



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.B.T.
AICAC File No.: AC-03-196**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Barbara Miller
Mr. Paul Johnston

APPEARANCES: The Appellant, L.B.T., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: August 4, 2004, November 22, 2004

ISSUE(S): Entitlement to chiropractic treatment benefits beyond
August 2, 2002

RELEVANT SECTIONS: Section 136(1) 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

L.B.T. (hereinafter referred to as the "Appellant") was involved in a motor vehicle accident on May 15, 2001 and, as a result of the motor vehicle accident, suffered soreness to his neck and back. The Appellant attended at his family physician who recommended massage therapy three times a week for three weeks. The Appellant subsequently saw Dr. Corner who, in a report dated May 24, 2001, noted neck and back pain and pain to the shoulders and referred the Appellant for physiotherapy treatments. The Appellant had approximately thirty physiotherapy treatments.

On August 31, 2001 the Appellant was referred by MPIC to the Associated Rehabilitation Consultants of Canada ('ARCC'). The result of ARCC's evaluation was that the Appellant should participate in a four week reconditioning program followed by six weeks of work hardening program, which the Appellant completed.

On November 30, 2001 ARCC provided a Discharge Report to MPIC in respect of the Appellant's participation in a work hardening program. In this report ARCC advised MPIC that the Appellant's discharge from the work hardening program occurred on November 30, 2001 and that the Appellant was now entering a graduated return to work and will start on December 3, 2001, at three hours a day. The report further indicated that a self-directed home exercise program will be given to the Appellant so that he can continue to make progress in his active rehabilitation and to promote independence in his pain management. This report further stated:

4. We would not recommend any further physical forms of treatment or any further diagnostic testing at this time.

Prognosis

[L.B.T.] has not sustained any permanent or severe physical injury as a result of this Motor vehicle Accident. We feel that no physical forms of treatment will be necessary after the completion of his Graduate Return to Work program.

On December 13, 2001 the Appellant consulted a chiropractor, Dr. Gall, because of ongoing cervical/lumbar discomfort. Dr. Gall, in a report to MPIC suggested chiropractic treatments at a frequency of three times a week for a timeframe of six months.

On May 17, 2002 the case manager wrote to Dr. D. Chester, a chiropractor, and requested him to conduct a third party independent chiropractic examination of the Appellant and stated:

Due to complaints of lower back pain early in January 2002 I approved for further chiropractic treatment. [L.B.T.] began to see Dr. Stephen Gall, attending for treatment

approximately three times per week until very recently when this has been decreased to two times per week. Last week, [L.B.T.] advised me that he continues to have pain in his "gluts", especially when sitting for an hour or more, or sitting in an uncomfortable chair.

In light of [L.B.T.'s] current chiropractic treatment and ongoing symptoms, we are requesting a third party chiropractic exam to assess the following:

- [L.B.T.'s] subjective symptoms,
- Your objective findings and diagnosis,
- Your recommendations for treatment.

Dr. Chester examined the Appellant on June 4, 2002 and provided a report to the case manager on the same date. In this report Dr. Chester reviewed the relevant medical information that was contained in the Appellant's file with MPIC and concluded his report by stating:

Following my examination and consultation of [L.B.T.] it would be my opinion that as a result of his accident dated May 15, 2001 he suffered from a muscular ligamentous injury to the cervical thoracic and lumbosacral musculature.

Objectively on examination there are no positive findings. Subjectively [L.B.T.] reports ongoing gluteal discomfort noted on activities such as sitting.

Following my examination and consultation it is my opinion that [L.B.T.] has had sufficient therapy directed towards the injuries from the accident dated May 15, 2001. There are no objective findings to support ongoing therapy. In my opinion further chiropractic therapy is not required.

On July 12, 2002 the case manager wrote to the Appellant and stated:

We are in receipt of Dr Chester's report (mailed to you on July 4, 2002 and delivered to your place of work on July 11, 2002) outlining his assessment of your symptoms/complaints when he examined you on June 4, 2002. Dr Chester advises:

- You report no cervical or lumbosacral discomfort in the morning;
- Knee to chest and figure four testing of the hips was full range without discomfort;
- No muscle wasting of mid thigh, calf, shoulder, shoulder girdle, arm, forearm or hand musculature;
- Normal thoracic and shoulder range of motion;
- Good strength of various arm and shoulder muscles;
- There are no objective findings to support (sic) ongoing therapy and further chiropractic therapy is not required.

We refer you also to the ARCC report of November 30, 2001, (previously provided to you) page 5, stating "We feel that no physical forms of treatment will be necessary after the completion of his Graduated Return to Work program."

I understand that you are currently receiving 2 treatments a week. As per our discussion, funding is approved for 2 treatments the week of July 8-12, 2002 and for one treatment per week for the following 3 weeks, ending August 2, 2002. Based on the available information, funding for chiropractic care beyond these parameters is totally your responsibility. I have advised Dr Gall of the above (fax July 11, 2002).

Upon receipt of that report, the Appellant filed an Application for Review dated February 23, 2003 in respect of the case manager's decision and provided a narrative report from Dr. Gall dated February 20, 2003 who disagreed with the decision of MPIC to terminate funding of the Appellant's chiropractic treatments.

Internal Review Decision

The Internal Review Officer rejected the Appellant's Application for Review and confirmed the case manager's decision of July 12, 2002 that the Appellant was not entitled to funding for chiropractic treatments after August 2, 2002.

The Internal Review Officer, in his decision dated October 1, 2003, stated:

You provided, with your Application for Review, a new report from your treating chiropractor, Dr. Steven Gall, dated February 20, 2003. Following your hearing, I forwarded that report to our chiropractic consultant with a detailed memorandum dated April 1, 2003. Dr. Pethrick's response of April 10, 2003 concludes that the information provided was insufficient for him to provide the opinions requested in my April 1, 2003 memo. He suggested that Dr. Gall's clinical notes and records might provide the needed information.

I then asked you, by letter dated April 16, 2003, to arrange for production of Dr. Gall's records. You supplied those on May 23, 2003. Dr. Pethrick's response of June 19, 2003 explained that he was unable to interpret enough of the handwriting to make the notes useful. I brought this to your attention by letter dated July 3, 2003, suggesting that you might wish to consider asking Dr. Gall to have the notes transcribed.

There followed a number of telephone calls and the detailed letter I wrote you on July 22, 2003, attempting to clarify a number of misunderstandings concerning the situation which had arisen. During our telephone conversation of August 5, 2003, you advised that there was no additional relevant information whatever in Dr. Gall's notes. Clearly, therefore, it was pointless to have them transcribed.

Instead, you provided another report from Dr. Gall. This is undated, but received on August 14, 2003. As you know, I referred that back to Dr. Pethrick again. I now have his final report dated September 8, 2003. A copy of that is attached. At is worth quoting at some length. Dr. Pethrick notes that the purpose of Dr. Gall's August 14, 2003 report:

". . . was to clarify the necessity of care for injuries sustained in the motor vehicle accident of May 15, 2001. Unfortunately, there is little in his letter that addresses these issues. Dr. Gall indicates that following July 31, 2003, he resumed care due to a recurrence of neck pain. This information is previously known. What is not known, and is not provided by Dr. Gall, are the clinical findings on re-presentation in mid-August that would allow one to formulate an opinion as to whether care was necessary and related to the motor vehicle accident of May 15, 2001. His statement that care was medically necessary is therefore not substantiated by objective information.

In summary, the information provided by Dr. Gall does not provide sufficient information to conclude that treatment beyond July 31, 2003 was a medical necessity or related to the motor vehicle accident."

The criteria mentioned by Dr. Pethrick ("a medical necessity or related to the motor vehicle accident") are the two pre-conditions that must be met before coverage is available for expenses for chiropractic treatments. The conditions are imposed by Section 5 of Regulation 40/94 and Section 136(1) of *The Manitoba Public Insurance Corporation Act* ("the Act"). I accept Dr. Pethrick's advice that the available evidence satisfies neither condition.

In summary, then, the situation in which we find ourselves is the following: Your entitlement to chiropractic treatments was terminated on the basis of evidence provided by the independent chiropractic examination. Despite this lengthy review, no objective evidence has been provided justifying the resumption of treatment. It follows that you are not entitled to benefits for the chiropractic treatments you underwent after August 2, 2003, and this Review will confirm the decision of July 12, 2002.

Appeal

The Appellant filed a Notice of Appeal on December 23, 2003. The relevant provisions of the MPIC Act relating to this appeal are Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94:

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;

....

(d) such other expenses as may be prescribed by regulation.

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;

The hearing took place on November 22, 2004. The Appellant represented himself and Mr. Terry Kumka appeared on behalf of MPIC. The Appellant, in his submission to the Commission, asserted that prior to the motor vehicle accident he did not have any real problems with his neck and back and was able to conduct his daily activities without pain. However, he submitted that subsequent to the motor vehicle accident his neck and back continued to bother him.

The Appellant, in his testimony before the Commission, stated:

1. as a result of participating in the ARCC work hardening program he was able to return to work but required regular chiropractic treatments from Dr. Gall.
2. these treatments were extremely important in order to permit him to maintain his normal activities.
3. notwithstanding the chiropractic treatments he continued to have gluteal pain, especially when sitting for more than one hour or sitting in an uncomfortable chair.

4. when MPIC discontinued funding of his chiropractic treatments on a regular basis he was not able to receive the chiropractic treatments on a regular basis and, as a result, there was a return of both neck pain and gluteal pain.
5. MPIC was unjustified in terminating funding of his chiropractic treatments because these chiropractic treatments were necessary to prevent both neck pain and gluteal pain.

MPIC's legal counsel submitted that the Commission should accept the independent chiropractic assessment of Dr. Chester who determined that there were no objective findings to support ongoing therapy and that further chiropractic treatment was not medically required in accordance with Section 5(a) of Manitoba Regulation 40/94.

Decision

The Commission, after a careful review of the medical documentation on file, and after hearing the submissions of both the Appellant and MPIC, finds that the Appellant has not established, on a balance of probabilities, that the chiropractic treatments were medically necessary pursuant to Section 5 of Manitoba Regulation 40/94. The Commission therefore agrees with the decision of the Internal Review Officer that, having regard to the assessment of Dr. Chester, the Appellant was not entitled to receive funding for chiropractic treatments after August 2, 2002 from MPIC.

Accordingly, the Commission confirms the decision of the Internal Review Officer dated October 1, 2003 and dismisses the Appellant's appeal.

Dated at Winnipeg this 30th day of November, 2004.

MEL MYERS, Q.C.

BARBARA MILLER

PAUL JOHNSTON