



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by G.F.**  
**AICAC File No.: AC-02-150**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Deborah Stewart  
Dr. Patrick Doyle

**APPEARANCES:** The Appellant, G.F., was represented by J.F.;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Kathy Kalinowsky.

**HEARING DATE:** November 8, 2005

**ISSUE(S):** Entitlement to chiropractic treatment benefits

**RELEVANT SECTIONS:** Section 136(1) 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

The Appellant, G.F., was injured in a motor vehicle accident on December 4, 2001. As a result of his injuries, the Appellant was in receipt of Personal Injury Protection Plan ('PIPP') benefits, including chiropractic treatment administered by his chiropractor, Dr. Desmarais. Following a recommendation by a third party chiropractic examiner, Dr. William Rothman, on June 21, 2002, the Appellant's case manager wrote:

This is in response to Dr. Desmarais' request for further treatment as outlined in his treatment plan report dated May 8, 2002.

We have also received Dr. William J. Rothman's Third Party Examination Report dated June 21, 2002.

Both reports, as well as your entire medical file, have been reviewed by our Health Care Services Team. The medical information on file indicates that you have not recognized any significant progress through the seven months of care, to date. Based on this information, it is unlikely that a favourable outcome can be attained in a timely manner through a continuation of passively weighted care. As such, this care can no longer be considered "medically required."

We will approve further treatment as follows:

- 1 treatment for 4 weeks for the purpose of providing specific exercises in stretching and strengthening

Should symptoms persist to a significant degree beyond the anticipated discharge from care, alternate forms of management could be discussed with your family physician.

The Appellant sought an internal review of this decision. On August 30, 2002, the Internal Review Officer for MPIC upheld the case manager's decision. The Internal Review Officer found that Dr. Rothman's recommendations were consistent with recommendations made by MPIC's chiropractic consultant, Dr. Russell Baron. The Internal Review Officer stated:

Your letter is quite critical of Dr. Rothman. Nevertheless, Dr. Rothman's point that you have made no significant progress through seven months of treatment seems very well founded, as is his conclusion that you have "reached the upper limit of any therapeutic benefit that can be obtained through [your] present course of chiropractic care."

The Internal Review Officer found that there was no medical requirement to continue with care that no longer provides therapeutic benefit and denied the Application for Review.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

### **Submissions**

On behalf of the Appellant, it was submitted that he wants to get well and is looking for ways to

resolve the problem. He firmly believes that chiropractic care is the answer and that he obtains relief from it.

The Appellant noted that Dr. Rothman only saw him for one (1) hour following which the chiropractor concluded that he had made only minimal progress with Dr. Desmarais' treatment. Dr. Baron, MPIC's chiropractic consultant, never saw the Appellant, and only did a paper review.

The Appellant submitted that it is his firm belief that chiropractic treatment will help him, although nobody can say how long this will take. Although the chiropractic treatments are working slowly, the Appellant still feels he needs them, and that MPIC should pay for these treatments.

Counsel for MPIC reviewed the documentary evidence on file, including the reports from Dr. Desmarais, Dr. Rothman and Dr. Baron. She submitted that clinical tests (for range of motion and other factors) performed upon the Appellant showed very little improvement over time. Some areas showed no improvement at all, leaving the Appellant's condition essentially unchanged. Given that it is the natural history of soft tissue injury such as that suffered by the Appellant to heal itself over time, the Appellant has not met the onus of showing that further chiropractic treatments would provide therapeutic benefit and are medically required.

### **Discussion**

The onus is on the Appellant to show that further chiropractic treatment is medically required in accordance with the Act and Regulations:

**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.

**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 panel has considered whether the Appellant has demonstrated objective measures of improvement to establish that chiropractic care beyond that which was approved is a medical necessity.

There is very little medical information before the panel regarding the period between July 2002 and April 2005. However, even the assessment of the Appellant conducted by Dr. Desmarais and reported in his letter of April 4, 2005, shows minimal improvement. The Appellant testified that he suffers pain and headaches daily, and that these are only somewhat temporarily relieved by home exercises and weekly chiropractic treatments. In fact Dr. Desmarais noted, on December 3, 2004, that “It is acknowledged that [G.F.’s] headaches are persistent”.

This conclusion is further supported by the Appellant’s testimony at the hearing that he suffers from daily symptoms.

Accordingly, the evidence before the Commission does not support continued chiropractic benefits. We find that there was minimal, if any improvement in the Appellant's condition as a result of chiropractic treatment. The Appellant has failed to demonstrate to the panel that there has been an improvement in his condition, attributable to chiropractic care, and not, as submitted by counsel for MPIC (and supported by the opinion of Dr. Baron) attributable simply to the passage of time.

The case manager, in her decision of July 2, 2002, noted the possibility of alternate forms of care:

Should symptoms persist to a significant degree beyond the anticipated discharge from care, alternate forms of management could be discussed with your family physician.

The Internal Review Officer, in his decision dated August 29, 2002, supported this position:

The decision under Review is confined to your entitlement to benefits for chiropractic treatments. The letter attached to your Application complains that there has been a decision to "terminate my claim." That is not the case. The decision invites you to discuss "alternate forms of management" with your family physician. No one has decided that any of those "alternate forms of management" fall outside the coverage provided by Manitoba Public Insurance. Please consult your case manager on this issue.

Accordingly, while the panel has concluded that further chiropractic care is not medically required as it does not provide therapeutic benefit to the Appellant, the options discussed by the case manager and Internal Review Officer for alternate treatment may remain open to the Appellant. He may wish to consider consulting with his family physician to seek further assessment and identify potential alternative forms of treatment. However, we are of the opinion that MPIC was justified in terminating payments for further chiropractic treatments for the Appellant as it did.

As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date August 29, 2002.

Dated at Winnipeg this 1<sup>st</sup> day of December, 2005.

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**LAURA DIAMOND**

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**DEBORAH STEWART**

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**DR. PATRICK DOYLE**