



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-177

PANEL: Mr. Mel Myers, Q.C., Chairperson

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

HEARING DATE: January 23, 2006

ISSUE(S): Entitlement to further chiropractic treatment benefits

RELEVANT SECTIONS: Section 136(1) of The Manitoba Public Insurance Corporation 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 Internal Review decision dated November 4, 2003 succinctly sets out the essential facts of this appeal:

REASONS FOR REVIEW DECISION

On May 26, 2002, you were a passenger in a vehicle heading southbound on [text deleted], when a North bound vehicle hit you head on while attempting a left hand turn. As a result of the accident you reported bruising to various parts of your body as well as pain in your neck and back.

[MPIC's chiropractor #1] of Manitoba Public Insurance's Health Care Services Team reviewed your file and provided a report dated April 3, 2003. [MPIC's chiropractor #1]

concluded that a trial of chiropractic care may be reasonable to evaluate whether or not it would be effective as treatment for your ongoing complaints.

You began attending for chiropractic care in March of 2003 and on July 31, 2003, your chiropractor requested funding for further treatment.

[MPIC's chiropractor #1] reviewed the new medical information on your file and provided a report dated September 17, 2003. [MPIC's chiropractor #1] wrote that after reviewing the information on your file it would appear that the trial of chiropractic care has been unsuccessful at alleviating your complaints and that not only are the reported findings similar between chiropractic report, your Oswestry and Neck Disability Indices scores have worsened slightly. [MPIC's chiropractor #1] concluded that the current file contents do not indicate that ongoing chiropractic care is a therapeutic necessity.

Section 136(1) of the Act provides that a victim is entitled to reimbursement of expenses incurred because of a motor vehicle accident. Section 5 of Manitoba Regulation 40/94 R provides that Manitoba Public Insurance shall pay an expense incurred by a victim for medical or paramedical care where that care is medically required as a result of the accident.

Since the medical documentation on your file indicates that further chiropractic care is not a therapeutic necessity, I must confirm your Case Manager's decision.

The Appellant filed a Notice of Appeal dated November 12, 2003.

On January 28, 2005 the Commission received a narrative report from the Appellant's chiropractor, [text deleted], and a copy of this report was provided both to the Appellant and Mr. Dean Scaletta, MPIC's legal counsel. MPIC requested [text deleted], a Chiropractic Consultant of MPIC's Health Care Services Team to review and comment on [Appellant's chiropractor's] report. [MPIC's chiropractor #2], in a memorandum to Mr. Scaletta dated March 21, 2005 indicates that the request for a review of [Appellant's chiropractor's] report was forwarded initially by MPIC to [MPIC's chiropractor #1], who had previously reviewed the file on behalf of MPIC. However, at that time, the attending chiropractor, [text deleted], was practicing in the same office as [MPIC's chiropractor #1]. As a result, [MPIC's chiropractor #2]

was requested to provide Mr. Scaletta with a chiropractic opinion in respect of [Appellant's chiropractor's] report.

[MPIC's chiropractor #2] reviewed [Appellant's chiropractor's] report and disagreed with [Appellant's chiropractor's] comments as to the method in which status inventory information was collected by [MPIC's chiropractor #1]. [MPIC's chiropractor #2] stated that he was in agreement with [MPIC's chiropractor #1's] previously expressed opinion that the Appellant failed to show adequate improvement to draw the conclusion that further chiropractic care would not be a medical necessity.

[Appellant's chiropractor] was provided with a copy of [MPIC's chiropractor #2's] report and replied in a report dated September 28, 2005. In this report she reviewed [MPIC's chiropractor #2's] report and concluded that in her view further chiropractic care was a medical necessity.

[MPIC's chiropractor #2] was provided with a copy of [Appellant's chiropractor's] report and in a Inter-Departmental Memorandum dated November 7, 2005 [MPIC's chiropractor #2] advised Mr. Scaletta that after reviewing [Appellant's chiropractor's] report dated September 28, 2005 he still disagreed with [Appellant's chiropractor]. [MPIC's chiropractor #2], in his memorandum, stated that in summary the information that was submitted by [Appellant's chiropractor] did not change his opinion as expressed in his memorandum to MPIC dated March 21, 2005.

Appeal

The appeal hearing took place on January 23, 2006. The Appellant appeared on her own behalf and Mr. Dean Scaletta appeared as legal counsel for MPIC.

The relevant provisions of the Act and Regulations in respect of this appeal are Section 136(1) of the Act and Section 5 of Manitoba Regulation 40/94:

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.

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;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

At the appeal hearing the Appellant testified that she had received twenty-four (24) chiropractic treatments between February 2003 and August 2003 for which she was reimbursed by MPIC. She further testified that MPIC was in error in terminating reimbursement for chiropractic treatments thereafter because she was receiving a benefit from chiropractic treatments. She further testified that subsequent to the termination of reimbursement of the expenses by MPIC, she had received five (5) chiropractic treatments from [Appellant's chiropractor] which were paid for by Manitoba Health Services and that these treatments were beneficial to her.

In response to questions by the Commission panel the Appellant acknowledged that the chiropractic treatments:

1. provided a reduction in the amount of pain she felt to her neck and back on a temporary basis;
2. did not improve her health permanently by reducing the pain in her neck and back.

The Commission panel informed the Appellant that in order to obtain reimbursement for further chiropractic treatments from MPIC the onus was upon the Appellant to establish, on a balance of probabilities, that these chiropractic treatments were a medical necessity pursuant to Section 5 of Manitoba Regulation 40/94. The Commission panel explained to the Appellant the meaning of the term “medical necessity” within Section 5 of Manitoba Regulation 40/94. Upon receipt of this information from the Commission panel the Appellant acknowledged that she was unable to establish that the chiropractic treatments were a medical necessity within the meaning of Section 5 of Manitoba Regulation 40/94.

The Commission panel informed the Appellant that after reviewing the chiropractic reports of [text deleted], [Appellant’s chiropractor], [MPIC’s chiropractor #1] and [MPIC’s chiropractor #2], and having regard to the testimony of the Appellant at the appeal hearing, that the Appellant had failed to establish, on a balance of probabilities, that the chiropractic treatments subsequent to August 2003 were a medical necessity pursuant to Section 5 of Manitoba Regulation 40/94. The Commission further informed the Appellant that for these reasons the Commission would be dismissing her appeal and confirming the decision of the Internal Review Officer dated November 4, 2003. In reply, the Appellant informed the Commission that she now understood why MPIC had rejected her request for reimbursement of the cost of future chiropractic treatments.

Dated at Winnipeg this 1st day of February, 2006.

MEL MYERS, Q.C.