

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-38**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mrs. Lila Goodspeed
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Mr. Keith Addison
[Text deleted], the Appellant, represented by [Appellant's
representative]

HEARING DATE: April 6th, 1998

ISSUE(S): Whether victim entitled to further chiropractic treatment.

RELEVANT SECTIONS: Section 5 of Regulation 40/94

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

REASONS FOR DECISION

THE FACTS:

[the Appellant], a [text deleted] year-old housewife at the time, was a passenger in a car driven by her daughter on October 6th, 1994 when, either stopped or coming to a stop at an intersection,

that car was rear-ended by another vehicle. [the Appellant] complained of a sore neck at the base of her skull and a sore left ear. Following one, inconsequential visit to a chiropractor in [text deleted], [the Appellant] returned to her home in [text deleted], Manitoba, and on October 18th started seeing [text deleted], a chiropractor at [text deleted], Manitoba. [Appellant's chiropractor's] initial report indicates "subluxation at C1 and C2 due to severe sprain type of injury; prognosis is guarded at present". He prescribed adjustments at a frequency of three per week 'until scanner readings normalize', a frequency that he anticipated would prevail for from four to six months. He adds that [the Appellant] "has been unable to perform any duties that involve lifting or bending" - a finding that seems to be at odds with [the Appellant's] own statement in her application for compensation, also dated October 18th, wherein she reports "able to do housework but suffer headaches".

[Appellant's chiropractor's] next report is of an examination of [the Appellant] on December 12th, 1994, which contains the same diagnosis and prescribes adjustments to reduce nerve interference and increase mobility, at a frequency of twice per week for the next six to eight weeks. He notes that "lifting aggravates her condition".

[Appellant's chiropractor's] third report, dated March 22nd, of 1995 and relating to an examination on March 15th, indicates "Subluxation at C1. Scanner readings have improved but return on a weekly basis." He prescribes adjustments once per week "to remove nerve interference", and anticipates that weekly adjustments would be required from four to six

months. He adds that [the Appellant] is unable to lift heavy objects more than thirty pounds.

[Appellant's chiropractor's] next report relates to his examination of [the Appellant] on May 25th, 1995. His diagnosis indicates "Subluxation of atlas (*ie. the first cervical vertebra which articulates with the occipital bone*) to the right. The patient's condition is slowly improving but the right shoulder is the slowest to recover. Tremors have been noted to occur in this arm as well but the frequency is reducing." This is the first occasion upon which any "subluxation of atlas" has been noted, and the first mention of any tremors in [the Appellant's] right arm. [Appellant's chiropractor] continues to prescribe adjustments once weekly, for a period of three to four months.

Next, we have a report from [Appellant's chiropractor] of September 13th, 1995 which contains a diagnosis "Subluxation at C1-2 due to a sprain type of injury. Symptoms have greatly improved but she still has trouble with her right shoulder especially when she has to lift. Tremors are not noted as frequently." [Appellant's chiropractor's] prescription continues to be specific spinal adjustments 'to remove nerve interference'.

Then, on January 8th, 1996 and in response to a request by MPIC for a narrative report, [Appellant's chiropractor] writes to the insurer to say that, when [the Appellant] first presented herself to his office on October 28th, 1994, she complained of stiffness of neck, soreness of neck, loss of hearing in the left ear, pain in arms and hands, right shoulder pain and tremors in right

arm. It has to be noted that this is not in accord with [Appellant's chiropractor's] earlier reports to MPIC, which make mention only of subluxation at C1 and C2 of a sprain/strain variety. That report of January 8th, 1996 also seems to indicate a number of neurological deficits that [Appellant's chiropractor] discovered when examining [the Appellant], although no mention is made of them in any of his earlier, written reports to MPIC. We note, also, that [Appellant's chiropractor's] findings of what he calls "interference with the nervous system" seemed to be based upon thermographic tests - that is, patterns of skin temperature - a diagnostic procedure specifically rejected by two judicial decisions in the Supreme Court of British Columbia and by an earlier decision of this Commission.

In her own evidence, [the Appellant] testified that her neck is still sore once in while, that she has a measure of pain that seems to be localized at or about the point where her neck meets the lower, left side of her jaw but whose source is undetermined, and that her right arm is still a little bit shaky. She testified that the soreness under the left jaw and the problem with her right arm started about a year after her motor vehicle accident; she would develop a discomfort at the point of her right elbow and her hand would start to shake a little, causing her on one occasion to drop her cup.

[The Appellant] further testified that the pain that she had been experiencing around her shoulders is now cured.

[The Appellant's] evidence, which the Commission found to be straight-forward and candid, also indicated that she had been attending [text deleted], a physician in [text deleted], Manitoba, for about fifteen years, primarily for her diabetic condition. She takes medication for her diabetes, although she was not able to tell us the nature of that medication. She had also been suffering from pains in her legs, which she felt were related to her diabetes, and [Appellant's doctor #1] had prescribed Tylenol #3 to help her deal with that discomfort; she has been taking Tylenol #3 for many years and, ever since payment for her chiropractic treatments had been discontinued by MPIC, she has been taking Tylenol #3 for the intermittent pain in the lower, central part of her neck, the pain under her left jaw line and the discomfort in the crook of her right arm.

On May 7th, 1996, MPIC wrote to [Appellant's chiropractor] and to [the Appellant], to tell them that the insurer would no longer be paying for chiropractic treatments on her behalf.

[the Appellant] applied for an internal review of that decision, which was confirmed by the Internal Review Officer. [Appellant's chiropractor] wrote to the Internal Review Office of MPIC on August 18th, 1996, disagreeing with that decision and stating that [the Appellant] did, in fact, complain of tremors soon after her accident and that the Appellant "reports that she developed these tremors approximately two to three months after the motor vehicle accident on October 6th, 1994". This is at odds with both [the Appellant's] sworn testimony before this Commission, and even with [Appellant's chiropractor's] earlier reports. It is certain that

[Appellant's chiropractor] makes no mention of tremors until May of 1995, seven months after the accident. He notes that it is common for complaints to develop several months after severe injuries to the spine and nervous system, but we have no evidence to indicate that [the Appellant] suffered any such severe injury.

We were provided with a detailed report from [independent chiropractor] who performed an independent chiropractic examination of [the Appellant] on February 4th, 1997. The majority of [independent chiropractor's] findings are not reflected in any of the reports of [Appellant's chiropractor], although it is certainly possible that those complaints from which [the Appellant] suffers and which relate to her cervical spine are, indeed, related to her motor vehicle accident. But [independent chiropractor] reports that [the Appellant] is experiencing bilaterally leg pain which starts at the knee and which travels all around her legs under both feet. While [independent chiropractor] indicates his belief that the accident-related neck injury may be responsible for the leg pains, the fact is that she has been taking Tylenol #3 for leg discomfort for several years, at least, before her motor vehicle accident.

We were also provided with a letter from [Appellant's doctor #2], who has also been [the Appellant's] physician for many years. [Appellant's doctor #2] reports that she examined [the Appellant] on February 4th, 1998, when the Appellant complained of soreness in the back of her neck since the accident and "a year or more later" started to drop her cup from the right hand and developed "soreness" in the right elbow and lower arm. [Appellant's doctor #2] reports that [the

Appellant] had also developed similar symptoms in her left arm over the last four months. [Appellant's doctor #2] concludes her report by saying that she is not in a position to support chiropractic therapy.

We have also been provided with memoranda from [MPIC's chiropractor #1] and [MPIC's chiropractor #2], each of whom is a chiropractic consultant with the Claims Services Department of MPIC. Their comments, which are based upon a paper review of the entire file rather than upon a physical examination of the Appellant, may be summarized, at the risk of gross over-simplification, this way:

- (a) the neurological symptoms displayed from time to time by [the Appellant] are more likely to find their roots in her diabetic condition rather than in her motor vehicle accident, and it is remarkable that she has not been referred to a neurologist for further investigation;
- (b) there are major inconsistencies between the reports of [Appellant's chiropractor] and [independent chiropractor] and, while it may well be that [the Appellant] was suffering from the additional problems described by [independent chiropractor] at the time of his examination, those problems are not related to her motor vehicle accident;
- (c) while it is quite possible, perhaps even probable, that the injury to [the Appellant's] upper neck (that is to say, at C1-C2) that she sustained in her motor vehicle accident is still giving her residual problems, the prolonged

regimen of chiropractic care that extended from October 18th of 1994 until May 6th of 1996, when viewed in light of current literature and practices adopted by the governing bodies of the Chiropractic Association in both Canada and Manitoba, would indicate that [the Appellant] has reached maximum therapeutic benefit from that form of therapy.

[Appellant's doctor #2's] letter of April 2nd, 1998 indicates that [the Appellant] has been referred to [text deleted], a specialist in physical medicine and rehabilitation, for assessment and management. [Appellant's rehab specialist] has apparently recommended further investigations and we assume that those are ongoing.

THE ISSUE:

Was MPIC justified, or premature, in discontinuing payments for [the Appellant's] chiropractic treatments?

We are satisfied, from the evidence and literature available to us, that no useful purpose would be served by recommencing chiropractic adjustments for [the Appellant], and for that reason we are prepared to confirm the decision of MPIC's internal review officer. This is not to say that [the Appellant] is necessarily fully restored to her pre-accident status. Her situation is obviously complicated to a major extent by her long-standing diabetic condition and by the fact that she

suffers from high blood pressure, for which she is also taking medication. Further complications arise from the fact that, from [independent chiropractor's] report at least, symptoms have arisen that did not exist during the time that she was being treated by [Appellant's chiropractor]. Those symptoms do not appear in any way to be related to her motor vehicle accident.

If [Appellant's rehab specialist] and any other specialist to whom he may see fit to refer [the Appellant] conclude that some additional course of treatment aimed at management of her upper neck problem is called for, it may well be that payment for that course of treatment should be at the expense of MPIC, since that problem does appear to be accident-related. Treatment for any other problems from which [the Appellant] may be suffering should be dealt with in the ordinary course through the medium of Manitoba Health Services Commission.

DISPOSITION:

For the foregoing reasons, and because payment by MPIC for continued chiropractic treatments can only be ordered when medically required and made necessary the motor vehicle accident, we are obliged to dismiss [the Appellant's] appeal.

Dated at Winnipeg this 8th day of April 1998.

J. F. REEH TAYLOR, Q.C.

LILA GOODSPEED

F. LES COX