

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-74**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by Mr. Keith Addison
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: November 24th, 1998

ISSUE(S): (a) Whether Appellant entitled to resumption of
physiotherapy at MPIC's expense;
(b) Whether Appellant entitled to assistance with yard care.

RELEVANT SECTIONS: Section 136(1) fo the MPIC Act, and Section 5 of Manitoba
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 Appellant] has an unfortunate history of back injuries. Those with which we are primarily here concerned consisted of two motor vehicle accidents, the one that occurred on January 3rd, 1995 when he was a passenger in a vehicle that was rear-ended, causing some \$4,000.00 worth of

damage to the vehicle; the second was also a rear-end collision that occurred on October 30th, 1995, with resultant damage to the vehicle of approximately \$450.00. We recognize, of course, that the costs of repair made necessary by a motor vehicle accident are of minimal probative value in determining the extent of personal injury to the occupants of the vehicle.

[The Appellant] is a retired [text deleted], aged [text deleted] at the date of this decision.

Following the first of those two accidents, [the Appellant] received some 28 chiropractic adjustments from January 5th, 1995 to May 25th, 1995, both inclusive, rendered almost entirely to the area of his cervical spine. His doctor of chiropractic, [text deleted], then referred him to the [text deleted] where, between May 25th, 1995 and March 7th, 1997, he attended upon approximately 143 occasions, primarily for physiotherapy and occasional cortisone injections. On March 7th, 1997 MPIC which, up to that time, had been paying for [the Appellant's] chiropractic treatments and subsequent physiotherapy and related treatments at the [text deleted] Clinic as well as reimbursing him for the cost of employing someone to clear his snow and perform other yard work, decided that the condition he had then reached, while far from satisfactory, was no longer related to either of his motor vehicle accidents and advised him that the foregoing benefits would be discontinued. He appealed that decision to MPIC's Internal Review Officer, who upheld it. He now appeals to this Commission, asking us in particular to reinstate his yard care and, as well, to order MPIC to assume responsibility for therapy that he has received since March 7th, 1997, and for further therapy that he may need in the future.

In order to reach a rational decision respecting [the Appellant's] appeal, it becomes necessary to examine his medical history and the condition that prevailed immediately before the first of those two motor vehicle accidents. That history and that condition are spelled out very clearly in two memoranda prepared for MPIC by [text deleted], the Medical Director of its Claims Administration Department. While it is true that [MPIC's doctor] has never examined the Appellant and that, therefore, his comments are based upon a 'paper review' of [the Appellant's] history, nevertheless we find [MPIC's doctor's] analysis of this case compelling. It may be summarized this way:

1. [The Appellant] has a history of back pain dating back 20 years. He has had five previous back surgeries, including a spinal fusion from L4 to his sacrum. He also had a decompressive laminectomy in 1975.
2. On examination and assessment by [Appellant's pain specialist] at the [text deleted] Clinic at the [hospital] on September 9th, 1994, just four months before his first motor vehicle accident, [the Appellant] was suffering from severe low back pain occurring after he had walked one to two blocks and after standing approximately 15 to 20 minutes. That pain was apparently relieved by flexing the lumbar spine or by lying supine.
3. A CT Scan in 1993 indicated severe spinal stenosis at L3-4 due to diffuse disc bulging and hypertrophic facet joints. [The Appellant] was described by [Appellant's pain specialist] as having severe degenerative changes involving his lower apophyseal joints. He had obtained short term relief by use of narcotic analgesics such as Tylenol No. 3, as

well as non-steroidal anti-inflammatory agents.

4. [Appellant's pain specialist] described [the Appellant], at the time of his September 9th, 1994 assessment, as "walking with the aid of a cane, with a considerable flexion of his lumbar spine. He was able to stand briefly on heels and toes but was quite unsteady performing those maneuvers. He has full lumbar spinal flexion but severely limited extension and rotation of his spine. He has tenderness over his lower spine."
5. [Appellant's pain specialist] was of the opinion that [the Appellant] was suffering from claudication (i.e. limping) secondary to spinal stenosis, as well as mechanical low back pain. [The Appellant] had been given injections in his facet joints, giving him some relief. He had trigger point injections performed on his visit of September 20th, 1994 to [Appellant's pain specialist], indicating that, prior to his first accident of January 3rd, 1995, he had been suffering from myofascial pain syndrome.
6. A CT Scan had documented extensive and severe degenerative disk disease, with hypertrophic facet joints, disk bulging and osteoarthritic changes. Well before his first accident, [the Appellant] had been taking narcotics and non-steroidal anti-inflammatory agents. The condition of spinal stenosis, said [MPIC's doctor], was one which is typically progressive, leading to increasing low back pain and progressive exercise limitation. "The abnormal spinal morphology described in [the Appellant's] case does not tolerate loading well and this serves as a self-perpetuating phenomenon."
7. [Text deleted], a general practitioner in whose care [the Appellant] had been since some time prior to his first accident, indicated on January 27th, 1995 that [the Appellant] had

suffered a "myofascial sprain of his cervical spine". It is significant that [Appellant's doctor #1] mentions no acute lumbar findings. He records, merely, that the patient had chronic recurring lumbar disk disease and low back pain prior to his accident of January 3rd, 1995; he had been treated for those problems by [Appellant's doctor #1] until September 1994 and by [Appellant's pain specialist] until a few weeks before his first accident.

8. [Text deleted], [the Appellant's] chiropractor, only records findings related to the cervical spine, for which he prescribed a cervical pillow and chiropractic, manipulative therapy; he makes no mention of the lumbar spine in a report completed on February 15th, 1995.
9. Following [the Appellant's] second accident on October 28th, 1995, he was examined by [Appellant's doctor #2] on October 28th. [Appellant's doctor #2], while noting that the patient had "aggravated his back", makes no mention of any impairment or disability resulting from the motor vehicle accident and, by March 7th of 1996, [Appellant's doctor #2] is in a position to say that the patient is doing well and has good function; physiotherapy has decreased to once per week.
10. In a further report of August 15th, 1996, [Appellant's doctor #2] documents gradual improvement as a result of regular physiotherapy. He speculates that [the Appellant's] symptoms might have been aggravated by both motor vehicle accidents to the point where he became unable to perform such duties as snow shoveling or yard work. [MPIC's doctor] points out that, given [Appellant's pain specialist's] assessments of September and December of 1994, with their description of the patient walking with a cane in

forward flexion, unable to stand for more than about twenty minutes and unable to stand on either foot, it would be logical to assume that [the Appellant] had not been able to perform those activities even before his first motor vehicle accident.

11. [Appellant's doctor #2], after consultation with [the Appellant's] physiotherapist, reported that by the end of August of 1996 [the Appellant] in all probability had reached his pre-accident level of functioning. However, in a later report of January 22nd, 1997, [Appellant's doctor #2] stated that, since [the Appellant] had been weaned from treatment in the previous August and that he had not become asymptomatic, resumption of treatment was felt to be necessary to alleviate [the Appellant's] increased back pain. [MPIC's doctor] points out that [the Appellant] had not been asymptomatic even before his first motor vehicle accident and it was doubtful whether any therapies would change the natural history of [the Appellant's] condition.

It seems fairly clear that [the Appellant] did indeed sustain a comparatively minor sprain to his neck and shoulders as a result of his first motor vehicle accident and that that condition was somewhat exacerbated by the second accident. We are satisfied that, as a result of his chiropractic treatments by [Appellant's chiropractor] and his subsequent physiotherapy and related treatments at the [text deleted], the effects of his motor vehicle accidents were resolved and he was restored to his pre-accident status by March 7th, 1997, if not sooner.

We are constrained to note that [the Appellant's] cause was not assisted by his memory: he testified that he had never had to use a cane when walking, prior to his first accident - a recollection that, from the clear and objective notes of [Appellant's pain specialist], is patently at odds with reality; he also testified that he had no problems with his back prior to that first motor vehicle accident - an even more bizarre recollection, given his medical history.

Therefore, while this Commission has the greatest possible sympathy with [the Appellant], since his condition is obviously causing him much pain and is limiting his functional capacity in certain areas, we find that the difficulties he is currently encountering, and from which he has suffered since March 7th of 1997, were, on a strong balance of probabilities, not caused by either or both of his motor vehicle accidents but are, rather, a continuance of the degenerative process that had started long before the first of those accidents.

We are therefore obliged to deny his appeal and confirm the decision of MPIC's Acting Review Officer of May 12th, 1997.

Dated at Winnipeg this 14th day of December 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED