

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-30**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan McKelvey
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: September 11th, 1998

ISSUE: Whether continued chiropractic care necessitated by motor
vehicle accident.

RELEVANT SECTIONS: Section 136(1)(a) of 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 FACTS:

The Appellant, [text deleted], was the victim of a motor vehicle accident in February of 1994
(shortly before the current legislation came into force) in which he sustained injury to his lower

back, neck, upper back, left buttock and leg. He commenced seeing [text deleted], chiropractor, as well as being treated by his medical practitioner, the [text deleted]Pain Clinic at the [hospital] and, for physiotherapy treatment, the [rehab clinic]. He had also suffered a work-related back sprain in July of 1993, for which he also received chiropractic treatment.

[The Appellant] was still seeing [Appellant's chiropractor #1] for chiropractic adjustments at least once a week when, on April 19th, 1995, he was involved in a second accident that is the subject of this appeal. [The Appellant's] evidence was that, in this second accident, he was driving east on [text deleted] in the median lane on a green light. A driver heading west made a left turn and hit the left side of the hood, fender and doors of [the Appellant's] vehicle. He says that he was thrust to his right, that his vehicle was then airborne for second or two before hitting a snowbank. He was, understandably, shaken up by that accident.

[The Appellant] was initially seen by [text deleted], chiropractor, who worked out a treatment plan with MPIC that, on July 25th of 1997, called for two treatments per week for the subsequent six weeks, to be followed by one treatment per week for the following twelve weeks, with an expected discharge date of November 15th.

[Appellant's chiropractor #2] went on maternity leave, and [the Appellant] therefore continued his chiropractic treatments under the care of [Appellant's chiropractor #3] who, after re-evaluating the Appellant, proposed a slightly revised treatment plan with which MPIC agreed. That plan, commencing October 14th, 1997, called for two treatments per week until November 1st to be

followed by one treatment per week until an estimated discharge date of December 6th, 1997. That treatment plan was committed to writing, of which a copy was provided to [the Appellant]. MPIC has refused to pay for any chiropractic treatments beyond December 6th, 1997.

On December 3rd, 1997 [the Appellant] applied for a review of the foregoing decision, claiming that the nature of his work for [text deleted] continued, regular, chiropractic visits. He has, indeed, received continued chiropractic care until the present time, although the frequency of his treatments has now been reduced to once or twice per month. The question before us is whether the chiropractic adjustments that he has received since December 6th, 1997 were made necessary by his 1995 motor vehicle accident and should therefore be paid for by MPIC.

[Appellant's chiropractor #3] is on record with his report that, on December 4th, 1997, [the Appellant] "was determined to have reached maximum chiropractic improvement", in the context of his accident of April 19th, 1995. [Appellant's chiropractor #3] did suggest that [the Appellant] might benefit from massage therapy, but nothing more.

[The Appellant] then went back to see [Appellant's chiropractor #1] who, having examined him on January 9th, 1998, provided a report that:

It was my impression that there was significant post-traumatic subluxation sprain and myofascial hypertonicity involving his cervical and costovertebral joints at the following areas: intervertebral joints C1, 2, C5-7, and L4, 5 areas. Costovertebral joint subluxations was (sic) noted at T1-10 on the left associated with myofascial hypertonicity.

[The Appellant's] chief complaint at this time involves his neck, upper thoracic area on the left side associated with headaches. It is my opinion that [the

Appellant] is suffering from joint dysfunction and pain caused by his motor vehicle accident. Although he is able to maintain his present work duties his (sic) is not fully asymptomatic. It is felt that his condition can be further stabilized reducing the present pain intensity. This patient will be re-evaluated in eight weeks.

[Appellant's chiropractor #1] furnished a further, narrative report to this Commission, bearing date June 12th, 1998. That report is lengthy and detailed but, in our respectful view, the most significant aspects of it may be summarized this way:

- (a) [The Appellant] reported to [Appellant's chiropractor #1] that, at the time of the accident, he was wearing his seatbelt with shoulder harness, was sitting square in his seat with no rotation at the time of the accident. He reported having similar symptoms and residual complaints following his February 17th, 1994 accident;
- (b) [The Appellant] had reported his chief complaint as left low back stiffness and pain which started to flare up. There was no radiation of pain. He had intermittent pain with episodes of no pain at all, the pain being described as "a mild dull ache aggravated by forward bending and relieved by rest";
- (c) the cervical range of motion was full and painless; all tests of provocation were essentially negative; sensory, motor and reflexes were within normal limits; bony palpation findings revealed no specific joint restrictions; soft tissue findings revealed mild localized myofascial trigger points on the right upper cervical and left terse musculature; thoracic spine revealed full and painless range of motions, with all tests of provocation proving negative; examination of the lower back revealed full range of motions other than forward flexion being stiff and sore at the end range;
- (d) on March 10th, 1995 [the Appellant] was noted to be asymptomatic for injuries sustained

in the February 14th, 1994 motor vehicle accident. This finding seems to be in direct conflict with [the Appellant's] own evidence, which was to the effect that "my back has never been right since the 1994 accident";

- (e) [The Appellant] reported to [Appellant's chiropractor #1] that, by June of 1998 at the very latest, his neck and lower back were essentially asymptomatic, except for occasional, mild tenderness in his left interscapulae region, and that he was able to maintain full normal work duties and activities of leisure.

[the Appellant], in giving his evidence, testified candidly that "Until last Christmas I really hadn't gotten any better since the first accident. Since then I've been getting much better; the only pain I have now is in my neck and upper back from time to time."

[Text deleted], MPIC's chiropractic consultant, offers the following comment:

It appears that is is now approaching nearly three years post-motor vehicle accident and this claimant continues to suffer from neck and upper thoracic spine complaints. This, despite numerous chiropractic interventions provided by several different caregivers. It would be my opinion, at this point, that based on [Appellant's chiropractor #1's] report, there is a lack of specific objective findings to draw a clear causal relationship between the claimant's current symptoms and the motor vehicle accident in question. [Appellant's chiropractor #1's] primary findings are of myofascial hypertonicity as well as subluxations of C1-2, C5-7, L4-5, T1-10, and the costal vertebral joints. There is little in the way of evidence to suggest that the presence of these subluxations can be directly related to the motor vehicle accident in question.

We have to agree with [MPIC's chiropractor]. Although it may well be that [the Appellant] does require occasional chiropractic adjustments, we find that, by December 6th, 1997 [the Appellant] had reached at least the condition that he had enjoyed immediately prior to his accident of April

19th, 1995. We find, from a careful review of all of the medical and chiropractic evidence as well as [the Appellant's] own testimony, that on a strong balance of probabilities any residual problems from which [the Appellant] may have been suffering after December 6th, 1997 do not have their origins in his motor vehicle accident of April 19th, 1995.

DISPOSITION:

In light of the foregoing finding, we must dismiss [the Appellant's] appeal and confirm the decision of MPIC's Internal Review Officer.

Dated at Winnipeg this 24th day of September 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX