



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by A.B.
AICAC File No.: AC-98-141**

PANEL: Mr. Mel Myers, Q.C., Chairman
The Honourable Armand Dureault
Mr. Bill Joyce

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

HEARING DATE: April 14, 2003, October 28, 2003 and October 29, 2003

ISSUE(S): Entitlement to reimbursement of cost of chiropractic
treatments

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

**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

A.B. (hereinafter referred to as the 'Appellant'), is appealing the decision of the Internal Review Officer dated August 18, 1998 which confirmed the case manager's decision that chiropractic funding would not be provided. At issue in the Appellant's appeal is whether chiropractic treatments were medically required as a result of injuries caused by the motor vehicle accident on February 22, 1996.

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

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

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 which provides that:

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 a result of the motor vehicle accident the Appellant suffered a whiplash injury and had pain to her back and both areas of the neck and lower back. The Appellant saw Dr. G. G. Lemoine, her personal physician, in respect of these complaints and he provided a report to MPIC, dated November 12, 1996. In this report Dr. Lemoine outlined the Appellant's complaints and indicated that because of the Appellant's basic condition of degenerative arthritis to her whole spine, the injuries she sustained in the motor vehicle accident were exacerbated due to this condition. In respect of her neck and lower back complaints, the Appellant was treated by a chiropractor, Dr. Seguin, and MPIC funded these treatments.

MPIC subsequently requested Dr. Pethrick, MPIC's chiropractic consultant, to provide an assessment in respect of these chiropractic treatments. Dr. Pethrick provided a report to MPIC dated November 2, 1997 wherein he indicated the Appellant had stopped progressing in respect of the chiropractic treatments and her condition appeared to be the same as it was five months previously. As a result Dr. Pethrick indicated it was unlikely that the continuation of chiropractic treatments would result in further progression of the Appellant's medical condition. Upon receipt of that report the MPIC case manager informed the Appellant, by letter dated December 9, 1997, that MPIC would cease payment of the chiropractic treatments.

The Appellant, upon receipt of that letter, applied to have the decision of the case manager reviewed by an Internal Review Officer.

Dr. N. Sharif, an orthopaedic surgeon, had been treating the Appellant in respect of injuries she sustained in several motor vehicle accidents since February 24, 1986. On December 23, 1997 the case manager wrote to Dr. Sharif in respect of the February 22, 1996 accident. In this letter the case manager stated:

We have been advised that [A.B.] has an appointment to see you on January 6, 1998. We would appreciate if you could provide a report addressing the following:

1. What are [A.B.'s] current complaints?
2. List [A.B.'s] history of complaints regarding nose bleeds, ear problems and headaches.
3. Your current objective findings.
4. The cause of [A.B.'s] current complaints.
5. What if any treatment would you recommend?

Dr. Sharif responded to the case manager's letter, in a letter dated January 26, 1998, wherein he stated that:

- A. he treated the Appellant in respect of injuries she sustained in a motor vehicle accident on February 24, 1986;
- B. he subsequently saw the Appellant on November 6, 1991 in respect of a motor vehicle accident she was involved in on November 6, 1991. He reported that clinically he found the Appellant showed evidence of ongoing osteoarthritis of the small joints of both hands and wrists, as well as cervical and lumbar spine. He further stated *"X-rays of cervical spine revealed degenerative changes, particularly worse around C6/C7, as well as C5/C6, disc spaces."*
- C. *"[A.B.] reported back to my office on 18th April, 1995, when she was concerned about pain and stiffness of her lumbar spine. She mentioned that her ache and discomfort would travel to her hips and shoulders. Additionally, the ache and discomfort of her fingers and wrists were continuing. Apparently, there was no further episode of accident in her history."*
- D. he indicated that the Appellant returned to his office on February 10, 1997 and complained about ache and stiffness of her cervical spine associated with some headaches. She informed him that on February 22, 1996 while a front seat passenger, the automobile that she was riding in was struck in the rear end by another automobile, jerking her forward. He further reported that she informed him that in 1995 she received a similar injury due to a road traffic accident.

In response to the case manager's questions relating to the Appellant's current complaints, and

the cause of her current complaints, Dr. Sharif indicated that:

1. his examination of the Appellant and x-rays of her cervical spine revealed long standing arthritis with disc space narrowing of C5/C6, as well as C6/C7, vertebrae.
2. x-rays of her lumbar spine showed evidence of long standing arthritis.
3. with a diagnosis of ongoing multiple joint osteoarthritis, the Appellant was encouraged to continue with her daily exercises and oral medication.

The case manager also wrote to the [text deleted] on April 3, 1998 requesting a report in respect of the Appellant. Dr. Seguin replied to the case manager in a letter dated May 29, 1998 and stated that the Appellant had been receiving chiropractic treatments and that maximum chiropractic improvement had not been reached. In Dr. Seguin's view the Appellant had reached a 75% pre-accident status and prognosis for further improvement with care remained good at that time. Dr. Seguin recommended that further chiropractic treatment was required at a frequency of one treatment every two weeks over a one year period with possible gradual decrease in treatment frequency with further improvement.

The Internal Review Officer, upon receipt of the reports of Dr. Seguin dated June 8, 1998 and Dr. Sharif dated January 26, 1998, forwarded these reports to MPIC's Medical Consultant, Dr. Pethrick, who had previously reviewed the Appellant's medical file. Dr. Pethrick was requested by the Internal Review Officer to provide his opinion in respect of the case manager's decision to terminate MPIC's funding of chiropractic treatments in respect of the Appellant.

Dr. Pethrick replied in his Inter-Departmental Memorandum dated August 4, 1998 and indicated that there had been no demonstrable improvement to the Appellant. As a result of chiropractic

treatments, Dr. Pethrick concluded:

3. There is a clear underlying degenerative process as identified on x-ray taken March 1996, described as degenerative in nature in both the cervical and lumbar spines. A later report from Dr. Shariff (sic), a local orthopedist, describes the claimant in 1991 as having evidence of ongoing arthrosis of the cervical and lumbar spines.
4. The underlying degenerative condition was symptomatic for a long period of time prior to the motor vehicle accident in question. Dr. Shariff (sic), in his narrative of January 26, 1998, indicates a history of care by himself directed to the claimant's cervical and lumbar spine as far back as 1991.
5. There is frequent mention in the chiropractic reports of epistaxis and tinnitus. Following his examination of this claimant, Dr Sharif was of the opinion that these conditions related to medication use rather than directly to the effects of the motor vehicle accident in question.

SUMMARY

This woman has now been treated for in excess of two years with little or no evidence of improvement. There is historical and radiographic evidence of a pre-existing degenerative spinal condition. It does not seem likely that ongoing care at this time will progress her further since it has failed to do so for the most recent many months.

The Internal Review Officer in her decision dated August 18, 1998 indicated that she had reviewed the reports of Dr. Seguin, Dr. Sharif and Dr. Pethrick and stated:

After a full review of the medical information it is the consultant's opinion that there has been no significant change in your subjective status over the course of treatment and there is little as well to suggest objective improvement in your condition. Added to the lack of improvement in your condition is an underlying degenerative process for which Dr. Sharif has been treating you since 1991. This is an ongoing arthrosis of the cervical and lumbar spines. There is also frequent mention in the chiropractic reports of epistaxis and tinnitus. It was Dr. Sharif's opinion that these conditions were related to medication use rather than directly to the effects of the motor vehicle accident in question.

Therefore, as you have been treated for over two years with little or no evidence of improvement and as well there is historical evidence of a pre-existing degenerative spinal condition it is the opinion of our medical consultant that ongoing care at this time will not provide you with any further progress or help. Therefore, I see no reason to disagree with his opinion and it is my decision that as chiropractic care has not helped you for quite some time it will not now continue to help you and therefore no further chiropractic benefits will be funded by the Manitoba Public Insurance Corporation as a result of your accident of February 22, 1996.

The Commission notes that there is a conflict in the medical opinions of Dr. Seguin and Dr. Pethrick in respect of the issue as to whether or not the chiropractic treatments to the Appellant were medically required.

The Commission notes that Dr. Sharif in response to the case manager's question as to the cause of the Appellant's complaints, did not assert that the motor vehicle accident caused these complaints but rather Dr. Sharif determined that the complaints of the Appellant related to her osteoarthritis.

The opinion of Dr. Pethrick rejecting continuation of funding of chiropractic treatments by MPIC is consistent with the assessment of Dr. Sharif that the complaints of the Appellant are not the result of the motor vehicle accident but are due to a degenerative condition of her cervical and lumbar spine. The Appellant had received chiropractic treatments in excess of two years with little or no evidence of improvement. It is for these reasons the Commission rejects the opinion of Dr. Seguin and accepts the opinion of Dr. Pethrick in the issue of causation.

The Commission notes that the Appellant is suffering from a very significant rotator cuff tear to her shoulder which has materially affected the quality of the Appellant's life and made it extremely difficult for her to carry on her ordinary daily activities both in the household and on the farm. However, upon a careful review of all of the documentary evidence made available to us, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that chiropractic treatments were medically required by her as a result of the injuries arising from the motor vehicle accident on February 22, 1996 pursuant to Section 136(1)(a) of the MPIC Act and

Section 5(a) of Manitoba Regulation 40/94. As a result, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated August 18, 1998.

Dated at Winnipeg this 9 day of December, 2003.

MEL MYERS, Q.C.

HONOURABLE ARMAND DUREAULT

BILL JOYCE