

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-81**

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

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

HEARING DATE: March 3rd, 1999

ISSUE: Whether Appellant entitled to continued therapy.

RELEVANT SECTIONS: Section 136(1)(a) of the MPIC Act and Section 5(a) of
Manitoba Regulation No. 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], a [text deleted] year old electrician at the time of his accident on February 26th, 1995, was behind the wheel of this stationary, [text deleted] automobile when it was rear-ended by a half ton truck and pushed into a van ahead of him. As a result of injuries sustained in that pair of collisions he was off work for about six weeks.

He consulted his chiropractor, [text deleted] on the day after his accident. [Appellant's chiropractor] took X-rays of [the Appellant's] neck and started treating him with chiropractic adjustments five times per week. That frequency continued for about one month and was then reduced to three times per week and then, later in 1995, to twice weekly.

The viva voce evidence of [the Appellant], supported by the written reports of [Appellant's chiropractor], is that the chiropractic adjustments he was receiving initially were directed towards his neck and mid-back. However, approximately six weeks after his accident he started to experience pain in the left portion of his lower back, and this lower back pain became steadily more severe during the ensuing months. About six months after his accident, [the Appellant] testified, he started getting very severe pain in that portion of his lower back, and these bouts would last from three to four weeks at a time. They were preceded by pains transferring from his lower back into his left leg.

While [the Appellant] was on vacation in [text deleted] in the fall of 1995, he had experienced what he described as a serious flareup. He had been treated by a chiropractor there and had also undergone magnetic resonance imaging of his lumbar spine. The report of that MRI reflects multiple discogenic abnormalities throughout the lumbar spine, some (the more serious) of which almost undoubtedly predated [the Appellant's] motor vehicle accident. At the same time, [the Appellant] appears to have been symptom-free before his accident and, upon a review of all of the evidence, including the considered opinions of [text deleted], a chiropractic consultant to whom [the Appellant] was referred for an examination and assessment in November of 1995, and of [text deleted], chiropractic consultant to MPIC's Claims Services Department, we find that

[the Appellant] has suffered from lower back pain, commencing about six weeks after his accident and continuing to the present day. We find, also, that while that pain has been bearable most of the time, [the Appellant] has experienced occasional 'flareups' that have sent him to seek temporary relief from chiropractic treatments. We find that [the Appellant's] continuing problems with his lower back are, on a reasonable balance of probabilities, attributable to his motor vehicle accident.

Unfortunately, the earlier reports rendered by [Appellant's chiropractor] make no mention of [the Appellant's] lower back pain, which first surfaces in [Appellant's chiropractor's] reports on November 14th, 1995. [Appellant's chiropractor] explains that absence by commenting that both he and [the Appellant], although aware of the lower back problem during the weeks following the accident, felt that this was the least troublesome of [the Appellant's] complaints and that its natural history would soon see it cured. As matters turned out, and as we now know, that did not prove to be the case and [the Appellant's] sworn testimony does confirm that his lower back started to bother him about six weeks post-accident. It is by no means unusual for symptoms of that kind to surface a number of weeks after the time of impact and we find [the Appellant's] evidence credible.

A more difficult question posed by [the Appellant's] appeal is whether, by the time MPIC decided to discontinue paying for his chiropractic adjustments, [the Appellant] had reached maximum therapeutic benefits from those treatments. The file made available to us, and particularly [Appellant's chiropractor's] reports, together with [the Appellant's] own oral testimony, reflect that the chiropractic adjustments [the Appellant] was receiving from

[Appellant's chiropractor] have not changed from the day following his accident. [The Appellant] testified that, although [Appellant's chiropractor] was initially treating him for his neck and mid-back discomfort, when his lower back pain started and, later, when that pain in his left lower back became increasingly severe, transferring into his left leg, the treatments he received were the same: "I got the same neck adjustments, he 'cracked' the middle of my back, then I would lie on my side and [Appellant's chiropractor] would push down on my hip."

Although [Appellant's chiropractor's] report of November 5th, 1996, following some 150 such adjustments, speaks of [the Appellant] "responding well to his current treatment program andcontinuing to show improvement", we are not able to discern any material, permanent improvement even prior to that date. MPIC advised [the Appellant] on February 14th, 1997 of its decision to discontinue any further medical treatments: that decision was confirmed by MPIC's Internal Review Officer on May 21st, 1998. It is from this latter decision that [the Appellant] now appeals.

[MPIC's chiropractor], in an internal memorandum of November 13th, 1997 addressed to MPIC's Internal Review Officer, makes the comment that

There is evidence based on over two years of treatment that [the Appellant] appears to have, if anything, worsened throughout that time period. I am of the opinion that providing more treatment of the same type is not supportable, based on the evidence available to me. I would, however, support a rehabilitation program directed to lumbosacral stabilization as recommended by [Appellant's chiropractor].

[MPIC's chiropractor] concludes his memorandum by expressing doubt as to the relationship between [the Appellant's] then current complaints and the motor vehicle accident in question.

[Appellant's chiropractor], himself, had advised [the Appellant] to continue daily exercises and added that "It may be beneficial for [the Appellant] to undertake the formal rehabilitation exercise program". We concur, although it must be added that, since the MRI of [the Appellant's] lumbar spine shows a 7 millimeter posteriorly herniated disk in the left parasagittal region at L5-S1, any physical therapy that he might receive will need to be part of a program carefully planned to avoid further exacerbation of that site.

[The Appellant] could not recall when he had stopped seeing [Appellant's chiropractor] on a regular basis - he thought that it would have been about February of 1998 - and had only been seeing [Appellant's chiropractor] thereafter when he had a major flareup.

Although we find that [the Appellant] had reached maximum therapeutic benefit from [Appellant's chiropractor's] chiropractic adjustments by February of 1997, we are also of the view that [the Appellant] should be referred back to his Adjuster for the purpose of having him assessed by a qualified physiatrist, and that that assessment should be followed by such program of physiotherapy or other restorative therapy (if any) as the physiatrist may recommend. The purpose of any such therapy will be to restore [the Appellant], as nearly as may be practicable, to the state of functional capacity that he enjoyed immediately prior to his accident of February 26th, 1995, having in mind the fact that, even without his accident, the prior condition of his lumbar spine and the normal, degenerative process of aging would not have allowed permanent stabilization of his lower back.

We should add that counsel for MPIC referred us to the decision of Morse J. in the Manitoba Court of Queen's Bench case of Chartrand vs. Murovec and Bidinost but, with deference, the decision of Morse J. was based upon his finding, as a fact, that the low back pain experienced by the plaintiff in that case did not surface until some five months after the plaintiff's motor vehicle accident and that any discomfort caused by the accident itself had cleared up within less than a month. In [the Appellant's] case, and despite the written report of [Appellant's chiropractor] that [the Appellant's] "low back symptoms began mildly immediately after the accident and progressively exacerbated within a few months.....", we prefer the sworn testimony of [the Appellant] himself that there was an hiatus of roughly six weeks between the date of impact and the onset of his low back pains. As noted above, we do not regard that hiatus as being fatal to [the Appellant's] claim and we accept his submission that the onset of those symptoms was, most probably, brought about by his accident. Hence, the foregoing decision.

Dated at Winnipeg this 8th day of March, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED