



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by C.B.
AICAC File No.: AC-04-196

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms Barbara Miller
The Honourable Mr. Wilfred De Graves

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

HEARING DATE: August 10, 2005

ISSUE(S): Entitlement to coverage for chiropractic treatment benefits.

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

C.B. (hereinafter referred to as the 'Appellant') was the driver of a motor vehicle that was stopped at a red light at an intersection on Portage Avenue when her vehicle was rear ended by another vehicle. She testified that she commenced suffering from a stiff and sore neck and shoulders, as well as headaches, approximately two (2) weeks after the motor vehicle accident and she did not seek medical treatment until the month of December 2003. She was examined on February 5, 2004 by Dr. Tapper, a chiropractor, and in an Initial Health Care Report to MPIC,

dated April 1, 2004, Dr. Tapper diagnosed the Appellant with cervical, thoracic and lumbar subluxation complex of traumatic onset.

Dr. Tapper referred the Appellant for x-ray treatments and in an X-Ray Report dated February 5, 2004 Dr. Kremer wrote that the Appellant had very minor osteophytic lipping to the anterior/inferior of C4 to 6 and the anterior superior of C7. He further indicated that his impression was of altered lordosis and minor osteoarthritic changes.

The Appellant began a course of chiropractic treatment with Dr. Tapper and on April 5, 2004 applied to MPIC for reimbursement of expenses related to these treatments.

In a note to file dated April 15, 2004 the case manager indicates that she had a telephone discussion with Dr. Tapper and she reports:

Chiro advised the following to be the reasons why, in his medical opinion, clmt's signs and symptoms are related to the MVA;

- x-ray results reveal a straightened cervical lordosis; which is consistent with whiplash
- symptoms started first couple of weeks after accident but clmt didn't correlate with MVA
- Kemp's test is positive, which is related to LB and neck
- positive surface EMG and thermograph
- limited ROM

Chiro explained that clmt originally contacted him in January, but then the pipes froze in [text deleted] and did not pursue treatment until Feb. 5/06. Clmt then couldn't make it in until March 22/04 because of her exam schedule and her and the chiro's hours did not correlate.

The case manager requested Dr. Russell Baron, Chiropractic Consultant to MPIC's Health Care Services Team, to comment on the relationship between the Appellant's chiropractic treatments and the motor vehicle accident in question. In an Inter-departmental Memorandum to the case manager, dated April 27, 2004, Dr. Baron stated:

After reviewing the information on file including an x-ray report for the cervical spine, it is my opinion that the current file contents are insufficient to form a probable cause/effect relationship between the current necessity for care and the motor vehicle accident in question.

In this Memorandum the case manager reports that she spoke to the Appellant and advised her that her MPIC file had been reviewed by a consultant with MPIC's Health Care Services and, as a result, MPIC was unable to approve any funding for the treatments. The case manager further reports that the Appellant informed her that she disagreed with this decision and advised that she would appeal this decision.

In this Memorandum the case manager also stated that she spoke to Dr. Tapper and advised him of MPIC's decision. Dr. Tapper wished to know why a decision had been made and the case manager explained that MPIC needed to establish a causal relationship and was unable to do so. Dr. Tapper requested the consultant's name and telephone number.

Dr. Baron provided an Inter-Departmental Memorandum to the case manager, dated April 30, 2004 and stated:

At Dr. Tapper's request, I re-reviewed this file as it relates to causation. After reviewing the file again, and taking into consideration the circumstances surrounding the presentation to the chiropractor, it remains my opinion that the current objective file contents do no (sic) support a clear relationship between the current necessity for care and the motor vehicle accident in question.

A review of the x-ray reports submitted by Dr. Kremer reveals, in his opinion, minor osteophytic lipping, as well as a straightened cervical lordosis with a gravity line slightly to the anterior. It is my opinion that these x-ray findings are not pathognomonic of motor vehicle-related injuries and as such, do not aide in a determination of causation.

On May 18, 2004 the case manager wrote to the Appellant and stated:

The Initial Health Care Report, as well as your entire medical file has been reviewed with our Health Care Services Team. The medical information reviewed, indicates that there is insufficient evidence to support a causal relationship between your current signs and

symptoms and the motor vehicle accident of September 17, 2003. Therefore, we are unable to approve funding of the requested chiropractic treatment.

The Appellant sought an Internal Review of the case manager's decision. In her Application for Review the Appellant made a number of submissions including the following:

1. She commented on the fact that she was being told that she had waited too long to seek professional help. She noted that as a full-time university student she was reading a lot with her head in a downward-tilted position and commented that when the pain first started she attributed the discomfort to her having to read a lot in her studies. To alleviate the pain, she used ice packs and purchased a book stand but in the end these did not help.
2. She also noted that she has a high pain threshold and this was a further reason why there was a delay between onset of the symptoms and her going to a doctor. By December, the pain was sufficiently bad that she consulted the chiropractor.
3. She noted that the case manager, in an attachment to the decision letter, commented on the lack of damage to her motor vehicle. The Appellant pointed out that she had said that there was no damage that she could see except some paint marks on the bumper. She further commented that she had been told later, by a relative who is a mechanic, that she should have had her motor vehicle inspected since the bumper on a vehicle is designed to absorb impact and that if her motor vehicle had been examined by a trained professional, likely it would have been noted that the bumper was indeed damaged and required replacement.
4. On the day of her appointment with Dr. Tapper, the gas lines in [text deleted], where she lives, froze and the Appellant had to cancel the appointment. She did attend with Dr. Tapper February 5, 2004, just a couple of weeks after the first appointment.

5. The Appellant noted that the x-ray showed an altered lordic curve in the neck and commented that this is consistent with whiplash, adding that it is documented that even slow speeds such as 5 kms per hour, due to the weight of the head (14 lbs) being thrown forward, a neck can be injured. The altered lordosis she claims, supports that a whiplash injury had occurred.
6. The Appellant pointed out that they were both wearing seatbelts and that it is a fact that her passenger was injured.

Internal Review Officer's Decision

The Internal Review hearing took place on August 10, 2004. The Internal Review Officer wrote to the Appellant on August 12, 2004 confirming the case manager's decision and rejecting the Appellant's Application for Review. In her decision the Internal Review Officer acknowledged the Appellant's concerns, reviewed the reports of Dr. Baron and noted that in his opinion the x-ray findings are not symptomatic or characteristic of motor vehicle accident-related injuries and, as a result, do not aid in a determination of causation. The Internal Review Officer, after referring to Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94, further stated:

Since the medical information on your file does not establish that your current signs and symptoms resulted from your motor vehicle accident of September 17, 2003, chiropractic care as requested has not been established as being medically necessary as a result of same. As such, I must confirm your Case Manager's decision.

The Appellant filed a Notice of Appeal dated November 12, 2004.

Appeal

The relevant provisions of the MPIC Act and Regulations in respect to this appeal are:

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;

Prior to the appeal hearing, Dr. Baron provided an Inter-Departmental Memorandum to MPIC's legal counsel dated June 15, 2005. In this report Dr. Baron indicates that he reviewed the entire MPIC medical file, including the documentation from Dr. Tapper, as well as the Appellant's letter. In this Inter-Departmental Memorandum Dr. Baron states:

With the x-ray findings described as slightly (sic) straightened cervical spine lordosis. This is a finding that is very common in the general population independent of cervical trauma. It is not a finding that is pathognomonic of any particular incident and although it is not uncommon to find straightened cervical lordosis following motor vehicle collisions it is certainly not a finding that is exclusively found in the claimants with whiplash type injuries.

With respect to the positive findings, again a positive cervical Kemp's test as well as limited range of motion are consistent with a patient with neck pain and are not pathognomonic of someone suffering from a cervical spine whiplash injury. They are commonly, independent of any specific trauma found in those patients with neck pain be it acute or chronic.

With respect to the surface EMG findings and thermography findings. The current literature does not support these instruments as being helpful in determining cause/effect relationships.

And finally with respect to the onset of the symptoms. I am only able to comment on the objectifiable file information which consists only of a report dated February of 2004 nearly 5 months post motor vehicle collision.

With the above in mind, it is my opinion that given the length of time between the motor vehicle collision and first presentation for care as well as the non specific cervical spine findings including x-rays, the current file contents do not provide evidence to suggest that there is a probable relationship between the motor vehicle accident and the necessity for care. None of the findings noted on the Initial Health Care Report including the x-ray findings are pathognomonic [of] cervical spine trauma, let alone a whiplash injury specifically. Most of the findings could be found in the patient population who present with neck pain, be that neck pain post traumatic or in fact chronically repetitive such as one might expect with sustained forward head posture. In short the file contents do not provide convincing evidence of a probable relationship.

The appeal hearing was held on August 10, 2005. The Appellant appeared on her own behalf and Mr. Morley Hoffman represented MPIC. Dr. Richard Tapper was called as a witness by the Appellant and gave the following testimony:

1. That he had a booth at the [text deleted], December 3, 2003, to inform members of the university community about chiropractic care and his chiropractic services. He met the Appellant at this booth when she came up and asked some questions about chiropractic, her headaches and the pain in her neck and shoulders. They agreed she could benefit from an examination. An appointment, he continued, was set for January but had to be cancelled due to the gas lines freezing in [text deleted].
2. Dr. Tapper examined the Appellant on February 5, 2004. He did a physical examination, had x-rays, a surface EMG and thermograph completed. He also took a personal history from the Appellant.
3. The x-ray and physical examination indicated “altered lordosis”, which Dr. Tapper described as a straightening of the neck and noted that a straightened neck is consistent with Delayed Onset Whiplash Associated Disorder. He noted that the positive Kemp’s test, limited range of movement in the neck and shoulders, as

well as the timing of the onset of the symptoms, which the history revealed began two weeks following the motor vehicle accident, supported this diagnosis.

Dr. Tapper further testified that:

1. the altered lordosis, the Kemp's test and any other tests he completed with the Appellant were not, in themselves, indicative of an accident or any other cause.
2. the Appellant's history was critical in his determination that there was a causal connection between the Appellant's complaints of pain to her neck and shoulders and the motor vehicle accident in question.

In cross-examination, Dr. Tapper was asked about the lack of damage to the Appellant's vehicle and Dr. Tapper pointed out that the amount of damage to the vehicle was not conclusive as to the nature and degree of the Appellant's injury and that this injury depended upon many factors, including the type of vehicle involved in the accident and other factors. Dr. Tapper further testified that in his view the Appellant suffered an injury to her neck and shoulders as a result of the motor vehicle accident and it was therefore necessary for the Appellant to receive chiropractic treatment for this injury.

The Appellant also called N.S., who was a passenger in the Appellant's vehicle at the time of the accident. N.S. testified that:

1. they were stopped at a red light when the Appellant said that they were about to be hit;
2. the collision was not very hard, but hard enough to scare her and make her scream;

3. the Appellant's motor vehicle did not move forward when hit and explained that she felt that this was because the Appellant had the brakes on.
4. the impact, she noted, "jerked her forward".

She further testified that:

1. the Appellant got out of her motor vehicle and went to the van that had hit them;
2. the Appellant returned and told her to call the police as the Appellant thought the driver of the van was drunk and, as a result, she called the police on her cell phone;
3. because she explained that because she felt some pain in her back the Appellant took her to the hospital;
4. she received physiotherapy for her injuries and is now completely recovered.

N.S. further testified that the date of the accident was September 17, 2003. When she was asked by a member of the Commission panel how she remembered that date she explained that she kept a journal and had noted the date of the motor vehicle accident in her journal. She also testified that several weeks after the accident the Appellant advised her that she was experiencing neck and shoulder pain, as well as headaches.

The Appellant also testified at the hearing and described the motor vehicle accident wherein her stationary vehicle was struck from the back by another motor vehicle. She further testified that:

1. just before impact she saw the van approaching behind her from a side street and was aware that a collision was going to take place.

2. she braced herself against the steering wheel with her hands, put both feet on the brake and prepared for the impact;
3. the impact was hard enough to throw her forward;
4. the damage to her motor vehicle was limited to some paint marks on the bumper of her motor vehicle;
5. because her motor vehicle was old, she did not feel it was important to have it inspected.

The Appellant further testified that:

1. she did not feel any symptoms or injuries immediately following the accident but did start to feel sore approximately two (2) weeks after the accident, eventually developing headaches as well;
2. she did not equate the symptoms with the accident but thought perhaps the pains were caused by the fact that she was studying a lot at the time;
3. for this reason she bought a bookstand, which, in the end, did not alleviate her symptoms;
4. she noted that she did have at that time “tons of other stresses”, including her family responsibilities which included her [text deleted] year old son, along with dealing with the difficulties faced by [text deleted] boys;
5. even though the pain did not subside, still she did not go to a doctor;
6. she did not like going to the doctor, or taking pills, and in any case, she stated that she had a high pain threshold;
7. she admitted that with hindsight this was not sensible but that it was the way she had been raised;
8. throughout this time, she did not miss attending at university.

The Appellant further testified that:

1. by chance she saw Dr. Tapper's booth at the University one day in December 2003 when leaving class and decided, on the spur of the moment, to talk with him about her headaches and neck and shoulder pain.
2. Dr. Tapper, who is a Chiropractor, first related her symptoms to her motor vehicle accident and suggested that she put in a claim with MPIC.
3. Dr. Tapper also pointed out to her a slight lump on the back of her neck and explained that this is a result of the straightening of the neck.
4. Dr. Tapper's chiropractic treatments were very beneficial in reducing the pain to her shoulders and neck and, as a result of these treatments she felt much better.
5. the small lump on her neck was now gone.

In her submission to the Commission, the Appellant freely admitted that she had been stupid not to have gone to a doctor sooner. She pointed out that prior to the motor vehicle accident she had not had headaches and pains to her neck and shoulders similar to the pain she suffered subsequent to the motor vehicle accident. She also noted that she had had a full physical when commencing work for [text deleted] in 1977 and that examination revealed no problems. She further submitted that since the symptoms first appeared two (2) weeks after the accident, together with Dr. Tapper's diagnosis, supported her argument that the accident had a causal relationship with the symptoms.

The Appellant therefore submitted, for these reasons, the appeal should be allowed and she should be entitled to reimbursement in respect of the chiropractic treatments.

MPIC's legal counsel submitted that:

1. Dr. Baron's medical opinions should be accepted by the Commission in preference to the medical opinion of Dr. Tapper and, as a result, the Internal Review Officer, who relied primarily on Dr. Baron's medical opinions, was justified in his decision to dismiss the Appellant's Application for Review;
2. the Appellant's symptoms in respect of the neck and shoulder pain did not appear immediately following the accident;
3. the Appellant delayed in obtaining treatment for the symptoms after they appeared and her explanation for the delay should be rejected;
4. the motor vehicle accident was minor in nature and therefore could not have caused the alleged motor vehicle accident injuries;
5. since the Appellant was a university student the probable cause of the Appellant's neck and shoulder pain resulted from sustained reading with her head bent forward while she was studying;
6. Dr. Baron's medical opinions, as set out in his medical reports of April 27 and April 30, 2004 and June 15, 2005 clearly established that there was no causal connection between the Appellant's complaints to her neck and shoulders and the motor vehicle accident.

MPIC's legal counsel therefore submitted that:

1. the Appellant has failed to establish, on a balance of probabilities, that the chiropractic treatments in question were medically required pursuant to Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94.
2. the appeal should be dismissed and the decision of the case manager, dated August 12, 2004, confirmed.

Discussion

The issue for determination by the Commission is whether the Appellant has established, on a balance of probabilities, that her symptoms of neck and shoulder pain, for which she received chiropractic treatments from Dr. Tapper, are related to the motor vehicle accident which had occurred on September 17, 2003.

The Commission notes that:

1. Dr. Baron, MPIC's chiropractic consultant, in his two brief reports dated April 27 and April 30, 2004, and in his narrative report dated June 15, 2005, states that the medical documentation in the Appellant's MPIC file was not sufficient to support a clear cause and effect relationship between the symptoms and the motor vehicle accident.
2. however, Dr. Baron also comments in his June 15, 2005 report that this medical information is "rather sparse".
3. Dr. Baron, in arriving at his opinion, conducted a paper review of the documentation on the Appellant's file and at no time personally examined the Appellant and, therefore, did not obtain the Appellant's history in respect of her symptoms and was not in a position to assess her credibility.
4. Dr. Baron was not in a position to express an opinion in relation to the onset of the Appellant's symptoms.
5. in his June 15, 2005 report he states:

. . . with respect to the onset of the symptoms. I am only able to comment on the objectifiable file information which consists only of a report dated February of 2004 nearly 5 months post motor vehicle collision.

6. in this report Dr. Baron further states that in respect of the symptoms generally, the altered lordosis, the positive Kemp's test and the limited range of motion diagnosed by Dr. Tapper, "Most of these findings could be found in the patient population who present with neck pain, be that neck pain post traumatic or in fact chronically repetitive such as one might expect with sustained forward head posture."
7. however, Dr. Baron, in this report, does clearly acknowledge that "it is not uncommon to find straightened cervical lordosis following motor vehicle collisions".

Dr. Tapper, on the other hand, did examine the Appellant personally and treated her over a long period of time. Dr. Tapper, unlike Dr. Baron, obtained an oral history of the Appellant in respect of her symptoms and unlike Dr. Baron was in a position to assess the Appellant's credibility.

Dr. Tapper testified that:

1. in his view it is important for all doctors to take and rely on a patient's history.
2. in arriving at his diagnosis he relied on the history relayed by the patient.
3. the symptoms experienced by the Appellant, as well as her medical condition and the altered lordosis, could have causes other than the motor vehicle accident.
4. however, when the medical record is reviewed in the context of the onset of the symptoms and the medical history of the Appellant, the conclusion that a causal relationship exists between the motor vehicle accident and the symptoms is a compelling one.

Although Dr. Baron rejects that there is a connection between the Appellant's symptoms and the motor vehicle accident, he does acknowledge that it was not uncommon to find straightened cervical lordosis following motor vehicle collisions. Dr. Tapper, who was in a position to assess

the Appellant's credibility, determined that, having regard to the Appellant's history and her symptoms, there was a causal relationship existing between the motor vehicle accident and the Appellant's symptoms. For these reasons the Commission gives greater weight to Dr. Tapper's medical opinion in respect of the issue of causation than it does to the medical opinion of Dr. Baron.

MPIC's legal counsel submitted that because the Appellant delayed seeking medical treatment in respect of her complaints of shoulder and neck pain, the Appellant failed to establish these complaints were caused by the motor vehicle accident.

The Commission found that the Appellant was an impressive witness who was very candid in acknowledging her mistake in failing to seek medical treatment in respect of her neck and shoulder problems and accepts her explanation as to the onset of her headaches and neck and shoulder pain and her explanation as to why she did not seek medical attention in a timely fashion.

It was suggested by counsel for MPIC that the symptoms could have been caused by sustained reading with the head bent forward. In her testimony the Appellant first thought that this may have been the cause and used ice packs to alleviate the pain and purchased a book holder to change her posture while reading, but these actions were not successful. She also pointed out in her testimony that this was her second year of university and that she had not experienced these sort of symptoms in her first year, even though she had to work harder in her first year being new to the demands of a university education. The Commission finds that the Appellant's explanation that the sustained reading required by her as part of her attendance at university was

not a probable cause of her symptoms was reasonable, and the Commission accepts her explanation.

Counsel for MPIC also suggested that since the Appellant's vehicle was not damaged or moved forward as a result of the motor vehicle accident collision, it was unreasonable to conclude the Appellant was injured in the motor vehicle accident. However, the Commission rejects MPIC's legal counsel's submission in this respect. The Commission finds that the impact of the collision on the Appellant's motor vehicle, while not severe and did not result in the Appellant's vehicle moving forward or being damaged, was sufficiently powerful to have injured the Appellant. The Commission notes that the Appellant's passenger was in fact injured and required physiotherapy for those injuries. It is therefore not improbable in these circumstances that the same impact would have injured the Appellant who was sitting beside her injured passenger in the motor vehicle accident.

The Appellant's testimony in respect to the issue of causation and the medical need for chiropractic treatments for the injuries she sustained in the motor vehicle accident is corroborated by Dr. Tapper. The Commission finds that the Appellant's testimony in respect of these issues is credible and accepts her testimony on all material issues in this appeal.

The Commission determines that the Appellant has established, on a balance of probabilities, that the symptoms for which Dr. Tapper treated the Appellant were as a result of the motor vehicle accident of September 17, 2003. The Commission further finds that the chiropractic treatments provided by Dr. Tapper were medically required as a result of the motor vehicle accident of September 17, 2003. As a result, MPIC was required to fund the chiropractic treatments provided by Dr. Tapper pursuant to Sections 136(1) of the MPIC Act and Section 5 of

Manitoba Regulation 40/94. The Commission therefore allows the Appellant's appeal and rescinds the Internal Review Officer's decision dated August 12, 2004.

Dated at Winnipeg this 14th day of September, 2005.

MEL MYERS, Q.C.

BARBARA MILLER

HONOURABLE WILFRED DE GRAVES