

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-00-76**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Jeff Palamar

**APPEARANCES:** The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey.

**HEARING DATE:** December 4<sup>th</sup>, 1999

**ISSUE:** Claim for cost of chiropractic care.

**RELEVANT SECTIONS:** Section 136(1)(a) of the MPIC Act and Section 5 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**

This Commission, when dealing with an earlier appeal by [the Appellant] in March of 1999, noted that, while [the Appellant] had raised the question of her entitlement to reimbursement of chiropractic fees after May 13<sup>th</sup>, 1998, the Commission had no mandate to deal with that since the question had not been the subject of an internal review.

That review has now taken place and it is from a decision of the Internal Review Officer, bearing date April 6<sup>th</sup>, 2000, that [the Appellant] now appeals.

The accident giving rise to the present claim occurred on September 16<sup>th</sup>, 1997. [The Appellant] had also been involved in a motor vehicle accident on May 13<sup>th</sup>, 1997, for which she had made no personal injury claim.

[The Appellant] received assessment and treatment, following each of the foregoing accidents, from [text deleted], a chiropractor. In each case, he diagnosed a Grade II Whiplash Associated Disorder. In addition to [Appellant's chiropractor #1], [the Appellant] also attended upon her family physician, [text deleted], who referred her for physiotherapy to [physiotherapy clinic], where she received physiotherapy from [Appellant's physiotherapist]. She was also sent by her adjuster at MPIC for an independent assessment by [text deleted], physiotherapist, in January of 1998.

[Appellant's chiropractor #1], having examined and reassessed [the Appellant] on February 19<sup>th</sup>, 1998, set out a revised treatment plan at a frequency of twice per week for eight weeks, followed by once weekly for a further four weeks, with an anticipated discharge date of May 14<sup>th</sup>, 1998.

During the month of February 1998, apparently believing that she was not getting any relief from her then current chiropractic or physiotherapy treatments, [the Appellant] changed her family physician to [Appellant's doctor #2], and commenced chiropractic care with [Appellant's chiropractor #2]. [Appellant's doctor #2] instructed her in home exercises and told her to work through the pain, despite the discomfort. [The Appellant] testified that [Appellant's chiropractor #2's] examination had been more thorough than any previously received, and that he gave her instant relief for her back and shoulders. [Appellant's chiropractor #2] diagnosed Grades III(a) and IV(a) Whiplash Associated Disorder but, as this Commission has already noted in its earlier

decision, [Appellant's chiropractor #2's] opinion diverges markedly from that of all [the Appellant's] other care-givers and there is no evidence of any neurological disorder that would justify those classifications. However, MPIC approved [Appellant's chiropractor #2's] course of treatments until May 13<sup>th</sup>, 1998, at the same frequency as had been established by [Appellant's chiropractor #1]. The Appellant actually continued with further treatments until May 31<sup>st</sup>, 1998, and that program appeared to have addressed and resolved her condition. [Appellant's chiropractor #2] referred the Appellant for an X-ray of her shoulder on April 25<sup>th</sup>, 1998; it disclosed no abnormalities in [the Appellant's] shoulder and, in particular, no evidence of dislocation, separation, recent fracture or gross osseous pathology. Nevertheless, [Appellant's chiropractor #2] reported a complaint by the Appellant of pain in the area of her collarbone which he related to scalene muscle hypertonicities. In a further report of May 13<sup>th</sup>, 1998, [Appellant's chiropractor #2] refers to a left shoulder subluxation. On May 22<sup>nd</sup>, 1998, [Appellant's doctor #2] offered his opinion that [the Appellant] was suffering from a combination of muscular and ligamentous strains complicated by a loss of muscle tone. "Essentially a detraining affect as a result of the injury and the lack of functional use following her injuries". He started her on an exercise program to strengthen her paraspinal and thoracic neck muscles, and a bilateral shoulder exercise program to strengthen the muscles in an effort to tighten up some of the laxity and to increase the general stability of the joints. By May 22<sup>nd</sup>, said [Appellant's doctor #2], there had been an improvement in bilateral shoulder function. There was some bilateral weakness still present but the impingement test was now essentially negative.

A narrative report from [Appellant's chiropractor #2] addressed to this Commission on July 28<sup>th</sup>, 1998, concludes that "apparently her previous providers had been unsuccessful in addressing the chief complaint, that is the left shoulder dysfunction".

A memorandum bearing date March 23<sup>rd</sup>, 2000, and prepared by [text deleted], a chiropractic consultant to MPIC, reads in part as follows:

The Initial Health Care Report provided by the claimant's current chiropractor found the claimant to have dermatomal deficits at left C7 and C8, myotomal weaknesses in the left median nerve and a reflex change in the left triceps. In addition to the typical neck and upper back musculoskeletal complaints, there was also a complaint of collarbone area pain. This was described as being associated with scalene muscle hypertonicities.

There was also a suggestion by the claimant's treating chiropractor that the other providers missed this important finding (clavicular fixation) and it was this finding that was responsible for the claimant's primary complaint.

I feel it is possible that the previous provider and the third party physiotherapy examiner did not detect this area of injury. If this were the case, and it was related to the motor vehicle in question, I would expect a maximum of two to three months of care directed towards this area in order to have it resolved.

I however have difficulty appreciating how the previous practitioners missed this primary problem. I also question, what might have transpired with the claimant. Why did she present to her second chiropractor with head trauma related symptoms? These findings were not consistent with any of those that were previously described and are in my opinion, not in concert with the accident. I also question what other natural circumstance might have taken place, in order for the claimant to be complaining of these kinds of symptoms.

With all of the above said, it is possible that the previous treatment providers missed the claimant's primary area of complaint. If that area of complaint was related to the motor vehicle accident in question, it would in my view, have required not more than two to three months of care.

We accept the view of [MPIC's chiropractor] and we find that, on a balance of probabilities, the clavicular fixation to which [Appellant's chiropractor #2] makes reference, to the extent that it had its cause in the Appellant's motor vehicle accidents, was resolved by June 30<sup>th</sup>, 1998. [The Appellant] will therefore be entitled to be reimbursed for the cost of any chiropractic treatments between the date when her benefits were terminated on May 13<sup>th</sup>, 1998, and June 30<sup>th</sup> of that year.

Dated at Winnipeg this 10<sup>th</sup> day of January, 2000.

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**J. F. REEH TAYLOR, Q.C.**

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**YVONNE TAVARES**

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**JEFF PALAMAR**