



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-02**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Deborah Stewart
Ms. Mary Lynn Brooks

APPEARANCES: The Appellant [text deleted], did not appear and was unrepresented;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Kathy Kalinowsky.

HEARING DATE: January 12, 2005

ISSUE(S): Entitlement to further chiropractic treatment benefits.

RELEVANT SECTIONS: Section 136 (1) of The Manitoba Public Insurance Act ('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 Appellant, [text deleted], was injured in a motor vehicle accident on March 20, 2001. He suffered injuries to his lower back and as a result of these injuries he became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The Appellant received chiropractic treatment and was in receipt of chiropractic treatment benefits until June 20, 2002.

However, the Appellant alleges that he suffered a recurrence of back pain as a result of the motor vehicle accident on February 24, 2003 and is seeking chiropractic treatment benefits from February 24, 2003 to July 21, 2003.

Preliminary Matters

Immediately prior to the hearing scheduled for the morning of January 12, 2005, the Appellant left a voice mail message with an Appeals Officer for the Commission stating that he would not be appearing, as his shoulder hurt. The Appeals Officer left a voice mail message for the Appellant in return, advising him that the Notice of Hearing which had been sent to him dated October 21, 2004 indicated that:

Should either party fail to appear or to be represented at the above time and place, the Commission may proceed with the hearing and render its decision. Alternatively, it may dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

The hearing was convened approximately ten minutes late on January 12, 2005 to give the Appellant a chance to appear. When the Appellant did not appear, the panel of the Commission telephoned the Appellant. The call was answered by an outgoing voice mail message identifying the voice mail as belonging to the Appellant. The Appellant did not appear to be at home. The Deputy Chief Commissioner left a message for the Appellant advising him of the stipulations set out in the Notice of Hearing, stating that the time and date of the Appeal Hearing are firm and that postponements would only be granted under unusual circumstances of a compelling nature. Should a party fail to appear the Commission may proceed with the hearing and render its decision or adjourn.

The panel then adjourned to consider the matter. It concluded that it had not heard any compelling reason to postpone the hearing and decided to proceed with the appeal on the merits in the absence of the Appellant.

[MPIC's Chiropractor] Report Dated January 11, 2005

Another preliminary issue arose in regard to an additional report prepared by [MPIC's chiropractor] which counsel for MPIC sought to have included in the documentary evidence before the Commission, on January 11, 2005, two days before the hearing. The panel considered the matter and advised counsel for MPIC that as the report was received long after the deadline for receiving documentation (four weeks before the hearing), and as the Commission had not had the opportunity to hear the Appellant's position in regard to the report, the additional report would not be allowed into evidence.

Internal Review Decision

The Appellant's case manager notified him by letter dated May 30, 2003, that the Appellant's request for further chiropractic benefits was being declined as the medical information indicated that there was insufficient evidence to support a causal relationship between his current signs/symptoms and the motor vehicle accident of March 20, 2001.

The Internal Review Officer considered the Appellant's submission that he still had pain in his lower back, and that he had not sustained any other injury, thus he believed that the same accident continued to cause him pain.

The Internal Review Officer also considered the opinion of [MPIC's chiropractor] dated May 27, 2003, as well as reports provided by the Appellant's chiropractor, [text deleted]. The Internal Review Officer concluded that further chiropractic treatment was not medically necessary as a result of the motor vehicle accident of March 20, 2001. It is from this decision of the Internal Review Officer that the Appellant has appealed.

Grounds for Appeal

The Appellant, in his Notice of Appeal, stated that he still had pain in his lower back on and off, which the chiropractic treatment helped.

The Commission reviewed the summary of treatments administered by [Appellant's chiropractor #1] between June 2002, and July 2003, as set out in [Appellant's chiropractor #1's] letter dated October 1, 2003.

The Commission also reviewed [Appellant's chiropractor #1's] letter dated October 21, 2003 where he states that treatments performed by him were directed at injuries in the Appellant's lower back, particularly the left SI joint.

He responded well to therapy and was pain free on June 20, 2002.

On February 24, 2003, [the Appellant] again began chiropractic treatments to address a left SI joint problem which he felt was a continuation of his previous complaint. He stated that there were no further injuries which might have caused this problem. He attended for six treatments and again doing well by July 21, 2003.

The fixation noted in February, 2003, was identical in appearance as that noted on the examination in March 2002.

In a report dated April 2, 2004, [text deleted], the Appellant's chiropractor, noted that while he was under chiropractic care, the Appellant felt he was approximately 90-95% improved.

She saw the Appellant in her office on March 31, 2004 and noted that her current examination findings correlated with the injuries sustained from the motor vehicle accident at that time. It was her opinion that the Appellant had chronic residual SI joint dysfunction as a result of the motor vehicle accident.

Submission of Counsel for MPIC

Counsel for MPIC submitted that the medical evidence showed that the Appellant had recovered from the effects of the motor vehicle accident of March 20, 2001, and that the Internal Review Officer was correct in upholding the case manager's decision that chiropractic treatment benefits resulting from an alleged recurrence some two years after the motor vehicle accident should not be allowed.

Counsel for MPIC submitted that [Appellant's chiropractor #1]'s report of October 21, 2003 indicated that the Appellant was pain free on June 20, 2003. The evidence showed that he was discharged from chiropractic care by July 2002 and, that he had told [Appellant's chiropractor #2] that he was 90 - 95% recovered by the end of his chiropractic treatment.

A significant period of time had elapsed, with the Appellant presenting approximately eight months later with low back pain. A note on the file from the case manager indicated that in fact,

by that point his file had been closed. He then had six chiropractic treatments over the next six months, between February and July of 2003.

Counsel for MPI also referred to a report of [independent chiropractor], who provided the results of his independent chiropractic examination of the Appellant on February 4, 2002. It was [independent chiropractor's] opinion that the subjective strength of the Appellant's complaints seemed to exceed the level of findings in the area and that he had :

...well undergone the worst of any initial accident related disorders. He (sic) initial neck symptoms have essentially resolved. His lower back complaints have partially responded but his progress has leveled off. Pre-existent de-conditioning and postural factors are likely perpetuating the back symptoms.

[Independent chiropractor] recommended a tapering off of chiropractic treatments to once a week to start self-managed care by the end of March 2002. This time line was later extended to the end of June 2002. [Appellant's chiropractor #1], as reported in his letter of October 21, 2003, found the Appellant to be pain free on June 20, 2002

The file was reviewed by [MPIC's chiropractor] on May 27, 2003. [MPIC's chiropractor] indicated that given the passage of one year between treatments and the fact that mechanical back pain is a common problem in the general population, it was his opinion that the Appellant's recurrence of low back pain one year after his last treatment was difficult to relate to the effect of the motor vehicle accident.

On November 12, 2003, [MPIC's chiropractor] provided an additional memorandum which opined that there was no information which would relate the occurrence of back pain in February 2003 to the effects of the motor vehicle accident.

Counsel for MPIC submitted that having regard to the timing of the motor vehicle accident and treatment (at least two years post accident), the Appellant's physically demanding job as a machinist, the age of the claimant, his pre-existing deconditioning of the lower back area and poor postural factors, it was difficult to relate the Appellant's complaints to the motor vehicle accident, rather than to general low back pain commonly seen in the general population.

Discussion

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded chiropractic treatment if that medical treatment is required because of the accident. The relevant sections of the MPIC Act and Regulations are as follows:

Section 136 (1) of the MPIC Act:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Counsel for MPIC also points out that the onus is on the Appellant to show that his complaints are due to and treatment are required because of the accident.

Decision

The medical evidence before the Commission is that the Appellant had recovered from the effects of the motor vehicle accident by June 20, 2002.

It is the finding of the Commission that the evidence in this matter leads to the conclusion that the Appellant was recovered and pain free from his injuries by June 2002, and there is no evidence to show that further chiropractic treatments from February to July 2003 were a medical necessity as a result of the motor vehicle accident of March 20, 2001. As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date November 27, 2003.

Dated at Winnipeg this 10th day of February, 2005.

LAURA DIAMOND

DEBORAH STEWART

MARY LYNN BROOKS