



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-119**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Deborah Stewart
Dr. Patrick Doyle

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: December 4, 2003

ISSUE(S): Termination of Chiropractic Treatment and Reimbursement

RELEVANT SECTIONS: Section 136(1)(a) of the Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5(a) 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] was involved in a motor vehicle accident on March 8, 1996. As the result of the injuries the Appellant sustained in this accident he attended at the office of his chiropractor, [text deleted], who had been treating the Appellant since the Appellant was involved in a motor vehicle accident in 1988. In his Initial Report to MPIC, dated March 11, 1996, [Appellant's chiropractor] indicated that the Appellant was suffering from a subluxation of C1 & C2 due to a severe sprain type of injury. In this report [Appellant's chiropractor] indicated that the treatment

plan that he proposed was spinal adjustments at two times per week for three months, followed by reassessment.

[Appellant's chiropractor] provided a Narrative Report to MPIC dated May 28, 1996 and details a history of the Appellant's presentation to his clinic on March 11, 1996. [Appellant's chiropractor's] report indicates that the Appellant presented at that time with a plethora of symptoms. In respect of the orthopedic findings in the cervical spine the report indicates a severely restricted cervical spine particularly in flexion/extension and which would be considered non-functional.

On February 11, 1997 [Appellant's chiropractor] submitted a further narrative report to MPIC based on his examination of the Appellant on January 8, 1997. [MPIC's chiropractor], upon reviewing [Appellant's chiropractor's] report of February 11, 1997, recommended in a letter to MPIC dated July 22, 1997 that MPIC obtain an independent chiropractic assessment.

As a result MPIC requested [text deleted], a chiropractor, to conduct a third party examination of the Appellant. [Independent chiropractor] examined the Appellant on October 28, 1997 and provided a report to MPIC dated November 12, 1997.

In this report [independent chiropractor] stated that as a result of obtaining the Appellant's history and physical examination he arrived at the following clinical impressions:

- 1) Upper cervical biomechanical dysfunction
- 2) Myofascial pain of the lower cervical and upper thoracic region
- 3) Mild lumbosacral posterior facet dysfunction
- 4) Mild to moderate left sacroiliac joint syndrome

[Independent chiropractor] noted that although the claimant may require ongoing conservative care, he did not find any significant objective findings that would support

this claimant's nearly total self-imposed disability. It was [independent chiropractor's] opinion that the 1988 motor vehicle collision produced significantly more injury than did the most recent accident, which simply aggravated pre-existing conditions. It is [independent chiropractor's] impression that the claimant would benefit from an aggressive regular exercise program.

MPIC made arrangements with [Appellant's chiropractor] to have the Appellant attend a program at the [text deleted] and the Appellant commenced exercises two or three times a week for a period of time and then subsequently stopped attending this program.

[Appellant's chiropractor] provided a report to MPIC, dated December 22, 1999, outlining the chiropractic treatments the Appellant had been receiving since 1998 and the Progress Report dated February 13, 2000. These reports were provided to [MPIC's chiropractor] of MPIC with a request that [MPIC's chiropractor] review the Appellant's claim and advise MPIC whether ongoing chiropractic treatments were related to the injuries sustained in the accident and, if so, whether the frequency of treatments as requested by [Appellant's chiropractor] was appropriate.

On March 23, 2000 [MPIC's chiropractor] wrote to MPIC and stated:

After reviewing this file in detail including multiple reports from [Appellant's chiropractor] as well as a third party examination from [independent chiropractor], it is my opinion that this claimant has reached maximum therapeutic benefit with respect to the chiropractic care he is receiving for the March 8, 1996 motor vehicle collision.

In November, 1997, [independent chiropractor] acknowledged that the claimant continued to suffer from what he believed were accident related symptomatology, however, he found a paucity of objective physical findings to substantiate the claimant's almost total self-imposed disability.

It is my opinion that there is insufficient information on file to equate the current need for chiropractic care to the motor vehicle accident in question.

Upon receipt of [MPIC's chiropractor's] report the case manager wrote to the Appellant by letter dated March 30, 2000 indicating that, based upon a review of the medical file, MPIC was not prepared to fund any further chiropractic care with respect to the March 8, 1996 motor vehicle accident because further treatment was unlikely to be of any further therapeutic benefit. Upon receipt of this letter the Appellant, on May 23, 2000, made Application for Review to an Internal Review Officer.

On June 6, 2000 [Appellant's chiropractor] provided a narrative report to MPIC. At the request of MPIC, [MPIC's chiropractor] was requested to review the entire medical file and provide his comments to MPIC in respect of [Appellant's chiropractor's] report.

[MPIC's chiropractor], in his Inter-Departmental Memorandum dated July 18, 2000 to MPIC, comments on [Appellant's chiropractor's] report dated June 6, 2000 as follows:

Reviewer Comment

This represents an essentially unchanged examination of muscle strength testing.

Insofar as diagnosis, [Appellant's chiropractor] offers hyperflexion-extension sprain-strain injuries to the cervical spine, misalignment of the cervical vertebrae, misalignments throughout the mid and low back.

[Appellant's chiropractor] goes on to note that the claimant continues to receive care on a weekly basis and that supportive chiropractic care will be necessary for some time.

[MPIC's chiropractor] also reviewed the Appellant's entire medical file and stated:

After a detailed review of the file contents pertaining to the motor vehicle accident in question I will offer the following opinions.

1. The balance of [the Appellant's] complaints are on the balance most probably related to the collision of 1988.
2. The incident in question most probably resulted in an exacerbation of the previous injuries.

3. The claimant has had extensive exposure to chiropractic care since 1988.
4. The file contents fail to demonstrate significant improvement in the claimants subjective and objective findings as reported by [Appellant's chiropractor]. He presents with a similar list of symptoms now as compared to shortly after the accident. It would appear that there are more symptoms that have remained unchanged or have worsened since that onset of care than have improved.
5. The claimant has had an adequate exposure to chiropractic care in relation to the motor vehicle accident in question and has reached maximum therapeutic benefit.
6. Ongoing interventions of a passive nature are unlikely to alter this claimants symptomatic expression.

Internal Review Decision

In a letter dated August 17, 2000 the Internal Review Officer wrote to the Appellant and advised him that he was confirming the decision of the case manager to terminate the funding of chiropractic treatments and dismissing the Appellant's Application for Review for the following reasons:

In order for treatment expenses to be covered under PIPP, the treatments must be "medically necessary". In addition, the treatments must be required to treat injuries sustained in a motor vehicle accident occurring on or after March 1, 1994.

Based upon the opinion of [MPIC's chiropractor], I am satisfied that MPI has fulfilled its obligations to you in terms of ongoing chiropractic coverage and that your claim for such coverage fails on both points.

On December 12, 2000 the Appellant filed a Notice of Appeal to this Commission.

Appeal

The appeal in this issue is governed by Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94 which provides as follows:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician.

Prior to the hearing of the appeal [Appellant's chiropractor] wrote to the Commission on May 27, 2002 and asserted that:

- (a) the Appellant requires support of chiropractic care approximately on a one time per two weeks basis.
- (b) the Appellant did not return to his pre-accident status prior to any of the accidents that he had been involved in.
- (c) the prognosis for [the Appellant] is guarded. Without supportive Chiropractic care [the Appellant] is unable to function and not able to perform the duties of his work. Withdrawal of Chiropractic care would severely debilitate [the Appellant].

We estimate that supportive Chiropractic care will be necessary for many years due to [the Appellant's] eventful history and severity of injuries that he sustained. We will re-evaluate his progress approximately every six to eight months.

Upon receipt of that report MPIC requested [MPIC's chiropractor's] comments in respect of this report. [MPIC's chiropractor] provided an Inter-Departmental Memorandum to MPIC, dated June 12, 2003, and stated:

After reviewing the additional report from [Appellant's chiropractor], there is little information on file that would change my previously rendered opinion. Specifically, it continues to appear that the balance of [the Appellant's] complaints are probably related to the collision of 1988 as opposed to the collision in question.

The incident in question most probably resulted in a time-limited exacerbation of the previous injuries. [Appellant's chiropractor] has not provided any additional objective evidence to suggest that the claimant has improved significantly over time and with care, but rather the balance of this new report is subjective information including a subjective opinion from the claimant that he needs more care as well as a subjective opinion from [Appellant's chiropractor] that the claimant needs supportive chiropractic care. There does not appear to be any objective evidence on file to suggest that this is so with respect to the most recent accident.

This claimant has had extensive exposure to chiropractic for the accident in question and has, on the balance of probability, reached his maximum therapeutic benefit and his maximum medical improvement with respect to any exacerbation that he may have sustained as a result of the collision in question.

[Appellant's chiropractor] provided a further report to MPIC dated August 6, 2003 and MPIC again requested [MPIC's chiropractor] to comment on this report by [Appellant's chiropractor].

[MPIC's chiropractor] provided an Inter-Departmental Memorandum to MPIC, dated August 26, 2003, wherein he stated:

. . . . it is my opinion that the primary injuries that necessitate supportive care predate the March 8, 1996 collision on which this file review is based. The necessity for supportive care is unrelated to the motor vehicle accident of 1996.

The appeal hearing in this matter took place by teleconference on December 4, 2003. Participating in this teleconference was the Appellant and [Appellant's chiropractor], and MPIC's legal counsel who was present in the Commission's hearing room together with members of the Commission.

Submissions

[Appellant's chiropractor] acted as the spokesperson for the Appellant, reviewed the medical status of the Appellant prior to and after the motor vehicle accident of March 8, 1996, and concluded that the 1996 accident materially contributed to the present medical condition of the

Appellant. [Appellant's chiropractor] further submitted that the Appellant was required on a regular basis to receive supportive chiropractic care and further stated that if the Appellant was unable to receive these treatments he would be unable to continue to work.

In reply MPIC's legal counsel stated that:

1. the Commission should accept [MPIC's chiropractor's] opinion that the necessity of supportive chiropractic care was a result of the 1988 and 1999 motor vehicle accidents which were unrelated to the March 8, 1996 accident, which was the only accident relevant in this appeal.
2. the 1996 motor vehicle accident resulted in a prolonged exacerbation of the Appellant's complaints.
3. having regard to the chiropractic opinion of [MPIC's chiropractor] the Appellant's complaints persisted for a period of time until the Appellant was again at a level of care which [Appellant's chiropractor] described as supportive and which closely approximated the frequency that was directed to the same areas of care delivered prior to the 1996 collision.
4. the Internal Review decision was correct when the Internal Review Officer stated that the Appellant had received adequate exposure to chiropractic treatment and had likely already obtained the maximum therapeutic benefit from chiropractic treatments when MPIC's coverage for chiropractic treatment was properly terminated effective March 30, 2000 pursuant to Section 5(a) of Manitoba Regulation 40/94. MPIC's legal counsel referred to Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94.

Decision

The Commission, after reviewing the documentary evidence, and after hearing the submissions from [Appellant's chiropractor], the comments of the Appellant and the submissions of MPIC's legal counsel, determines that:

1. having regard to the number of chiropractic treatments the Appellant has received since the motor vehicle accident and having regard to the lack of progress the Appellant made from these chiropractic treatments; and
2. having regard to the medical opinions of [independent chiropractor] and [MPIC's chiropractor] that the chiropractic treatments were not medically required; and
3. the Appellant had obtained maximum therapeutic benefits from the chiropractic

treatments when MPIC terminated the funding of these treatments on March 30, 2000; and

4. under these circumstances the Commission rejects the medical opinion of [Appellant's chiropractor] in respect of a continuation of chiropractic treatments after March 30, 2000; and
5. for these reasons the Commission determines that the Appellant has not established, on the balance of probabilities, that chiropractic treatments after March 30, 2000 were medically required pursuant to Section 5(a) of Manitoba Regulation 40/94.

The Commission therefore finds that MPIC correctly applied the provisions of Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94 when terminating the funding for chiropractic treatments to the Appellant as of March 30, 2000. As a result, the Commission confirms the decision of the Internal Review Officer dated August 17, 2000 and dismisses the Appellant's appeal herein.

Dated at Winnipeg this 5th day of January, 2004.

MEL MYERS, Q.C.

DEBORAH STEWART

DR. PATRICK DOYLE