

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by R. D.  
AICAC File No.: AC-05-180**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson

**APPEARANCES:** The Appellant, R. D., was represented by D.M.;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Pardip Nunrha.

**HEARING DATE:** May 31, 2007

**ISSUE(S):** Entitlement to further chiropractic treatments

**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 essential facts in this appeal are succinctly set out in the Internal Review Officer's decision dated August 11, 2005 as follows:

1. On September 6, 2002, you were the driver of a vehicle involved in a two-vehicle collision at the [text deleted] and [text deleted] intersection in Winnipeg, Manitoba.
2. As a result of the accident, you sustained injuries to your right shoulder, neck, right hip, and left wrist.
3. Approximately six months following the accident in question, you began attending for chiropractic treatment with Dr. Allan Hawkins, D.C. Dr. Hawkins' report for examination date of March 3, 2003 advised of your marked restriction in cervical range of motion and cervical rotation. He observed significant dysfunction in the mid-cervical spine and bilateral sacroiliac junctions. Your neurological indications

were documented as normal. Dr. Hawkins diagnosed multi-site dysfunction in the spine with significant arthritic and general soft tissue inflammation.

4. On May 2, 2003, Dr. Hawkins provided a narrative report with the updated status of your injuries.

Dr. Hawkins advised you had attended for approximately six treatments and shown marked improvement in biomechanical dysfunction. He felt that continued weekly treatment for three months should suffice to obtain pre-accident status.

Dr. Hawkins noted your chronic body stiffness due to arthritis and soft tissue inflammation which was present prior to but aggravated by the accident.

5. Dr. Timothy Pethrick, a chiropractic consultant with Health Care Services, reviewed your file on May 27, 2003 and agreed Dr. Hawkins' proposed treatment plan was reasonable at a frequency of one treatment per week until the end of June, 2003.
6. On July 7, 2003, Dr. Hawkins advised you were pleased with your progress to date and agreed to continue with chiropractic treatment on a monthly basis for four months to confirm your prognosis. Dr. Hawkins noted your increase in movement and exercise as a contributing factor in your injury improvement.
7. A Treatment Plan Report dated December 4, 2003, noted subjective complaints similar to the previous report of July, 2003. Your chiropractor confirmed you had not followed the treatment plan as recommended in July, 2003.

Dr. Hawkins indicated that long term adjustments were not recommended, however, he suggested continued care for an additional two months to confirm your previous response to chiropractic treatment.

8. Dr. Pethrick reviewed your file again on January 13, 2004 and, following discussion with your case manager, a further course of an additional two months of treatment was approved for funding as recommended by your chiropractor.

The Commission notes that two (2) further Treatment Plan Reports were provided by Dr. Hawkins to the case manager, who submitted these Treatment Plan Reports to Dr. Pethrick, MPIC's Chiropractic Consultant, for his review.

In a Memo to the case manager, dated September 28, 2004, Dr. Pethrick stated:

**Injury Information:**

- March 24/03 – pain in right upper back and neck with daily h/a; pain in right hip, left arm (forearm and wrist); diagnosed as dysfunction in spine (multi-site) with significant arthritis and general soft tissue inflammation
- July 3/03 – daily pain in right hip and sacroiliac joint with less severity
- Dec 4/03 – similar to previous reports of July 3/03 – definite improvement on motion and pain with more regular car (sic); increase in sacroiliac dysfunction, however systemic arthritis
- May 17/04 – sharp LBP, right hip pain
- July 27/04 – LBP, right hip pain, patient is 50% better

**Treatment Information:**

- Attended for 34 tx over the 2 year period

**Question/Opinion:**

Based on the updated medical information, do you feel that continuing chiropractic treatments at the frequency/duration recommended by Dr. Hawkins would be medically required to return my claimant back to maximum medical improvement or that clmt has reached a plateau and MTB at this time?

Sep 28/04

There is no evidence of improvement in the most recent 2 TPR's. In balance of probabilities, claimant is at MTB. Further care would not be considered medically required.

The Commission notes that the Treatment Plan Report provided by Dr. Hawkins to MPIC, dated August 15, 2004, provided for chiropractic treatments to the Appellant every one (1) or two (2) weeks for eight (8) weeks.

**Case Manager's Decision**

The case manager wrote to the Appellant on September 30, 2004 and stated:

. . . This letter will confirm your entitlement to further chiropractic treatments following Dr. Hawkins' request as outlined in the treatment plan report dated August 15, 2004.

That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information on file indicates that you have reached a plateau in your recovery and that additional chiropractic treatment is not a "medical necessity". Therefore, Manitoba Public Insurance will not consider the cost of further treatment effective from the date you receive this letter.

We base our decision on Section 5(a) of Manitoba Regulation 40/94, a Regulation under the Manitoba Public Insurance Corporation Act that reads as follows:

**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 Appellant made Application for Review of this decision on November 8, 2004 and stated:

I would like to have the opportunity to have my Injury Claim reviewed, as I am still in pain and chiropractor treatments will improve my quality of life.

I will be sending you further information regarding my injury claim.

**Internal Review Officer's Decision**

The Internal Review Officer conducted a review in respect of the Appellant's Application for Review and issued a decision dated August 11, 2005 confirming the case manager's decision and rejecting the Appellant's Application for Review. The Internal Review Officer, in her decision dated August 11, 2005 stated:

**DISCUSSION AND RATIONALE FOR DECISION**

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

1. The expenses must have been incurred because of the accident (i.e. treatment must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the Act (copy enclosed);
2. The treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation 40/94 (copy enclosed).

One of the key considerations in determining whether the requested treatment is of "medical necessity" is whether there is any likelihood that it will lead to a demonstrable

improvement in the condition of the patient. The medical reports on your file do not indicate that your condition has improved to any appreciable degree in spite of the fact that you have attended approximately 36 chiropractic treatments in the first two years following the motor vehicle accident.

Considering the passive therapy you have undergone since the accident, it is highly unlikely that further chiropractic care will result in any sustainable improvement. The medical documentation on the file does not support that further advances in recovery are being recognized with this modality of treatment.

I agree with Dr. Pethrick, who advises you have reached maximum therapeutic benefit with respect to chiropractic care. In my opinion, further chiropractic treatment would be an elective undertaking and not of “medical necessity” within the meaning of the PIPP legislation.

No basis has been shown for interfering with the decision under review. Accordingly, the decision terminating funding for chiropractic treatment is confirmed.

### **Application for Review**

The Appellant appealed the decision in a letter to the Commission dated October 7, 2005:

- 1) I strongly disagree with the allegation asserted by the chiropractic consultant at M.P.I. that I have reached a plateau in my chiropractic treatments and I would like to continue further sessions to improve my deteriorating health.
- 2) As a direct result of the impact of the collision I sustained injuries to my neck, right shoulder, back, right hip and left wrist which has left me with the conditions of chronic pain, stiffness and decreased mobility.
- 3) With respect to my physician’s report (Dr. Hawkins) dated March 3, 2003 his findings indicated a marked restriction in my cervical range of motion and cervical rotation including significant dysfunction in the mid-cervical spine and bilateral sacroiliac junctions. In addition, the accident further aggravated soft tissue inflammation and body stiffness (completed report on file at M.P.I. dated March 3, 2003).
- 4) In accordance with section 136(1)A of the Manitoba Public Insurance Corporation Act (“The Act”) and Manitoba Regulation 40/94, I am requesting that the Commission approves the necessary physiotherapy rehabilitation treatments in order for my health conditions to improve in the near future. Further, under section 5 of the Manitoba Regulation 40/94 it states in part that one of the critical considerations in determining whether the requested treatment is of “medical necessity” is whether there is any likelihood that it will lead to a demonstratable (sic) improvement in the condition of the patient.

## Appeal

The relevant provisions of 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;

### **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;

(b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

## Discussion

The Appellant, in his testimony to the Commission, stated that:

1. he never recovered from the injuries he sustained in the motor vehicle accident of September 6, 2002.
2. Dr. Hawkins' chiropractic treatments reduced the amount of pain he suffered as a result of the motor vehicle accident injuries and sustained his quality of life.
3. he was now in the process of collecting medical information in respect of problems he was having to his neck, back and hip, and would be providing reports in due course.
4. he recognized that the only reports that had been filed with the Commission related to

the reports that MPIC received from Dr. Hawkins in May and August of 2004 and that he had not filed any other medical reports with MPIC in respect of his injuries.

5. notwithstanding the lack of medical reports, he requested that the Commission order MPIC to fund the cost of physiotherapy treatments since these treatments reduced the amount of pain he was suffering to his hip and back and these treatments maintained his quality of life.
6. he had obtained medical reports and was in the process of obtaining further medical reports but that he had not, as of the date of the appeal hearing, provided these reports to MPIC.
7. the Commission should order MPIC:
  - a) to fund all his future physiotherapy treatments;
  - b) refund the loss of income he suffered as a result of the motor vehicle accident injuries;
  - c) provide a permanent impairment award to him in respect of the permanent injuries he had suffered as a result of the motor vehicle accident.

### **Submissions**

D.M., in her submission to the Commission, reviewed the written submission that the Appellant had made to the Commission dated October 7, 2005 and argued that the Commission approve physiotherapy rehabilitation treatments in order improve the Appellant's health conditions which had been deteriorating. She further submitted that under Section 5 of Manitoba Regulation 40/94 the physiotherapy treatments were a medical necessity.

MPIC's legal counsel provided a written submission to the Commission, reviewing Section 5 and

Section 136(1)(a) of the MPIC Act, the chiropractic opinion of Dr. Pethrick dated September 28, 2004, as well as the case manager's decision dated September 30, 2004. Legal counsel submitted that the decision of the Internal Review Officer, dated August 11, 2005, was correct and that the Commission should confirm the Internal Review Officer's decision which found that:

1. the chiropractic reports on the Appellant's file did not establish that there had been an improvement in his medical condition after thirty-six (36) chiropractic treatments in the first two (2) years following the motor vehicle accident.
2. it was highly unlikely that further chiropractic care would result in any sustainable improvement.
3. further chiropractic treatments that the Appellant had initially requested were not a medical necessity within the meaning of Section 5 of Manitoba Regulation 40/94.
4. the Commission should dismiss the Appellant's appeal and confirm the decision of the Internal Review Officer.

### **Discussion**

The Commission notes that the only medical evidence in support of the Appellant's position was provided by Dr. Hawkins in his Treatment Plan Reports of May and August of 2004. The Commission further notes that Dr. Pethrick, MPIC's Medical Consultant, concluded that upon reviewing these Treatment Plan Reports there was no evidence of improvement in the Appellant's health. As a result, Dr. Pethrick found that, on the balance of probabilities, the Appellant was at the maximum therapeutic benefit and further care would not be considered medically required.

The Commission finds that the Appellant has not provided any medical evidence to contradict

Dr. Pethrick's chiropractic opinion. The Appellant submitted that he required physiotherapy treatments for the purpose of maintaining his quality of life but he did not provide any evidence that these treatments would improve his health in accordance with Section 5 of Manitoba Regulation 40/94. In these circumstances, the Commission gives greater weight to the chiropractic opinion of Dr. Pethrick than it does to the chiropractic opinion of Dr. Hawkins.

### **Decision**

The Commission therefore determines, having regard to the submissions of both the Appellant and Ms Mahoney, the submission of MPIC's legal counsel, and having reviewed the documentation on file, that the Appellant has failed to establish, on a balance of probabilities, that further chiropractic treatments were medically required in accordance with Section 5 of Manitoba Regulation 40/94. As a result, the Commission confirms the decision of the Internal Review Officer dated August 11, 2005 and dismisses the Appellant's appeal.

### **Appellant's Additional Requests**

During the course of the appeal, the Appellant advised the Commission that:

1. he was no longer seeking that MPIC fund chiropractic treatments but instead was seeking MPIC to fund all future physiotherapy treatments.
2. he was seeking loss of income payments from MPIC as a result of the motor vehicle accident injuries which prevented him from returning to work.
3. he was requesting that MPIC provide him with a permanent impairment award in respect of the permanent injuries he had sustained in the motor vehicle accident.

The Commission informed the Appellant that:

1. the Commission had no jurisdiction at this time to deal with these three (3) requests

because he had not filed an appeal in accordance with the provisions of the MPIC Act.

2. the Commission only had jurisdiction to deal with his request for the funding of chiropractic treatments since this was the only matter he had appealed in accordance with the provisions of the MPIC Act.
3. he may wish to consider making a new claim in respect of these requests to MPIC based on “new evidence” in accordance with the provisions of the MPIC Act.
4. MPIC would be required to consider the merits of this application.
5. having regard to the complexity of these matters, and the effluxion of time, he should consider obtaining assistance from either private legal counsel, or the Claimant Adviser Office or Legal Aid Manitoba.

Dated at Winnipeg this 27<sup>th</sup> day of June, 2007.

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**MEL MYERS, Q.C.**