

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-093**

PANEL: Ms Laura Diamond, Chairperson
Mr. Tom Freeman
Dr. Chandulal Shah

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

HEARING DATES: June 10, 11, and 24, 2015

ISSUE(S): Entitlement to further chiropractic treatment.

RELEVANT SECTIONS: Section 136 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 issue in this appeal is whether the Appellant is entitled to further chiropractic care.

The Appellant was injured in a motor vehicle accident on September 12, 2011, suffering injuries to her neck and back. She attended for chiropractic treatment, as well as for medical treatment.

The Appellant's chiropractors continued to recommend further chiropractic treatment and funding for Track II chiropractic treatment was approved by MPIC.

Further treatment coverage past Track II, Phase 3 (64 treatments) was denied by MPIC, until a further review showed that the Appellant's complaints had worsened during a period of withdrawal of care. MPIC coverage then provided for a further trial of chiropractic treatment and an additional 10 treatments were approved.

When the Appellant's chiropractor requested more funding, past the 74 treatments already provided, MPIC's Health Care Services chiropractic consultant reviewed the medical information and opined that further treatment was not medically required. On January 30, 2014, the Appellant's case manager wrote to her indicating that there was no entitlement to further funding of chiropractic treatment beyond Track II, Phase 4, which is a maximum of 74 treatments.

The Appellant sought an Internal Review of this decision and, on May 9, 2014, an Internal Review Officer for MPIC reviewed the medical information on the Appellant's file and concluded that no further improvement was occurring and that the Appellant had reached maximum therapeutic benefit from chiropractic care. The case manager's decision was upheld. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

The Commission has reviewed the evidence presented as well as the submissions of the parties and concluded that, on a balance of probabilities, the Appellant has failed to establish that ongoing chiropractic care, either under the regular Track or for supportive care, is medically required under Section 136 of the MPIC Act or Section 5 of Manitoba Regulation 40/94.

Evidence and Submission for the Appellant:

The Appellant did not testify at the hearing into her appeal. However, reports from the Appellant's doctors and chiropractors were provided, including reports from [Appellant's physical medicine specialist] (physical medicine specialist), [Appellant's doctor] (family practitioner), [Appellant's pain specialist] (pain clinic specialist), [Appellant's chiropractor #1] (chiropractor) and [Appellant's chiropractor #2] (chiropractor).

[Appellant's chiropractor #1] testified at the hearing into the Appellant's appeal. He was qualified as the Appellant's treating chiropractor. He testified that he had been treating the Appellant for the past 10 years, and that she had come to see him two days after the motor vehicle accident. He testified that after the accident the Appellant was not suffering from any form of chronic long-standing problem, but rather a more acute or sub-acute injury which had recently occurred.

He described the Appellant's symptoms and his treatment. He explained that between September and December of 2011, the Appellant's signs and symptoms began to come under control. Many of her symptoms were resolved, although she still suffered from headaches and some nausea and dizziness.

She was discharged from care and attended a rehabilitation program. When she returned to chiropractic care following that program, he found that she had regressed in all areas, and that her symptom picture had been extremely exacerbated. At that point, he continued with treatment and also referred the Appellant to a neuropsychologist to deal with her memory problems and headaches.

The chiropractor testified that he also encouraged her to see her own family practitioner, [Appellant's doctor] for further investigation. He also explained that, during a period when he was not able to work, another chiropractor from his practice, [Appellant's chiropractor #2], treated the Appellant.

[Appellant's chiropractor #1] testified that the Appellant cannot function without chiropractic treatment. In his view, without further chiropractic treatment the Appellant cannot function pain-free and would not be able to enjoy activities of daily life.

The chiropractor was also asked about the status forms which the Appellant filled out regarding her signs and symptoms. He indicated that at a certain point, the Appellant became very discouraged with filling out all the daily forms and subjective questionnaires, as these were causing her stress. It discouraged her, so she stopped filling them out. He did agree, upon cross-examination, that the Appellant's refusal to fill out the status inventory forms did make it difficult to show that the absence of chiropractic care was detrimental to the Appellant's condition since comparisons between various scores are needed in order to support payment of chiropractic benefits. But the chiropractor indicated that these scores are just a tool which helped to elicit information. He did not feel in any way that the Appellant was malingering and emphasized that he felt she required chiropractic treatment to maintain or improve her condition.

The Appellant's representative submitted that the Appellant was seeking reimbursement for chiropractic care which she had received from the date her benefits with MPIC ended, as well as coverage for ongoing chiropractic treatment.

He referred the panel to reports on the Appellant's indexed file, from various practitioners, which recommended chiropractic treatment.

For example, [Appellant's doctor], in a report dated April 8, 2014 indicated that he supported [Appellant's chiropractor #2's] opinion that the Appellant required further chiropractic treatment. He stated that he had found this treatment regime to be helpful for the patient and that she has less subjective pain and better range of motion after the treatments.

[Appellant's pain specialist] provided a report dated April 22, 2014 stating:

"I believe that the chiropractic treatments have been beneficial in terms of helping to control [the Appellant's] pain symptoms and maintain her functional abilities so that she can continue pursuing her work-related activities."

[Appellant's chiropractor #2] provided a report on March 24, 2014 which described the Appellant's symptoms and treatment and concluded:

"[The Appellant] does need to have chiropractic treatments to sustain her current level of function. If she does not have the treatments, she is not able to do her activities at home and at work, due to severe neck pain and migraines. She requires one treatment a week for at least 1-year duration, so she can maintain her current level of function, avoid decline in her work capabilities and sustain or improve pain levels. Also due to presence of severe concussion, it will take much longer to reach a maximum therapeutic level.

There has to be a maintenance chiropractic care provided to [the Appellant] in order to avoid symptom deterioration, only then the maximum therapeutic benefit can be reached and sustained."

These reports, combined with the testimony and reports of [Appellant's chiropractor #1], a chiropractor with some 39 years experience, served to show that further chiropractic treatment for the Appellant was and is medically required.

The Appellant's representative addressed the evidence provided by MPIC's Health Care Services chiropractic consultant, who had provided testimony that the Appellant had reached maximum medical improvement. He noted that the consultant had only provided his opinion on the basis of reviewing other chiropractors' clinical notes and that he did not know and had not examined the Appellant. He had based much of his opinion upon the Oswestry and other assessment scores as well as agreements between the Manitoba Chiropractic Association and MPIC. However, the Appellant submitted that this is just an agreement between those parties, and that the Appellant is still entitled, under the legislation (particularly Section 5 of Regulation 40/94) to receive coverage for chiropractic treatments which are medically required.

He submitted that the Appellant had to modify her life in many ways due to the motor vehicle accident, from refraining from wearing high heels to not participating in many activities with her children, due to the pain from the motor vehicle accident. It is only chiropractic treatment and adjustments which provide pain reduction and allow her to do some of these things. He submitted that the treatment is not elective, but is required to help her. She had not been attending regularly for chiropractic treatment for about a year before the motor vehicle accident. However, after the motor vehicle accident regular chiropractic treatment was medically required.

Evidence and Submission for MPIC:

MPIC relied upon the medical evidence in the Appellant's indexed file, and in particular, reports from one of its chiropractic consultants, [MPIC's chiropractor]. [MPIC's chiropractor] also testified at the hearing into the Appellant's appeal. He was qualified as an expert witness in the area of chiropractic care. [MPIC's chiropractor] indicated that he had several opportunities to review the Appellant's file, beginning when he was asked to determine whether the criteria

established a requirement for Track II chiropractic care, which he approved. He then approved additional treatments for chiropractic care.

These determinations were made following a comparison between old and new reports from the Appellant's chiropractor, to determine whether improvements continued to occur. For example, if there was a demonstration that the Appellant's subjective pain had improved through an improvement in her status inventory scores, then he could conclude that she was getting some benefit from treatment and approve a further phase of care.

In the year and a half following the motor vehicle accident, the Appellant had 52 treatments. He indicated that normally someone receiving chiropractic care would have seen a more rapid improvement, but in this case, based upon the information on the file, he felt it was reasonable to provide additional treatment in order to see if more improvement could be achieved.

In August of 2013, he reviewed the Appellant's file again when, after undergoing 64 treatments, there was a request for Track II, Phase 4 chiropractic care. At that time, when comparing reports, he began to see a lack of progress and improvement. For example, there was a high frequency of headaches which remained unchanged and her neck pain had increased from four to six on a ten point scale. Her lower back condition, nausea, dizziness and memory had become worse or remained unchanged. The neck disability index had worsened by 12% and her Oswestry scores had improved less than 10%. It became clear to [MPIC's chiropractor], now 21 months post-motor vehicle accident and after 64 treatments, that chiropractic treatment was not showing additional benefit at that point.

Then, in October of 2013, he was provided with new information regarding the Appellant's condition and care. The Appellant's chiropractor, [Appellant's chiropractor #2], had provided more recent chiropractic Track II reports which showed an attempt to withdraw care for a period of one month so as to determine whether the Appellant was gaining benefit from chiropractic treatment. Reviewing this information and comparing the reports, [MPIC's chiropractor] concluded:

“It would appear that certain areas of complaint did in fact worsen with the withdrawal period of no chiropractic treatment, while other areas of complaint improved. A comparison of status inventory scores demonstrates a change that is less than 10%. It would be reasonable to consider a trial of chiropractic treatment in Track II, Phase 4, so as to determine if there is additional medical benefit for chiropractic treatment for the treatment of the claimant's left shoulder pain and left back/chest pain, and other areas of complaint.”

As a result, an additional trial of 10 further chiropractic treatments was approved.

The chiropractic reports which followed did not demonstrate improvement following this trial. When he looked at the file again, the consultant had some difficulty, as the treating chiropractor had stopped using the standard reporting forms, so little or no standard information regarding range of motion, neurological symptoms, orthopaedic symptoms or updated status inventory were provided. However, [MPIC's chiropractor] testified that he tried to do the best he could in assessing the matter by using the information which had been provided. The chiropractor provided a list of numeric pain rating scores and [MPIC's chiropractor] compared these with previous reports. As a result, he concluded that the Appellant had reached maximum therapeutic benefit. There had not been a sufficient change in the more recent numeric pain rating scores to suggest continued medical benefit for chiropractic treatment. The pain rating scores, when compared to status inventory scores of November 2013 and September 2013, indicated that the Appellant was at maximum therapeutic benefit from chiropractic treatment.

[MPIC's chiropractor] also discussed the standards he applies in assessing a need for supportive care. He indicated that to approve supportive care one must show not just that a patient got worse without treatment, but also that the reinstatement of treatment led to an improvement that was sustainable. He also looked at whether the individual had investigated other areas of treatment, such as home based exercise program and other treatment modalities, which had not worked. In the Appellant's case, there was no notation of a chiropractor recommending or the Appellant attempting any active type home-based rehabilitation, for example. It was not possible to establish the basis for supportive care.

[MPIC's chiropractor] also noted that in the Appellant's case, pain scales had varied greatly from one day to the next, and that this could not be considered indicative of true improvement. The Appellant was asking for significant amounts of care (approximately one treatment a week for one year), which in his view was not medically required, as she had reached maximum therapeutic benefit, and would not constitute supportive care.

Counsel for MPIC submitted that he did not take issue with the Appellant's current medical state or her expressed difficulties with daily life. In his view, the issue is simply whether, as the Regulations indicate, further treatment is medically required. He submitted that in order to be medically required, medical treatment has to show some benefit to the Appellant, and if no benefit is being shown, it follows that the treatment is not required.

Counsel indicated that there may well be some other forms of treatment that might help the Appellant and alleviate her medical concerns, but in this case it is clear from the evidence that chiropractic care is no longer providing her with benefit. The Appellant has reached maximum therapeutic or medical improvement, plateauing under chiropractic care.

Counsel submitted that [MPIC's chiropractor's] evidence was compelling. He was well familiar with the Appellant's history and had in fact approved several phases of chiropractic care following her motor vehicle accident, until August 8, 2013 when he believed she had reached maximum benefit. He then reinstated chiropractic benefits at the request of her chiropractor, after 64 treatments, providing a trial of 10 additional treatments when she showed deterioration following a withdrawal from care. That continued until January of 2014. Difficulty assessing pain rating scales from her new chiropractor, as well as the Appellant's refusal to complete questionnaires, led [MPIC's chiropractor] to compare the assessment scores previously provided with pain rating scales which the new chiropractor, [Appellant's chiropractor #2], did finally provide. However, through this comparison, he still determined that there was not sufficient change in the Appellant's condition to signify an improvement. He explained the measures which he used to make this assessment and the indicators he used to conclude that the Appellant had plateaued. The great variation in the Appellant's pain scores over the 2½ years following the motor vehicle accident also contributed to his conclusion that she was not realizing further benefit from this form of treatment.

[MPIC's chiropractor's] evidence also led to the conclusion that a case had not been made for supportive chiropractic care after the 10 treatment trial period which was provided. Even though at one point the Appellant had suffered a deterioration following a withdrawal of care, there was not sufficient evidence of improvement following the reinstatement of care. As well, two other aspects of the appropriate tests were missing. No alternate treatment had been attempted and no home program had been pursued. For these reasons, [MPIC's chiropractor] concluded that the need for supportive chiropractic care was not established.

Counsel did not agree that the letters of support from [Appellant's doctor] and [Appellant's pain specialist] established a need for further chiropractic care. Rather, he submitted that those letters were just reflections of what the Appellant was telling those doctors when she described the benefits she believed she was receiving from chiropractic care.

Counsel also reviewed previous decisions of the Commission where the Commission accepted MPIC's chiropractic consultant's review of the treating chiropractor's reports and the consultant's conclusion that there was no evidence of improvement in the Appellant's condition following extensive treatments, with very similar presentation to the condition described in the immediate post-accident period. He submitted that it must logically be concluded that chiropractic care is not doing anything further for the Appellant and her appeal should be dismissed.

Discussion:

The MPIC Act provides:

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;

Manitoba Regulation 40/94 provides:

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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

...

The onus is on the Appellant to show, on a balance of probabilities, that further chiropractic care is medically required. Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment. The expenses must have been incurred to treat injuries sustained in a motor vehicle accident and the treatments must be medically required.

The panel has carefully considered the evidence provided by the Appellant and the testimony of her chiropractor, along with the evidence of MPIC's chiropractic consultant, and agrees that she had reached maximum medical improvement from chiropractic care.

A review of numerous medical reports in the Appellant's indexed file demonstrated that objective testing of the Appellant stopped showing improvements in her condition with further care. A review of chiropractic reports and assessment scores provided on September 11, 2013, November 28, 2013, February 13, 2014 and March 24, 2014 showed that the Appellant was still experiencing significant symptoms. One of her treating chiropractors, [Appellant's chiropractor #2], indicated that the Appellant had achieved "dramatic improvement" but recognized that there could be great variation in pain scales from day to day. He also noted that the Appellant would require a "team treatment approach" to help her slowly return to the level of function she was at before the motor vehicle accident.

The panel has accepted the submission of counsel for MPIC that the Appellant had reached maximum medical improvement by this point. Her range of motion and pain was no longer improving, but rather was going up and down and was “all over the map” as [MPIC’s chiropractor] had described it.

Although the Appellant argued that the evidence of her own caregivers should be preferred to that of [MPIC’s chiropractor], because he had not had the opportunity to examine her, counsel for MPIC submitted that these caregivers were relying heavily, if not exclusively, on the Appellant’s subjective reporting of her experience to them. Further, these caregivers did not engage in a thorough analysis or comparison of the Appellant’s various Oswestry, neck disabilities, Quick Dash and other scores, which would demonstrate the kind of improvement necessary to establish a medical requirement for further care. The panel finds, on the other hand, that [MPIC’s chiropractor] carefully analyzed the data and reports and applied a standard of inquiry which could be used to ascertain whether the Appellant was deriving any lasting benefit from chiropractic treatment and which would show whether treatment was medically required and not just elective.

The panel has also reviewed the tests applied by MPIC regarding the necessity for supportive care. [MPIC’s chiropractor], in a report dated April 1, 2014, set out the thresholds applied by MPIC in determining whether an individual requires supportive chiropractic treatment, including, but not limited to:

- “1. Initial treatment must provide benefit and the claimant must be at maximal therapeutic benefit.
2. The condition deteriorates in the absence of a therapeutically relevant timeframe; typically over a six-week period (status inventory scores are valuable).
3. The condition improves with resumption of treatment (demonstrated by objective measures).
4. Alternate treatment approaches have been attempted without success.

5. An appropriate home base program is in place.”

The panel finds these criteria to be useful guidelines in assessing a request for supportive chiropractic care. We note that no evidence was provided to show that the Appellant had participated in other forms of treatment or care, or in a home-based active program. As well, while there had been some form of a trial of withdrawal of care, the Appellant had stopped providing data scores, making it difficult to measure the effect of the additional 10 treatments that were allowed when treatment resumed. [MPIC’s chiropractor’s] analysis of the material led him to conclude that the resumption of care did not provide significant benefit, and we find that, in the circumstances, this was a reasonable conclusion. The panel finds that the Appellant has also failed to establish a need for supportive chiropractic care.

The Appellant may wish to explore with MPIC the possibility of pursuing other forms of treatment besides chiropractic care, either medical or paramedical, as well as a home based activity program. It may be that following this exploration, in the future, the Appellant may once again wish to seek ongoing treatment or supportive care of some form.

However, the Commission finds that the Appellant has failed, in this appeal, to establish on the evidence and on a balance of probabilities that further ongoing chiropractic care under the regular Track or on a supportive basis, is medically required under Section 136 of the MPIC Act or Section 5 of Manitoba Regulation 40/94.

Accordingly, the Appellant’s appeal is dismissed and the Internal Review decision of May 9, 2014 is upheld.

Dated at Winnipeg this 23rd day of July, 2015.

LAURA DIAMOND

TOM FREEMAN

DR. CHANDULAL SHAH