

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.G.
AICAC File No.: AC-06-55**

PANEL: Ms Laura Diamond, Chairperson
Ms Leona Barrett
Ms Sandra Oakley

APPEARANCES: The Appellant, R.G., was represented by Ms Marcelle Marion of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: August 6, 2008

ISSUE(S): Entitlement to further funding for chiropractic benefits beyond April 29, 2005

RELEVANT SECTIONS: Section 136(a) 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 was injured in a motor vehicle accident on July 5, 2000. He sought treatment at the Pan Am Clinic, where he received physiotherapy treatments. Following another motor vehicle accident that year, the Appellant found the physiotherapy treatments were not providing sufficient relief, and sought treatment from a chiropractor.

He continued to see the chiropractor, Dr. Raizman, between October 2001 to April 29, 2005, for some three hundred (300) treatments.

On April 22, 2005, following receipt of a third party chiropractic assessment report from Dr. Rothman, the Appellant's case manager wrote to him to indicate there was insufficient evidence to support a causal relationship between his current signs and symptoms and the motor vehicle accident and that no further chiropractic treatment would be funded beyond April 29, 2005.

The Appellant sought an Internal Review of this decision. On January 30, 2006, an Internal Review Officer for MPIC concluded that, after reviewing Dr. Rothman's reports, the Appellant's current symptoms and complaints were not related to either of his motor vehicle accidents and therefore any need that he felt he had for chiropractic treatment would not be funded by MPIC. The case manager's decision was confirmed.

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

Evidence and Submission for the Appellant

The Appellant gave evidence at the hearing into his appeal. He described his work as a tax auditor for the Federal Government, which required him to travel fairly extensively each year. Prior to the motor vehicle accident, he had been in good health and could do whatever he wanted including tennis, walking or running. He had no pre-existing conditions or difficulties prior to the motor vehicle accident. He walked to work and used a car for work only when traveling. He had been wearing orthotics since 1980, which corrected a diagnosed arch problem with his feet.

Following his motor vehicle accident in July of 2000, the Appellant, who was touring and vacationing at the time, began to have problems with his knee. He was attending a computer show, which he had attended many times before, and found that after walking for about thirty (30) minutes, his knee would give out, or start to hurt and he would have to sit down.

The Appellant testified that although his physiotherapy treatments at Pan Am Clinic provided him with some temporary relief, they ultimately did not address the real cause of his problem. He was concerned that his knees were not getting better, with continued knee pain and locking. His back was tight, with restrictions in the rotation of his neck, and he did not have the ability to walk distances or to run.

In late 2001, the Appellant began to see Dr. Raizman, a chiropractor. Dr. Raizman reviewed x-rays and conducted an examination. He told the Appellant that his problems resulted from the twisting of his pelvis and that this had caused the gel at the top of his pelvis to wear away unevenly. This was causing all of his other problems, including the difficulties he was having with his knees.

The Appellant testified that chiropractic treatment brought him a lot more relief and more freedom of movement. At the beginning, he could still not walk very far, but the pain in his knees was less. Although his knees still locked up, over time he had stopped collapsing and his function improved incrementally.

The Appellant testified that by May 2003 he could walk three (3) or four (4) blocks at a normal pace, and if he walked slower he could do approximately six (6) blocks. He had started with three (3) chiropractic treatments a week, but then reduced that to one (1) treatment per week.

Although at one point, he was able to only go for treatment every three (3) weeks, this did not last and he had to increase his treatments to once every two (2) weeks.

The Appellant described a motor vehicle accident in which he was involved in May 2003, which he felt aggravated his existing injuries.

As well, he described the stress he was under due to the prolonged pain. This led him to ask MPIC for psychological counseling. As a result, the Appellant began treatment with a psychotherapist, Dr. Slusky, which he found helpful to re-establish self-control over his emotions and anger.

The Appellant understood that Dr. Raizman's initial estimate would take him back to eighty (80%) percent of his full pre-motor vehicle accident function. After he had been treated by Dr. Raizman and Dr. Slusky for a while, the Appellant hoped that he would achieve as high as ninety-five (95%) percent of his pre-motor vehicle function and that he would be able to bike and occasionally play golf or tennis.

The Appellant described his assessments with Dr. Rothman. He was not impressed with Dr. Rothman's process or his familiarity with his tools, and did not feel that he had been fairly assessed by Dr. Rothman.

In spite of Dr. Rothman's opinion that his continuing chiropractic care was not connected to the motor vehicle accident and MPIC's termination of his chiropractic treatment funding in April of 2005, the Appellant continued to see Dr. Raizman for treatment. He indicated that at the time MPIC funded treatment was terminated, he felt that his function had returned to approximately

eighty (80%) percent of his pre-motor vehicle accident function. In the last eight (8) months, he testified that his percentage of function was in the high eighties (80's). He was able to do trade shows, walk for an hour with fifteen (15) minute breaks for a full eight (8) hours, and had traveled to Hawaii and for work. He described his condition as holding steady and understood that there would be periods when he would see no appreciable improvement. He indicated that his latest discussion with Dr. Raizman had led him to the conclusion that his condition had perhaps now plateaued.

Counsel for the Appellant submitted that the documents on file and the testimony of the Appellant showed that continued chiropractic care for the Appellant was medically required and that his symptoms and complaints were caused by the motor vehicle accident. She noted that the Appellant had been an active individual prior to the motor vehicle accidents. He suffered a setback when physiotherapy did not help his condition and delayed the chiropractic treatment which ultimately helped him.

Counsel for the Appellant submitted that as early as May 2002, when the Appellant was examined by Dr. Craton, Dr. Craton recognized that the Appellant might have a permanent impairment and that he would require lifetime chiropractic care.

Counsel submitted that although the Appellant did undergo a high number of chiropractic treatments, these treatments did help him to progress from a state where he had only attained fifty (50%) to sixty (60%) percent of his pre-accident function to the eighty (80%) percent of function which he describes today. This was also assisted by his treatments from Dr. Slusky. She cited a report from Dr. Raizman dated June 10, 2005 which noted that the Appellant was

improving to his pre-motor vehicle state, that he had seen significant improvement in the last months and that he had not plateaued, but rather, had continued to improve.

She noted that Dr. Raizman was very clear in his opinion that the Appellant's symptoms were caused by the motor vehicle accident. MPIC's chiropractic care consultant did not take the position that the Appellant's injuries were not caused by the motor vehicle accident, but rather, seemed focused merely on the number of treatments which the Appellant had undergone. Counsel maintained that the number of treatments was not the issue. The test for whether treatments are medically required is whether the treatments are working and whether possible long term treatments were reasonable and had been established in the early stages of injury, as was the case with the Appellant where, early on in the recovery period, Dr. Craton had foreseen a long term requirement for treatment.

Counsel submitted that if a caregiver determines that a patient is a candidate for improvement to the ninety (90%) percent level of function, and that patient is motivated to reach such goals and work at such goals, MPIC should give him the opportunity to reach them. Counsel submitted that the Appellant should be compensated for the chiropractic treatments he has paid for to date and that, as his pelvis has not yet fully stabilized, MPIC should continue to fund further treatments for chiropractic care.

Evidence and Submissions for MPIC

Counsel for MPIC relied on an Inter-Departmental Memorandum provided by Dr. Russell Baron, chiropractic consultant to MPIC's health care services, and dated March 26, 2008. Dr. Baron noted that the Appellant had been under chiropractic care from October 2001 to April 2005. Counsel submitted that this was a significantly long period of time. In Dr. Baron's view, after

reading the Appellant's file, maximum therapeutic benefit had been reached from chiropractic care. Ongoing passive care could not be reasonably expected to have further results.

Counsel noted that although the Appellant had testified that he continued to improve with chiropractic care, the objective medical evidence does not support a conclusion that the Appellant had improved further due to ongoing chiropractic care. She submitted that, based upon the opinions of Dr. Rothman and Dr. Baron, three hundred (300) chiropractic treatments was a staggering number, and the Appellant had now reached the point where chiropractic care could not do more for him in terms of recovery. Although the Appellant and Dr. Raizman had talked about improvements in his percentage of functioning, she noted that Dr. Raizman did not really have any basis to make such comparisons, as he did not have a pre-motor vehicle accident baseline with which to compare the Appellant's functions.

Counsel submitted that the Appellant's own evidence of continuing improvement with chiropractic care was purely subjective. There was no evidence to meet the necessary test of whether further care was medically required.

Discussion

The relevant Sections of the MPIC Act and Regulations are:

MPIC Act:

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;

The onus is on the Appellant to show, on a balance of probabilities, that he should be entitled to further funding for chiropractic benefits beyond April 29, 2005. The panel has reviewed the documentary evidence on file as well as the testimony of the Appellant and submissions of counsel.

Although counsel for the Appellant submitted that early on in the Appellant's recovery Dr. Craton had recognized the potential need for lifetime, long-term chiropractic care, a closer analysis of the documents on file shows that Dr. Craton noted the Appellant's presentation as including a pelvic misalignment due to scoliosis.

In the standing position he is asymmetric. He has a high right hemipelvis. This is associated with a thoracolumbar scoliosis concave to the right in the lumbar area. He has mild consequent asymmetry. Forward flexion is somewhat blunted, with only five centimeters of segmental expansion with Schober testing.

He recommended spinal stabilization exercises:

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[R.G.] seems to be improving with your care. At this time, I would add spinal stabilization exercises for his spine strength. I have recommended the bridge done in co-contraction with pelvic neutral. I would also suggest some home stretching of the deep buttock muscles, involving stretches such as the figure 4 stretch, and knee to opposite shoulder. I trust that these will complement your care.

In a further report, dated June 16, 2002, Dr. Craton noted the possibility of a permanent partial impairment, and reported on the Appellant's intention to continue with chiropractic care:

[R.G.] will likely have a permanent partial impairment related to his bilateral patellofemoral pain syndrome, and his potential lateral compartment compromise. He will also likely have some chronic mechanical lumbopelvic pain.

He will likely require the patellofemoral knee sleeves on an ongoing basis to help with his mechanical deficiencies. From the sound of things, he will also be availing himself of long-term chiropractic care.

However, Dr. Craton was merely reflecting the Appellant's expressed intention of continuing long-term care and, although he had recommended stabilization exercises, he did not clearly make a direct recommendation for chiropractic care.

The panel has also reviewed the evidence, both from Dr. Raizman and from the Appellant, regarding the improvements the Appellant had achieved by April of 2005. For example, in a letter dated May 24, 2005, Dr. Raizman indicated:

Over the past month [R.G.] has progressed beyond initial expectation of 80%. I now project he will return to 95% improvement and very close to pre-accident state.

In another letter, dated August 23, 2005, Dr. Raizman again indicated that the Appellant was "80% improved to his pre-accident state".

Later reports from Dr. Raizman and Dr. Rothman (for example Dr. Rothman's letter dated November 4, 2005 and Dr. Raizman's letter dated June 5, 2006) focus almost entirely on the question of the causation of the Appellant's injuries and the differences of opinion which emerged between the views of Dr. Rothman and Dr. Raizman on that question.

Dr. Raizman's letter dated June 5, 2006, his most recent report, did not indicate that the Appellant's function had improved, by objective measures beyond the improvement noted in May of 2005. The Appellant's own evidence reflected an improvement by February 2008 that was at a similar level to the improvements which had been reported in May of 2005.

In this regard, the panel notes the observation of Dr. Baron, on March 26, 2008, that:

The various reports from Dr. Raizman, Dr. Rothman and the claimant all go in to a great deal of detail regarding their respective opinions and positions regarding the claimant's necessity for chiropractic care and its relationship to the motor vehicle. However, after reviewing all this information it strikes me that the primary question remains whether or not chiropractic care beyond that which had been delivered by April 29, 2005 could reasonably be expected to have a therapeutic affect greater than that which had already been achieved.

With this in mind it is my opinion that over a therapeutically relevant time frame between October 2001 and April 2005 a significant time frame of nearly 4 years the claimant had a significant and therapeutically relevant treatment exposure of approximately 300 chiropractic interventions. Given that the claimant had not reached his pre-accident status with this level of care over an extensive time frame it is my opinion that on the balance of probability the claimant had reached his maximum therapeutic benefit. Ongoing passive care could no longer be reasonably expected to have further sustainable therapeutic results beyond those achieved by April 29, 2005.

The panel heard the evidence of the Appellant as to the progress made following the April 29, 2005 termination of benefits, in spite of ongoing chiropractic care. The Appellant's evidence was that he still did not have full function. He cannot golf, ride a bike, play tennis, or run. In his view that would probably not change, and he was as good as he was going to get.

Having regard to the Appellant's evidence, and the medical evidence on file, the panel finds that the Appellant has failed to establish, on a balance of probabilities, that there was continued sustained therapeutic benefit and improvement from chiropractic care continued beyond April 29, 2005. In spite of continued care beyond this date, the Appellant's evidence did not establish

that he experienced substantial improvement until February 2008 or to date. The panel finds that the Appellant has failed to established an ongoing medical requirement for further chiropractic care beyond April 29, 2005, as we find that he had reached maximum medical improvement from *this type of care* by that date. We find that the Appellant has not established, on a balance of probabilities, that further chiropractic care was medically required.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated January 30, 2006 is hereby confirmed.

Dated at Winnipeg this 24th day of September, 2008.

LAURA DIAMOND

LEONA BARRETT

SANDRA OAKLEY