



## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.S.  
AICAC File No.: AC-03-57

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms Diane Beresford  
Dr. Patrick Doyle

**APPEARANCES:** The Appellant, J.S., was represented by Mr. Randall Horton;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Dianne Pemkowski.

**HEARING DATE:** December 1, 2005

**ISSUE(S):**

1. Entitlement to chiropractic treatment benefits beyond October 7, 2002;
2. Entitlement to reimbursement for costs incurred for massage therapy dispensed by a massage therapist;
3. Entitlement to permanent impairment award for leg length discrepancy as it relates to the Appellant's soft tissue injuries.

**RELEVANT SECTIONS:** Section 127 of The Manitoba Public Insurance Corporation Act ('MPIC Act'); Regulation 40/2000; Sections 5 and 8 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

J.S. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on November 8, 2000 and sustained whiplash type injuries to her neck, shoulders and back, with radiating pain to her hips and legs. The Appellant advised MPIC that she had been involved in several previous accidents within the last seven (7) or so years and, as a result, had ongoing neck

and back problems prior to the most recent November 8, 2000 accident. In respect of these injuries the Appellant attended at the offices of Dr. Feasey and these chiropractic treatments were funded by MPIC.

### **1. Entitlement to chiropractic treatment benefits beyond October 7, 2002**

At the request of MPIC, Dr. R. Baron, Chiropractic Consultant to MPIC's Health Care Services Team, reviewed the Appellant's medical file and advised MPIC in a Memorandum dated September 11, 2002 that the ongoing chiropractic care was unlikely to have any further therapeutic effect and concluded that such care was not a therapeutic necessity. As a result, the case manager forwarded a letter to the Appellant dated October 7, 2002 advising her that MPIC would no longer fund chiropractic treatments.

The Appellant made Application for Review of the case manager's decision and an Internal Review hearing was held on December 11, 2002. The Appellant advised the Internal Review Officer that she taught business at the [text deleted] and that she needed chiropractic treatment once a week to enable her to walk. The Appellant further indicated, in her view, these treatments were medically required. Following this hearing the Internal Review Officer wrote to Dr. Baron and advised him of the Appellant's concerns expressed at the hearing. Dr. Baron replied by Memorandum dated December 19, 2002 confirming his earlier opinion.

### **Internal Review Decision**

The Internal Review Officer issued his decision on February 19, 2003 confirming the decision of the case manager and dismissed the Application for Review. In his decision the Internal Review Officer stated:

There are two conditions, which must be met before MPI becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:

1. the expenses must be incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the *Act* (copy enclosed); and
2. the treatment must have been “medically required” in accordance with Section 5 of Manitoba Regulation MR P215-40/94 (copy enclosed).

The Clinical Guidelines for Chiropractic Practice in Canada indicate that, in complicated cases, a failure to show additional improvement over any period of six weeks of treatment should result in the patient being discharged, or being referred to another practitioner to try another form of therapy. The repeated use of acute care measures is not condoned.

There is no indication in the Treatment Plan Reports from Dr. Feasey that your condition has improved to any appreciable degree in spite of the fact that you have attended for chiropractic treatments once a week for approximately one and one-half years, and twice a week for months before that.

In the circumstances, I am satisfied that the treatments you are continuing to receive are no longer “medically required” within the meaning of the PIPP legislation and that MPI has no further obligation to provide funding for those treatments.

### **Appeal**

The Appellant filed a Notice of Appeal and the hearing before the Commission took place on December 1, 2005. The Appellant testified that she had taught business at the [text deleted] and that she needed chiropractic treatment once a week to enable her to walk and disagreed with MPIC’s position that the medical treatments were not medically required. The Appellant acknowledged to the Commission that these chiropractic treatments did not improve the Appellant’s health but were essential for her to maintain her normal activities of life and in particular her ability to attend at work.

MPIC’s legal counsel submitted that the testimony of the Appellant and the medical evidence demonstrated that the chiropractic treatments were not medically required.

### **Decision**

The Commission finds that the Appellant has not established, on a balance of probabilities, that at the time MPIC terminated the funding for the Appellant's chiropractic treatments on October 7, 2002 that the treatments were medically required in accordance with Section 5 of Manitoba Regulation 40/94. The Commission determined:

1. Dr. Baron was correct in determining that the chiropractic treatments the Appellant received well exceeded guidelines provided by the Clinical Guidelines for Chiropractors in Canada;
2. the chiropractic treatments provided by Dr. Feasey did not demonstrate an improvement in the medical condition of the Appellant despite having attended chiropractic treatments once a week for approximately one and one-half (1 ½) years and twice a week for months before that.

For these reasons the Commission dismisses the Appellant's appeal and confirms the Internal Review Officer's decision dated February 19, 2003 in respect of chiropractic treatment.

### **2. Entitlement to reimbursement for costs incurred for massage therapy**

#### **dispensed by a massage therapist**

The Commission has reviewed all of the documentary evidence in respect to the request for reimbursement for costs incurred for massage therapy. For the reasons set out in the decision of the Internal Review Officer dated February 10, 2004 (which reasons are incorporated and form part of this decision as Schedule A), the Commission dismisses the Appellant's appeal and confirms the Internal Review Officer's decision dated February 10, 2004.

**3. Entitlement to permanent impairment award for leg length discrepancy  
as it relates to the Appellant's soft tissue injuries**

The Appellant was involved in her eighth motor vehicle accident on November 21, 2000. On this date the Appellant was the driver of a motor vehicle that was rear ended while Westbound on Broadway and, as a result of the accident, sustained soft tissue injuries to her neck and lower back with pain radiating to her right leg. In respect of the previous seven (7) motor vehicle accidents the majority of these accidents occurred where the Appellant was in a vehicle that was rear ended and, as a result, she suffered whiplash injuries.

The Appellant's request for entitlement for a permanent impairment award for leg length discrepancy as it relates to the Appellant's soft tissue injuries was dismissed by the case manager in a decision issued February 19, 2004. In this decision the case manager relied on the medical opinion of Dr. Shrom, Medical Consultant to MPIC's Health Care Services.

The Appellant applied to have the case manager's decision reviewed by an Internal Review Officer. On May 17, 2005 the Internal Review Officer issued a decision confirming the case manager's decision dismissing the Appellant's appeal.

**Appeal**

The Appellant filed a Notice of Appeal and the hearing took place before the Commission on December 1, 2005. The Appellant testified at this hearing and disagreed with the opinions of Dr. Shrom and Dr. Chris Adam and submitted that she was entitled to a permanent impairment award for the leg length discrepancy which related to the motor vehicle accident injuries she had sustained.

MPIC's legal counsel, in her submission, reviewed the medical reports of Dr. Shrom and Dr. Adam and submitted that the Appellant has failed to establish, on a balance of probabilities, that the various motor vehicle accidents the Appellant was involved in caused the Appellant's leg length discrepancy. As a result, MPIC was not obligated to provide her with a permanent impairment award.

### **Decision**

The Commission, after considering the testimony of the Appellant, and the submissions of both the Appellant's counsel and MPIC's counsel, for the reasons set out in the Internal Review Officer's decision dated May 17, 2005 (a copy of which is attached hereto and forms part of this decision and is marked Schedule B), that the Appellant has not established, on a balance of probabilities, entitlement to a permanent impairment award. The Commission therefore dismisses the Appellant's appeal and confirms the Internal Review decision dated May 17, 2005.

Dated at Winnipeg this 24<sup>th</sup> day of January, 2006.

---

**MEL MYERS**

---

**DIANE BERESFORD**

---

**DR. PATRICK DOYLE**