Manager's decision letter of December 13, 2000."

The Appellant filed an application of Notice of Appeal dated October 15, 2001. The Appeal Hearing took place on December 2, 2002. The Appellant did not personally attend the Appeal Hearing but participated by way of teleconference. Also present in the Appeal Hearing, together with members of the Commission panel, was Mr. Terry Kumka, legal counsel for MPIC.

The issue that required determination in the Appellant's appeal was:

1. Entitlement to reimbursement of the cost of chiropractic treatments.

The relevant sections of the MPIC Act and Regulations are as follows:

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.

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:

- (b) 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;

At the hearing of the Appeal, the Appellant submitted that she continued to have back problems which were connected to the injuries she sustained in the incident of March 1, 2000, and that it was critical that she continue to receive chiropractic treatments on an as needed basis and this should be funded by MPIC.

Prior to the hearing of the Appeal, the Commission had received further medical reports from Dr. Colmer dated January 21, 2002, and June 11, 2002, and a report from Dr. Russell Baron, Chiropractic Consultant for MPIC's Health Care Services.

Legal counsel for MPIC submitted that Dr. Colmer in his report to MPIC dated December 5, 2000, had indicated that the Appellant had reached maximum medical improvement in respect of her low back problems and that chiropractic adjustments would no longer be a medical necessity in her circumstances. Legal counsel further noted in Dr. Colmer's further report of June 11, 2002, Dr. Colmer had stated that the claimant had reached maximum medical improvement and recommended chiropractic treatments only on an as needed basis.

Legal counsel for MPIC further referred to Dr. Baron's medical report dated November 13, 2002, in which Dr. Baron had reviewed the entire medical file including Dr. Colmer's medical reports and stated:

"After reviewing the file contents in detail, it is my opinion that based on the file description of the claimant's injuries, as well as the balance of the medical information on file, this claimant's ongoing complaints of lumbar spine pain are not, on the balance of probability, related to the incident in question.

Any soft tissue injury that she may have sustained in the alleged incident has likely reached its maximum medical improvement.

There is no evidence on file to suggest that ongoing chiropractic care is a therapeutic necessity related to the motor vehicle accident in question.

Given the claimant's x-ray findings, it is my opinion that these x-ray findings are not related to the motor vehicle accident in question, particularly given the date of loss and the date of the x-ray study. These x-ray findings however do indicate that the claimant had some significant x-ray findings in March 2000. It is my opinion that these findings could be contributory to the intersegmental motion abnormalities noted by Dr. Colmer and may contribute to mechanical spine discomfort.

These x-ray findings however are not the result of the incident in question and any necessity for care is, on the balance of probabilities, also not necessitated by the incident in question."

The Commission, carefully considering the submissions of the Appellant and legal counsel for MPIC, and after a thorough review of the medical reports, has determined that the Appellant has not established on a balance of probabilities that further chiropractic treatments are medically required and as a result, MPIC is not obligated to reimburse the Appellant in respect of any further chiropractic treatments.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 22, 2001.

Dated at Winnipeg this 10th day of December, 2002.

MEL MYERS, Q.C.

BILL JOYCE

WILSON MACLENNAN