

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by S.W.
AICAC File No.: AC-06-70**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Mary Lynn Brooks

APPEARANCES: The Appellant, S.W., was represented by Mr. Brian Hyman of the Public Trustee's Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Leanne Zabudsky.

HEARING DATE: May 29, 2009

ISSUE(S): Entitlement to reimbursement of expenses for chiropractic treatments.

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 Public Trustee, on behalf of the Appellant, S.W., is appealing the Internal Review Decision dated February 17, 2006 with respect to the Appellant's entitlement to reimbursement of expenses for chiropractic treatments.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On May 22, 1994, S.W. was a cyclist that collided with a motor vehicle on [text deleted] Street in Winnipeg, Manitoba. As a result of the collision, S.W. sustained significant

injuries including a closed head injury, a fractured left zygoma, fractured left 5th metacarpal, fractured ribs, a left knee sprain, as well as a left hemiparesis. Following the accident, S.W. was a patient at the Health Sciences Centre for 3½ months before being discharged to the community.

2. Due to the Appellant's cognitive issues and neuro-psychological status, the Public Trustee was appointed as Committee of the Appellant, to make decisions regarding the Appellant's property and personal affairs.
3. Dr. Bill Mulhall, D.C. provided a chiropractic report dated December 17, 2003 to MPIC. Dr. Mulhall advised that the Appellant had been attending for weekly chiropractic care since April 11, 2001 to address vertebral subluxation complex of C6 and L5.
4. Dr. Mulhall provided a further chiropractic report to MPIC on October 17, 2004 and reported recurrent pelvis and low back pain, stiffness in the shoulders radiating into the neck, as well as headaches.
5. On February 17, 2004, Dr. Russell Baron, a chiropractic consultant with MPIC Health Care Services team, reviewed S.W.'s medical file. Dr. Baron recognized the significant injuries sustained by S.W., however, it was his opinion that there was insufficient evidence to support a causal relationship between the current necessity for chiropractic care and the accident of May 22, 1994.
6. Dr. Mulhall submitted a further report dated August 24, 2004, along with his chart notes relating to the treatment S.W. had received since April 2001. Dr. Baron revisited the file and provided a memorandum to file dated September 22, 2004. After reviewing the information on file, Dr. Baron concluded, "it is my opinion that there is a paucity of subjective or objective evidence on file to suggest that the necessity for chiropractic care beginning April 2001 has its origin in the motor vehicle accident in question".

7. In a decision dated October 7, 2004, MPIC's case manager advised that there was insufficient evidence to support a causal relationship between the Appellant's current signs/symptoms beginning April 2001 and the motor vehicle accident of May 22, 1994. As a result, MPIC was unable to consider any and all funding for chiropractic care that the Appellant had received to date.
8. The Appellant sought an Internal Review of that decision. In a decision dated February 17, 2006, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer relied on Dr. Baron's medical opinion expressed in his Inter-departmental Memorandum of January 24, 2006. Dr. Baron revisited S.W.'s file and gave consideration to all the additional documentation and medical reports submitted by the Public Trustee's Office to the Internal Review file. Following Dr. Baron's review, it remained his opinion that a poor temporal relationship between any indication of spinal injuries and the motor vehicle collision was established. The Internal Review Officer found that S.W.' file continued to lack objective evidence supporting a causal relationship between his motor vehicle accident of May 22, 1994 and the symptoms documented by his chiropractor. As a result, the Internal Review Officer found that MPIC did not have an obligation to fund chiropractic treatment relating to the accident of May 22, 1994.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of expenses for chiropractic care.

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 Public Trustee, on behalf of the Appellant, submits that the Appellant's chiropractic expenses should be reimbursed by MPIC and that MPIC should continue to fund his ongoing chiropractic treatments. The Public Trustee argues that a lot of time was initially devoted to finding an appropriate placement in the community for the Appellant because of his behavioural and cognitive issues. He maintains that those issues overshadowed the other pains and problems that the Appellant was dealing with. As a result, the Appellant did not seek chiropractic treatment for his pains and problems as quickly as he might have if he had not had so many other pressing issues to deal with.

In support of his position, the Public Trustee also relies on the opinion of Dr. Robert Grant Benningen, the Appellant's family physician. The Public Trustee argues that Dr. Benningen is of the opinion that the Appellant has a chronic spine sprain or chronic musculoskeletal pains and these are related to the motor vehicle accident. Dr. Benningen testified at the appeal hearing that the Appellant first became a patient of his in 1996. However, it wasn't until February 2001 that the Appellant advised him of his pain complaints. Upon the Appellant advising him of his pain, Dr. Benningen referred him to Dr. Mulhall, the treating chiropractor. Dr. Benningen also reiterates that a lot of time lapsed before the Appellant sought chiropractic treatment because the Appellant was dealing with a variety of more serious issues. Dr. Benningen testified that the Appellant would use less pain control medication when he was receiving chiropractic treatments. The Public Trustee maintains that the chiropractic treatments are medically required for the Appellant as he was able to reduce his use of medication as a result of chiropractic treatment.

Based upon the findings and opinion expressed by Dr. Benningen, the Public Trustee submits that the evidence supports that the Appellant requires ongoing chiropractic care in order to manage his pain condition and reduce his reliance upon pain medication. As a result, the Public Trustee maintains that the Appellant's appeal should be allowed and that he is entitled to reimbursement of expenses incurred for chiropractic treatments to date as a result of the motor vehicle accident of May 22, 1994.

MPIC's Submission:

Counsel for MPIC submits that chiropractic care is not medically required for the Appellant as a result of the motor vehicle accident of May 22, 1994. Counsel for MPIC maintains that two

conditions must be met before MPIC becomes obligated to reimburse a claimant for medical expenses:

1. expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 2004; and
2. the treatments must be “medically required”.

Counsel for MPIC submits that the onus is on the Appellant to establish both parts of the test. Counsel for MPIC argues that the symptoms and complaints listed by Dr. Benningen and Dr. Mulhall are not those listed at the time of the motor vehicle accident. She therefore argues that Dr. Benningen’s assumptions respecting causation are not backed up by the evidence. Counsel for MPIC also relies on Dr. Baron’s opinion and review of the file. Dr. Baron was of the opinion that “there is a paucity of subjective or objective evidence on file to suggest that the necessity for chiropractic care beginning April 2001 has its origin in the motor vehicle accident in question”.

Counsel for MPIC further submits that the Appellant has not established that chiropractic treatments are medically required. She maintains that the fact that the Appellant takes less medication when he receives chiropractic treatment does not meet the test of medical requirement. She contends that there is no indication that chiropractic care will improve his condition. Counsel for MPIC therefore submits that the Appellant has not satisfied the tests for medical expenses covered under Section 136(1)(a) of the MPIC Act and Section 5(a) of the Regulation. As a result, counsel for MPIC submits that the Appellant is not entitled to reimbursement of expenses for chiropractic treatment since April 2001.

Decision:

Upon a 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 Public Trustee on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for chiropractic care as a result of the motor vehicle accident of May 22, 1994.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 2004; and
2. the treatments must be “medically required”.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that chiropractic treatments since April 2001 satisfy either of those two conditions. In determining whether the Appellant’s musculoskeletal symptoms are related to the motor vehicle accident, we have relied upon the opinion of Dr. Russell Baron, chiropractic consultant to MPIC’s Health Care Services Team. In his Inter-departmental memorandum dated January 24, 2006, Dr. Baron provided the following opinion:

OPINIONS AND RECOMMENDATIONS

When considering a causality assessment one must take into account the nature and extent of the claimant’s injuries, the mechanism of the incident, the probability that such injuries could be sustained given the purported mechanism and of course also crucial is the temporal relationship between the onset of the complaints and the purported incident.

In this case, it is clear that the claimant sustained a significant injury resulting in multiple injuries as previously described throughout the file. However, what is less

clear is what effect the motor vehicle collision had on his subsequent development of neck, interscapular, shoulder and low back pain. Unfortunately the file contents, in so far as a temporal relationship is concerned, do not provide significant evidence of a probable cause effect relationship.

Even when considering the notes of Dr. Benningen, which begin two years post motor vehicle collision, it is not until February 2001 that any note is made of interscapular shoulder and back pain. This taken along with previous reports from Ms. Allardyce that the claimant was not complaining of any musculoskeletal symptoms and a chart note from Dr. Benningen dated April 26, 1996 noting relatively normal examination of the claimant's lumbar spine leads me to opine that, on the balance of probabilities, the file contents do not support a probable cause effect relationship between the claimant's necessity for chiropractic care beginning in April 2001 and the motor vehicle collision in question.

Also reviewed was a cover letter dated January 6, 2006 from the Public Trustee. This letter summarizes their file contents related to the claimant's musculoskeletal complaints. On page 2 of this report they begin to summarize Dr. Benningen's information, highlighting that Dr. Benningen is of the opinion that S.W. suffered from a chronic spinal strain resulting from the accident. With respect to this, it is again my opinion that although S.W.' injuries were severe and profoundly intrusive and limiting with respect to his daily life there is a poor temporal relationship between any reported symptoms of chronic spine sprain and the motor vehicle collision particularly given that the (sic) Dr. Benningen did not first consult with the claimant until 2 years post collision.

This report goes on to summarize the information obtained from Dr. Mulhall. As Dr. Mulhall did not see the patient until seven years post motor vehicle collision and has apparently not reviewed the medical documentation in detail it is my opinion Dr. Mulhall is not in an ideal situation to comment on causality.

On page 4 the public trustee describes the claimant as having seen Kim McConnell, a massage therapist for three years, presumably beginning in the year 2003.

Given the above information in its entirety, it remains my opinion that the poor temporal relationship between any indication of spinal injuries and the motor vehicle collision in my opinion results in a medical causality assessment that is not supportive of a probable cause effect relationship.

Based upon the totality of evidence before us, and particularly the lapse of time between the motor vehicle accident and the Appellant's first attendance for chiropractic care, we are unable to conclude that the Appellant's musculoskeletal complaints relate to the accident of May 22, 1994.

We also find that the Appellant has not established, on a balance of probabilities, that ongoing chiropractic treatments are medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. The evidence before the Commission establishes that the Appellant's condition has remained virtually unchanged since April 2001, despite ongoing chiropractic care. The evidence before the Commission does not establish that ongoing chiropractic care improves the Appellant's condition. Accordingly, we find that the Appellant is not entitled to reimbursement of expenses for chiropractic care.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated February 17, 2006 is confirmed.

Dated at Winnipeg this 29th day of July, 2009.

YVONNE TAVARES

LEONA BARRETT

MARY LYNN BROOKS