

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by L.W.  
AICAC File No.: AC-06-42**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Diane Beresford  
Ms Wendy Sol

**APPEARANCES:** The Appellant, L.W., was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

**HEARING DATE:** February 24, 2009

**ISSUE(S):** Whether the Appellant is entitled to reimbursement of expenses for chiropractic care beyond August 31, 2005.

**RELEVANT SECTIONS:** Section 136(1)(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, L.W., was involved in a motor vehicle accident on June 29, 1995. As a result of the accident, the Appellant sustained a right shoulder injury and soft tissue sprain affecting his upper extremities and back. Due to the injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant attended for chiropractic care in order to treat the injuries he sustained in the motor vehicle accident. In a decision dated August 5, 2005, MPIC's case manager advised the Appellant that:

It is in our Health Care Services opinion that you have reached maximal therapeutic benefit. It is unlikely that further chiropractic care would be instrumental in providing sustained or progressive improvement. The medical information also does not support the funding of supportive chiropractic care; this would be considered elective rather than medically required. Therefore, there is no entitlement to funding for further chiropractic treatment effective August 31, 2005.

The Appellant sought an Internal Review of that decision. In a decision dated January 11, 2006, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that:

One of the key considerations in determining whether recommended treatment is "medically required" is whether there is any real likelihood that it will lead to a demonstrable improvement of the patient. The medical documentation on your file does not support that lasting advances were recognized with this modality of treatment, even though you have been provided with extensive chiropractic rehabilitation.

In order to meet the criteria for supportive care, it must be established that the claimant has received maximum medical improvement and that any additional care is unlikely to have further sustainable therapeutic effect. In addition to this, it must be demonstrated that withdrawal of care in question has an objectifiable negative impact on the claimant's condition, and that the application of care in question has an equally objectifiable positive effect on the claimant's presentation.

Currently, the file contents do not describe a therapeutic withdrawal or other objective evidence to suggest that you meet the criteria for supportive care. I have difficulty accepting the submission that chiropractic treatment is "medically required" within the meaning of the PIPP legislation. I am satisfied that Manitoba Public Insurance has fulfilled its obligation in terms of chiropractic care.

Accordingly, there is sufficient evidence to support the decision of August 5, 2005, and no basis has been shown for interfering with the decision under review.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to reimbursement of expenses for chiropractic care beyond August 31, 2005.

## **Relevant Legislation**

Section 136(1)(a) of the MPIC Act provides that:

### **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;

Section 5(a) of Manitoba Regulation 40/94 provides that:

### **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;

## **Appellant's Submission**

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant's chiropractic expenses should be reimbursed by MPIC beyond August 31, 2005 and that MPIC should continue to fund his ongoing chiropractic treatments. The Claimant Adviser argues that the Appellant's functional ability decreases without chiropractic care and that he requires periodic chiropractic care in order to maintain his level of function. In support of her argument, the Claimant Adviser relies upon the report dated September 10, 2008 of Dr. Kimberly Castle, the Appellant's treating chiropractor, wherein Dr. Castle advises that:

### **Summary:**

A notable loss of right shoulder ranges of motion in (*sic*) found in both of the examinations performed following a withdrawal of care. This loss of mobility is particularly noted with abduction and forward flexion motions and appears to worsen

following a longer withdrawal of care. In addition, orthopaedic testing reveals positive findings for impingement and supraspinatus testing following a withdrawal of care, neither of which is noted in the earlier reports.

The examination of February 8, 2008 and August 13, 2008 each reveal a mild decrease in cervical spine mobility following a withdrawal of care. Nerve root compression findings and shoulder depressor findings also become more pronounced following a lapse in care.

Lastly, there is notable worsening of the myofascial findings, both in terms of hypertonicity and pain, noted in the examinations of February 8, 2008 and August 13, 2008.

Based upon the findings and opinion expressed by Dr. Castle, the Claimant Adviser submits that the evidence supports that the Appellant meets the requirement for supportive care as his condition deteriorates without treatment. As a result, the Claimant Adviser maintains that the Appellant's appeal should be allowed and that he is entitled to funding for chiropractic treatments beyond August 31, 2005.

**MPIC's Submission:**

Counsel for MPIC submits that chiropractic care beyond August 31, 2005 is not medically required for the Appellant. In support of her position, counsel for MPIC relies upon the Inter-departmental Memorandum dated October 31, 2008 from Dr. Timothy Pethrick, chiropractic consultant with MPIC's Health Care Services Team. Dr. Pethrick indicates that although the Appellant continues to suffer symptoms, there is no evidence that his condition deteriorates without treatment. Dr. Pethrick also comments that the Appellant's condition appears to have been stable for many years and in his opinion, the Appellant is at maximum therapeutic benefit with respect to chiropractic care and deterioration in his condition has not been objectively demonstrated with withdrawal of care. As a result, Dr. Pethrick does not feel that the Appellant meets the requirements for supportive chiropractic care. Based upon the opinion of Dr. Pethrick,

counsel for MPIC submits that the Appellant is not entitled to funding for chiropractic treatment beyond August 31, 2005.

**Decision:**

Upon hearing the testimony of the Appellant, and after careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of Counsel for MPIC, the Commission finds that the Appellant's chiropractic expenses should be reimbursed beyond August 31, 2005 and that the Appellant is entitled to ongoing reimbursement of chiropractic expenses on a supportive care basis.

The Commission accepts the opinion of the Appellant's treating chiropractor, Dr. Kimberly Castle, that there is objective evidence of deterioration in the Appellant's condition following a withdrawal of chiropractic care. In her report dated September 10, 2008, Dr. Castle indicated that:

Due to the fact that L.W. experiences a decrease in both right shoulder mobility and cervical spine range of motion as well as a significant increase in pain affecting his neck, shoulder, upper back and headaches I do believe that his deterioration following a withdrawal of care is significant enough to affect his daily function.

...

"L.W.'s (*sic*) demonstrates significant and demonstrable deterioration in his objective findings following a withdrawal of care. These findings improve with care. This meets the guidelines for supportive care."

Based upon the report from the Appellant's treating chiropractor, the Commission finds that ongoing chiropractic care meets the requirement for supportive care because there is objective evidence of deterioration in the Appellant's condition as set out in Dr. Castle's report.

Accordingly we find that the Appellant is entitled to reimbursement of expenses for chiropractic care beyond August 31, 2005 and is entitled to reimbursement of ongoing expenses for chiropractic care on a supportive care basis.

As a result, the Appellant's appeal is allowed and the Internal Review Decision dated January 11, 2006 is therefore, rescinded.

Dated at Winnipeg this 20<sup>th</sup> day of May, 2009.

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**YVONNE TAVARES**

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**DIANE BERESFORD**

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**WENDY SOL**