

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-79**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Les Cox

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf, assisted by [Appellant's chiropractor]; Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Keith Addison.

HEARING DATE: July 4, 2001

ISSUE(S): Termination of coverage for chiropractic and physiotherapy expenses.

RELEVANT SECTIONS: Section 136 of the Manitoba Public Insurance Corporation Act (the "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 involved in two motor vehicle accidents in 1998. On April 28, 1998, her vehicle was struck on the passenger side and on December 21, 1998, while stopped in traffic, her vehicle was rear-ended.

As a result of the April 28th accident, the Appellant was diagnosed with acute multiple joint/muscle mild sprain by her chiropractor, [text deleted]. In his initial health care report dated

May 5, 1998, he anticipated that she would require chiropractic care at a frequency of two times per week for one month then decreasing to one time per week for two months. On August 6, 1998, [Appellant's chiropractor] submitted a treatment plan report calling for further treatment until, at the latest, December 31, 1998.

The Appellant's general practitioner, [text deleted], in an initial health care report dated August 12, 1998, diagnosed the Appellant with muscle strains - neck, upper and lower back, and referred the Appellant for physiotherapy. The physiotherapist in an initial physiotherapy report dated October 26, 1998, anticipated that the Appellant would require three to six months of treatment in order to decrease the Appellant's pain, increase her mobility, strength and flexibility.

The Appellant was then involved in the second accident on December 21, 1998, just as she would have been recovering from the effects of the initial accident. In his initial health care report arising out of this accident, [Appellant's chiropractor] diagnosed the Appellant with acute lumbosacral and sacroiliac severe sprain and acute multiple muscle/joint mild sprains. He anticipated the duration of in-clinic care to be approximately nine months. In a subsequent treatment plan report dated February 5, 1999, [Appellant's chiropractor] confirmed his estimated discharge date of September 30, 1999. Based on that treatment plan report, the Appellant would be receiving chiropractic care one time per week for two months along with physiotherapy. A subsequent treatment plan report submitted by [Appellant's chiropractor] on March 22, 1999, had a more encouraging discharge date of June 30, 1999, based on treatment at one time every two weeks for two months together with exercises. However, in his treatment plan and report dated June 25, 1999, [Appellant's chiropractor] reverted back to his original estimated discharge

date of September 30, 1999, as the Appellant had been ill and had been unable to continue with physiotherapy in conjunction with chiropractic treatment.

In his treatment plan report dated September 17, 1999, [Appellant's chiropractor] indicated that the Appellant's recovery had been delayed because of physical problems she had encountered after her recent move to a new home. The new estimated discharge date was December 17, 1999. In his next treatment plan report dated December 10, 1999, [Appellant's chiropractor] stated that the Appellant's recovery had again been delayed since physiotherapy was cut off in October 1999, causing her lower back to become unstable due to muscle weakness. He then pushed back her estimated discharge date to March 10, 2000.

The Appellant's file was then referred to MPIC's Medical Services Team for review. In her Interdepartmental Memorandum dated January 10, 2000, [MPIC's doctor] concluded that further physiotherapy and chiropractic care were not warranted in the Appellant's case. She noted that the benefits from these forms of treatment tended to be realized within the first six months of treatment. On the basis of [MPIC's doctor's] opinion, [text deleted], staff adjuster, sent out a decision letter dated January 14, 2000, terminating PIPP (Personal Injury Protection Plan) coverage for physiotherapy and chiropractic treatment.

The Appellant sought an Internal Review of the adjuster's decision. In his letter dated May 1, 2000, the Internal Review Officer confirmed the decision of MPIC's adjuster terminating coverage for ongoing physiotherapy treatments and ongoing chiropractic treatment effective January 14, 2000.

The Appellant has appealed the decision of the Internal Review Officer dated May 1, 2000, to this Commission. She is seeking reimbursement with respect to the chiropractic treatments for which she continued to attend from January 14, 2000 to June 25, 2001, when she was involved in a subsequent motor vehicle accident. At the hearing, she advised the Commission that she was not seeking reimbursement for physiotherapy treatments as she had in fact not attended for physiotherapy since MPIC terminated her coverage.

DISCUSSION

Section 136 of the MPIC Act provides that:

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;

Section 5 of Regulation 40/94 provides that:

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 as prescribed by a physician;

At the hearing of her appeal, the Appellant indicated that she continued to attend for chiropractic treatment with [Appellant's chiropractor] because of continuing muscular weakness and

instability which often prevent her from taking part in the basic activities of daily living. Further, she argued that her back, neck and shoulder muscles become very tight and stiff and "lock up" and that the chiropractic treatments provide relief and help to loosen the affected areas. She advised that she was afraid to continue with her home exercises since she didn't have anyone to support her or assist her should she run into difficulty.

Counsel for MPIC submitted that the Appellant was discharged from physiotherapy at the end of October of 1999 with full knowledge and ability to do home exercises; had she kept up with the home exercises, she would not have become deconditioned, which lead to her dependency on chiropractic care. In response to his question on cross-examination, [Appellant's chiropractor] agreed that if the Appellant had continued the home exercise program set up for her at physiotherapy, she could have maintained muscular stability. Further, Mr. Addison argued that the chiropractic care that the Appellant was receiving were merely of a supportive nature, and could not be deemed medically required.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. In the case at hand, the Appellant has received over 130 chiropractic treatments since beginning therapy with [Appellant's chiropractor], yet there has been little indication of a reduction in symptomology as treatment has continued.

The Clinical Guidelines for Chiropractic Practice in Canada contain some recommended time-frames within which maximum chiropractic benefit may usually be anticipated, both for 'normal' and for more difficult cases. The Guidelines indicate that failure to show continuing

improvement with chiropractic care over any period of six weeks of treatment (as had been demonstrated with no improvement in the Appellant's inventory scores in the period from June 1999 to December 1999), should result in patient discharge or appropriate referral, or the patient will be deemed as having achieved maximum therapeutic benefit.

The facts of the case at hand, including the rather extensive amount of chiropractic treatments undertaken by the Appellant coupled with the lack of improvement in her condition, lead us to the conclusion that the Appellant has likely reached maximum therapeutic benefit and, essentially, maximum medical improvement from chiropractic care. We are of the opinion that MPIC was justified in terminating payments for further chiropractic care for [the Appellant] on January 14th, 2000, as it did. We are mindful that [the Appellant] continues to suffer with disabling pain and encourage her to seek a multi-disciplinary approach to deal with her pain.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date May 1, 2000.

Dated at Winnipeg this 27th day of July, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

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