

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-20**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Wilson MacLennan

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

HEARING DATE: August 30th, 2000

ISSUE: Entitlement to reimbursement for chiropractic expenses

RELEVANT SECTIONS: Section 136 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

[The Appellant], [text deleted], was involved in a motor vehicle accident on June 4th, 1999. She sustained injuries, consisting for the most part of cervical, thoracic and lumbo-sacral strain/sprain, initially diagnosed by her chiropractic care-giver, [text deleted], as a Grade III(a) Whiplash Associated Disorder but, shortly thereafter, downgraded to a WAD II.

[The Appellant] received chiropractic adjustments from [Appellant's chiropractor] at a frequency of about three times per week from June 11th through to the end of November 1999. In

December of that year, she received chiropractic treatments on the 1st, 3rd, 6th, 9th and 13th before receiving a letter from her adjuster at MPIC to advise her that the insurer would pay for no more chiropractic care. That letter enclosed a copy of a report from [independent chiropractor], to whom MPIC had referred [the Appellant] for an independent chiropractic examination. [Independent chiropractor], who had examined [the Appellant] on November 25th, 1999, was of the view that, rather than continuing chiropractic care, what [the Appellant] really needed was a program of exercise directed towards the conditioning and stabilization of her cervical, thoracic and lumbo-sacral spines. He noted that there had been no apparent, material change in [the Appellant's] overall symptomatology in the preceding six weeks, and he therefore felt that ongoing passive therapy should not continue.

The letter from MPIC's adjuster of December 13th, 1999, the contents of which were confirmed by MPIC's Internal Review Officer, did offer the exercise program suggested by [independent chiropractor].

However, [the Appellant] elected, instead, to continue with [Appellant's chiropractor's] chiropractic treatments. She received one more adjustment from him on December 16th, another four from a chiropractor in her home province of Saskatchewan over the Christmas holiday period, then another eight in January, four in February, three in March and one in April of the year 2000 from [Appellant's chiropractor]. She was discharged from chiropractic care by [Appellant's chiropractor] in April and testified that she is now back to her pre-accident condition.

[The Appellant] undoubtedly had some spinal restrictions prior to her motor vehicle accident, and had been receiving treatments from [Appellant's chiropractor] in that regard at a frequency

of about one per month. The motor vehicle accident of June 4th, 1999, appears to have exacerbated her earlier problems, giving rise to what, we are constrained to say, was an unusual number and frequency of chiropractic treatments over the next six months. That number and frequency are difficult to reconcile with the Clinical Guidelines for Chiropractic Practice in Canada and would, in the ordinary course, militate against the Appellant's claim. They certainly make this a borderline case.

That said, the fact remains that [the Appellant's] election to continue with chiropractic care, rather than accepting MPIC's offer of a structured exercise program, seems to have worked; the results speak for themselves. Although it is open to speculation whether the natural history of [the Appellant's] accident-related condition would have produced the same results with or without the chiropractic treatments that are at issue in this case, we are prepared to say that, on a slender balance of probabilities, those additional treatments were, in fact, medically necessary. It follows that [the Appellant] will be entitled to payment by MPIC for the cost of the treatments she received from [Appellant's chiropractor] from and including December 16th, 1999, to April 4th, 2000, subject only to the qualification that, if she is entitled to reimbursement for any of those treatments from Saskatchewan's provincial health plan, the reimbursement she receives from MPIC will be reduced by that same amount. She will be entitled to interest at the statutory rate, but only from the date of this Decision to the date of actual payment, since she is not yet out of pocket—the fees of [Appellant's chiropractor] appear to remain unpaid. We have assumed that the first five chiropractic treatments [the Appellant] received in December 1999 have in fact been paid for by MPIC already; if they have not, they must be added to her entitlement.

Dated at Winnipeg this 1st day of September, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

WILSON MacLENNAN