

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-91**

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 Ms Joan McKelvey

[Text deleted], the Appellant, appeared on her own behalf
accompanied by her husband, [text deleted]

HEARING DATE: November 30th, 1998

ISSUE: Whether Appellant entitled to continuing chiropractic
treatment?

RELEVANT SECTIONS: Section 136(1) of the MPIC Act and 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

On June 4th, 1997 the [text deleted] being driven by the Appellant, [text deleted], was struck from the rear by a small pickup truck while stopped for a red light at the intersection of [text deleted]. Her vehicle did not collide with the car immediately in front of her and no part of her body collided with any part of the interior of her vehicle. She was looking to the right at the time of the

collision. [The Appellant] testified that she felt a tightness around the neck and upper back almost immediately after the accident. She attended upon her family physician that same day, and was given a prescription for analgesics. On the following day she attended upon [text deleted], her regular chiropractor, from whom she had been receiving 'maintenance' chiropractic adjustments about once a month for a period of some ten years. She received an adjustment which, she said, relieved her headache. [Appellant's chiropractor #1] diagnosed a Grade 3a Whiplash Associated Disorder and set out a program of treatments for her at a frequency of three times per week from June 5th, 1997 until February 27th, 1998, then twice per week until April 30th to be followed by treatments once weekly until August of 1998. All of the treatments she was receiving from [Appellant's chiropractor #1] were of a passive nature, consisting of supine osseous adjustments to her cervical spine, prone adjustments to her thoracic spine and side posture adjustments to her lumbar spine and pelvis. She had been given no program of exercises to do, although she had been doing some exercises of her own, as well as walking. [Appellant's chiropractor #1] had classified her as a Grade 3a Whiplash Associated Disorder and, although he reported no risk factors for chronic pain or delayed recovery, still anticipated a period of fourteen months of clinic care to be required for her recovery.

We note that the generally accepted standard of frequency and duration of care for this grade of WAD would be daily treatments for one or two weeks, then three times a week for ten weeks, twice a week for another ten weeks, reducing to once per week for a further ten weeks, then once a month for six months - a total of about 80 treatments over some 58 weeks.

[The Appellant], [text deleted] years of age at the time, drives a school bus but was not engaged in her work at the time of her collision. In light of the frequency of her chiropractic treatments, MPIC referred her for an independent chiropractic examination to [independent chiropractor], who examined her on the 2nd of December 1997. [Independent chiropractor] recorded [the Appellant's] past medical history, including the facts that she indicated some difficulty in operating her bus, particularly when opening the door or using the gear shift, experienced no restrictions on her domestic activities and had missed only one-half day of work due to the accident. After giving a detailed report of his own observations and examination of [the Appellant], [independent chiropractor] reported his impression that [the Appellant] had suffered a Grade 2 Whiplash Associated Disorder, accompanied by cervicogenic headache, thoracic and lumbar strain, a probable left radiculopathy at S1 and left buttock myofascial pain. He also recorded his impression that [the Appellant] was suffering bilateral carpal tunnel syndrome, not due to the accident.

[Independent chiropractor] recommended that the frequency and duration of treatment should be reduced to two times per week for the following six weeks, once a week thereafter for eight to ten weeks and a discharge of [the Appellant] from chiropractic care at the end of that period. Should she still be having symptoms at that point, he recommended, she should be referred for multi-disciplinary management. He felt that [the Appellant] might benefit from some cervical spine exercises as well as treatment directed at the probable left S1 radiculopathy. [Independent chiropractor] felt that [the Appellant's] prognosis was good and that there appeared to be no permanent impairment from her injuries caused by the accident.

[The Appellant's] adjuster at MPIC approved funding for continued chiropractic care based upon [independent chiropractor's] treatment plan, from which decision [the Appellant] applied for an internal review. Not too surprisingly, [Appellant's chiropractor #1] disagreed with [independent chiropractor's] treatment plan. [The Appellant] indicated that her primary difficulty, for which she required continuing treatment, stemmed from symptoms of numbness in her left shoulder and arm and her left leg. She noted that those symptoms found temporary relief through [Appellant's chiropractor #1's] treatments but was obviously concerned that, while the symptoms had improved somewhat, they did not appear to be going away altogether.

The question of the need for continuing treatments was referred by MPIC's Internal Review Officer to [text deleted], MPIC's chiropractic consultant. [MPIC's chiropractor] expressed the opinion that, since [Appellant's chiropractor #1] had reported that [the Appellant's] pre-accident spinal health had been excellent, there were no physical modifying factors likely to delay her recovery. [MPIC's chiropractor], adopting [independent chiropractor's] diagnosis of a WAD 2-type injury, pointed out that the natural history of recovery for injuries of this type should see complete resolution within six months after about 33 chiropractic adjustments. By the date of [MPIC's chiropractor's] initial memorandum, May 12th, 1998, [the Appellant] had had chiropractic rehabilitation for over eleven months, encompassing at least 88 treatments, exceeding the natural history of recovery by well in excess of two times. By definition, he felt, [the Appellant] had reached maximum therapeutic benefit. [MPIC's chiropractor] added that if [the Appellant] still had significant residual symptomatology, she might benefit from chiropractic care

from a different chiropractor, on a time-limited basis of not more than eight weeks, supplemented by self-reported functional pain scale questionnaires so as to establish effectiveness.

We may say that we, also, have difficulty in accepting the diagnosis of a Grade 3 Whiplash Associated Disorder from a careful reading of all the chiropractic reports on [the Appellant's] file.

Based upon [MPIC's chiropractor's] opinion, MPIC's Internal Review Officer allowed [the Appellant's] appeal to the extent of an additional eight weeks treatment.

[The Appellant] then commenced seeing [text deleted], another chiropractor, on the 22nd of June 1978. Meanwhile, she filed a Notice of Appeal to this Commission from the decision of the Internal Review Officer. In that appeal, she sought payment for chiropractic treatments from March 21st, 1998 (the date when MPIC had initially terminated her chiropractic benefits) until June 2nd, 1998 (the date of the Internal Review Officer's decision) "and continued coverage until [Appellant's chiropractor #2] feels I have recovered".

On November 23rd, 1998 this Commission was advised by counsel for MPIC that the Corporation was prepared to honour the cost of [the Appellant's] chiropractic treatments between March 21st and June 2nd of 1998, both inclusive, and awaited only confirmation from [the Appellant] as to the exact number of those treatments, believed to be twelve.

Therefore, the only issue remaining for this Commission to decide is whether MPIC should be liable to pay for [the Appellant's] chiropractic treatments for any period after June 2nd, 1998.

In a report dated August 17th, 1998, [Appellant's chiropractor #2] prescribed a further twelve weeks of treatments at a frequency of two times per week, to be followed by one adjustment per week for six weeks and one treatment every two weeks for a further two months - a total of eight months continuing care from the date of his report.

Having commenced her treatments by [Appellant's chiropractor #2] on June 22nd, 1998, and having been allowed by the Internal Review Officer an extension of 8 weeks of care by her new chiropractor, by August 14th, 1998, [the Appellant] would have received an aggregate of at least 110 adjustments over a period of fifteen months. With all due deference to the views of [Appellant's chiropractor #2], we find that [the Appellant] had, by that date, reached maximum therapeutic benefit from chiropractic adjustments. We agree with [independent chiropractor] that if she continues to have residual symptoms a referral to a multi-disciplinary team would be appropriate.

DISPOSITION:

We find that the Appellant is entitled to be reimbursed for the cost of her chiropractic treatments from March 21st, 1998 to and including August 14th, 1998, upon production of suitable proof of

her payment or indebtedness for those treatments, to the extent that MPIC has not already paid for them. To the best of our knowledge, the last such payment was made on June 16th, 1998.

We further find that, if the Appellant still claims to be suffering from the residual effects of her motor vehicle accident of June 4th, 1997, the matter be referred back to her adjuster at MPIC for consideration by a multi-disciplinary team, to include representatives of such disciplines as MPIC may deem appropriate.

Dated at Winnipeg this 29th day of December 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED