



## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by A.K.  
AICAC File No.: AC-04-58

**PANEL:** Ms. Laura Diamond, Chairperson  
The Honourable Mr. Armand Dureault  
Mr. Guy Joubert

**APPEARANCES:** The Appellant, A.K., appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms. Dianne Pemkowski.

**HEARING DATE:** October 27, 2004

**ISSUE(S):** Entitlement to further chiropractic treatment benefits from  
August 11, 2003

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

The Appellant, A.K., was injured in a motor vehicle accident on October 29, 2000. He suffered from tearing of ligaments and tendons in the thoracic (T5, 6 & 7) area. The Appellant is a farmer and testified that the pain from this area, in his back and chest, was often worsened by farming activities.

For relief, the Appellant sought treatment from his chiropractor, Dr. John Borley. According to the Appellant's evidence, and a review of his file, he had been attending to various chiropractors

for care since approximately 1988. He received regular chiropractic care from Dr. Watkins from 1988 to 1998, from Dr. Dahl from January 21, 1997 to March 8, 1999, and from Dr. Borley from March 1, 1999 to present.

Following the accident, the Appellant received chiropractic treatments from Dr. Borley from November 8, 2000 to present. These were funded by MPIC until the Appellant was advised by his case manager, on August 6, 2003, that he had reached his pre-accident status and that continued chiropractic treatment was not medically necessary.

#### **Internal Review Decision**

An Internal Review Officer, on March 24, 2004, confirmed the decision of the case manager. The Internal Review Officer reviewed medical reports from Drs. Watkins, Dahl and Borley and also Dr. Pethrick, a chiropractor with MPIC's Health Care Services Team, and concluded that the Appellant had reached his pre-accident status. As of August 11, 2003, his chiropractic care was not medically necessary as a result of the motor vehicle accident and would not be funded by MPIC.

It is from this decision which the Appellant has filed his appeal.

#### **Submissions**

Counsel for MPIC submits that the Appellant suffered from a pre-existing condition for which he received chiropractic treatment prior to the accident. He has now reached his pre-accident status and needs chiropractic treatment at the same frequency, or even less, than he did before the accident. Counsel for MPIC argued that a review of the medical reports submitted by Drs. Dahl and Borley showed that prior to the accident, the Appellant had received chiropractic treatments

in the T5 area, the same area that was treated following the accident and at the present time. She points to the clinical notes of Dr. Dahl, for the period from January 1, 1997 through March 8, 1999, which show numerous treatments to the T5 area. As well, a report from Dr. Borley dated February 3, 2003, indicated numerous treatments to the same area, prior to the accident.

The Appellant submits that the chiropractic treatments he received prior to the accident were to the shoulder and neck area. He submits that although the attending chiropractor may have recorded treatments to the T5 area on his chart, this was merely as a result of the chiropractor treating the body as a whole, when his specific complaint had been limited to the shoulder and neck area. The Appellant says that he had chest pain and difficulty breathing which he felt immediately following the accident, and that this was different than the problems he had been experiencing prior to the accident.

The Appellant also indicated that he is feeling better now and only attends the chiropractor approximately one time every two weeks. At one point following the accident, he was attending twice every week, however, the Appellant attributes this improvement to his decision to rent out a portion of his land and not to carry on all of the same farming activities (like riding a tractor), which tended to aggravate his back.

### **Discussion**

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded chiropractic treatment if it is medically required because of the accident. The relevant sections of the MPIC Act 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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

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

**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;

In an Inter-Departmental Memorandum dated August 5, 2003, Dr. Pethrick noted that Dr. Borley had documented 47 treatments of the Appellant in the 20 months prior to the motor vehicle accident and that the areas of treatment included, but were not confined to the mid-thoracic level.

Dr. Pethrick was of the opinion that the Appellant had “. . . *on the balance of probabilities, reached pre-accident status. He is now attending for care less frequently than he was before the accident and for similar problems. Care is currently recommended once per month. This is slightly less than he attended prior to the motor vehicle accident. In my opinion, this is not related to the effects of the accident.*”

Dr. Watkins provided a report dated September 26, 2003, which stated that prior to 1998, the Appellant’s primary complaints were headaches and lower back pain. The condition in his mid-

back and his difficulty breathing were not present when the Appellant was given chiropractic care by Dr. Watkins.

However, a review of Dr. Dahl's report dated January 7, 2004, with accompanying clinical notes, does indicate numerous treatments to the T5 area, prior to the accident.

As well, Dr. Borley's report of February 3, 2003, describes treatments on a number of dates between March 1, 1999 and October 27, 2000. He states:

Areas of treatment included the pelvis due to the L5 spondylolisthesis, the thoracic spine at the level of T5, T6 and in the cervical spine at the level of C2.

After reviewing these reports, Dr. Pethrick observed, in an Inter-Departmental Memorandum dated March 11, 2004, that although the Appellant has ongoing thoracic spine problems, there is no evidence to suggest that this is different from his pre-accident status, noting documentation and frequent treatment of the mid-thoracic spine, at the T5 level, prior to the accident. In Dr. Pethrick's view, it is the pre-existing problems in the mid-thoracic area currently troubling the Appellant.

### **Decision**

The Commission finds that while the Appellant may derive relief of his symptoms from chiropractic treatments, the evidence does not establish that continued treatments are medically required. There is sufficient evidence of chiropractic treatment of the Appellant in the same general area of complaint prior to the accident, to lead us to conclude that the Appellant has reached his pre-accident condition and does not require further chiropractic treatment as a result of the accident. Accordingly, the Appellant has failed to show, on the balance of probabilities,

that the Internal Review Officer erred in her finding that further chiropractic treatments were not medically required as a result of the accident.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date March 24, 2004.

Dated at Winnipeg this 16<sup>th</sup> day of November, 2004.

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**LAURA DIAMOND**

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**HONOURABLE ARMAND DUREAULT**

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**GUY JOUBERT**