

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-98**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Les Cox
Mr. Wilson MacLennan

SUBMISSIONS: Written submissions were received from the Appellant, [text deleted], and from Ms. Joan McKelvey on behalf of the Manitoba Public Insurance Corporation ("MPIC").

HEARING DATE: September 28, 2001

ISSUES: 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

On June 1, 1995, the Appellant was involved in a motor vehicle accident when the car she was driving was rear-ended. She began to experience neck and shoulder stiffness shortly after the accident. Within the course of the next few days, she continued to have neck and shoulder pain, as well as headaches, causing her to present to her family physician, [text deleted]. She was subsequently examined and referred for physiotherapy treatments. She was employed as a cashier at [text deleted] and she tried going back to work after the accident, but could not

manage, so she was off work for approximately 10 - 12 weeks. She continued to attend for physiotherapy treatments for several months, until her busy schedule caused her to stop attending physiotherapy at the end of December 1995.

She was next seen for medical attention by a chiropractor, [text deleted], on April 22, 1996, complaining of headaches and also that she was unable to turn her neck as it was very stiff. She was subsequently examined by [Appellant's chiropractor], x-rayed and initiated into a treatment program. She continued to attend [Appellant's chiropractor's] office throughout 1996 for ongoing spinal adjustments. [Appellant's chiropractor] also referred her to an athletic therapist, [text deleted], who was performing massage and stretches with her.

On February 11, 1997, the Appellant attended [text deleted] for the purpose of an independent chiropractic examination. At that time, he found that she still had soreness at the left aspect of her neck and trapezius region which, she stated, was a constant dull pressure mostly on the left. [Independent chiropractor] diagnosed a soft tissue sprain/strain injury to the Appellant's cervicothoracic spine and perhaps also a strain to the left shoulder. It was his opinion that the Appellant had mild tautness of the erector spinae muscles adjacent to T5/6 and also a mild shortening of the left rotator cuff muscles. Based on his examination findings, it was his opinion that the Appellant's condition regarding her spinal joint had resolved and that she was not in need of further chiropractic adjustments as it related to the accident in question. However, because of the tautness in the erector spinae muscle, [independent chiropractor] recommended that the Appellant undergo a trial therapeutic period of acupuncture or perhaps needling.

[Appellant's chiropractor] provided a report dated May 26, 1997, which responded to [independent chiropractor's] report and provided updated information regarding the Appellant's

status. Based upon [Appellant's chiropractor's] recommendation that the Appellant continue to receive chiropractic care in order to achieve maximum therapeutic benefit, MPIC continued to cover chiropractic treatment for the Appellant.

In a letter dated March 23, 1998, [Appellant's doctor] advised that the Appellant continued to experience pain symptoms involving the left upper trapezius and diagnosed her as suffering from myofascial pain syndrome related to her motor vehicle accident of June 1, 1995. He recommended an alternative form of treatment such as acupuncture or trigger point injections of corticosteroid/local anesthetic and referred the Appellant to the [hospital] for assessment with one of the Rehab specialists.

Upon referral to the [hospital], the Appellant attended for educational counselling with a clinical nurse specialist in rehabilitation and also attended for treatments with [text deleted], a physiatrist, for trigger point injections. In her report of March 5, 1999, [Appellant's physiatrist] commented that:

I explained to her that because of the underlying degenerative changes which were seen in the x-ray of April 1996 by the chiropractor as well as in September 1996 that I did not feel that treating her myofascial pain was going to improve her mobility since she had underlying degenerative changes and fixation of the cervical spine. I felt at this stage that any kind of treatment by me in the form of stretching or trigger point injections would not improve the mobility of her neck because of the underlying changes. Since she has already had chiropractic treatment I did not think that they are going to improve her mobility much more. I feel that [the Appellant] will have to accept the fact that she has limited mobility and because of this, tight muscles around her neck which on repetitive bending and repetitive activities of her shoulder will aggravate the muscles around the neck and shoulder and cause the symptoms which is why the suggestion that she find an alternative job which is more sedentary rather than at the counter where she has to do some lifting and bending or at the Express Check-Out where she will have to do a lot of repetitious scanning fairly quickly.

As far as prognosis is concerned I feel that her mobility will not improve in the short term, this is going to be an ongoing impairment for her.

The entire file was then reviewed by MPIC's chiropractic consultant, [text deleted]. Based upon [MPIC's chiropractor's] Inter-departmental Memorandum of April 21, 1999, the staff adjuster wrote to [the Appellant] on April 23, 1999, advising her that she had likely reached maximum medical improvement from chiropractic care and that MPIC would only continue to fund chiropractic care on a supportive nature at a frequency of one visit per month for the next three to six months, after which time reimbursement of chiropractic care would cease.

The Appellant was then involved in another motor vehicle accident on June 24, 1999. She was the driver of a vehicle attempting to make a left turn when another vehicle brushed against the front end of her car, causing a mild impact. The following day she noticed pain and stiffness in the lower, mid back and shoulders. She attended upon [Appellant's doctor] on June 28, 1999, who diagnosed cervical and lower back muscular strain secondary to her motor vehicle accident. She was referred to physiotherapy and instructed in a basic home exercise program.

During follow-up examinations, [the Appellant's] cervical range of motion improved and she was able to return to part-time work on August 16, 1999. [Appellant's doctor] documented that after working two weeks of a graduated return-to-work program, the Appellant began experiencing general fatigue and lack of energy. Examination revealed full range of motion of the cervical and lumbar regions, and it was [Appellant's doctor's] opinion that [the Appellant] had myofascial pain involving the neck, upper and lower back regions. It was his recommendation that [the Appellant] continue with four-hour work shifts four days per week. He also recommended continuation of her physiotherapy treatments.

[The Appellant's] file was referred to MPIC's medical services team for review by her Case Manager to determine whether or not she had developed a medical condition as a result of the June 24, 1999 motor vehicle collision that would prevent her from performing her duties as a cashier at [text deleted]. [MPIC's doctor], in an Inter-departmental Memorandum dated September 10, 1999, concluded that:

Based on the information obtained from [Appellant's doctor's] September 7, 1999 report pertaining to the details of motor vehicle collision, it is my opinion that it would be very difficult for [the Appellant] to sustain an injury to her cervical, thoracic or lumbar regions as a result of this incident. In other words, the probability of [the Appellant] exacerbating her pre-existing chronic pain condition or developing a new medical condition as a result of the incident would be low. It is reasonable to conclude that the symptoms [the Appellant] experienced following the MVC were a result of her chronic pain condition, which [Appellant's physiatrist] related to the pre-existing degenerative changes involving her cervical spine.

...

The medical information does not identify an injury occurring to [the Appellant] as a result of the June 24, 1999 motor vehicle collision. In the absence of a medical condition arising from the collision, it is reasonable to conclude that therapeutic interventions are not required as a result of the collision. The information obtained from the documents reviewed indicates that [the Appellant's] disability is based on subjective complaints of pain, as well as fatigue and lack of energy. It is my opinion that the medical evidence does not establish a cause and effect relationship between these symptoms and the motor vehicle collision in question. With this in mind, an occupational disability arising from the June 24, 1999 motor vehicle collision has not been medically established.

Based upon [MPIC's doctor's] Inter-departmental Memorandum, the Case Manager wrote to the Appellant on September 20, 1999, to advise her that her Income Replacement Indemnity benefits would terminate on September 19, 1999, and that coverage for chiropractic and physiotherapy treatments would cease as of September 30, 1999.

The Appellant sought an internal review of the Case Manager's decision. In his letter dated May 18, 2000, the Internal Review Officer confirmed the decision of MPIC's Case Manager

terminating the Appellant's entitlement to Income Replacement Indemnity benefits as of September 19, 1999, and terminating her entitlement to treatment benefits as of September 30, 1999.

The Appellant has appealed the decision of the Internal Review Officer dated May 18, 2000, to this Commission with regard to the issue of the termination of treatment benefits only.

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;

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 numerous chiropractic and physiotherapy treatments since beginning therapy, yet there has been little indication of a reduction in symptomatology as treatment has continued.

[Appellant's doctor] in a report dated March 22, 2000, expressed an opinion that treatment for [the Appellant] should continue to be conservative and the modalities of chiropractic or physiotherapy could well be instituted. His view was that the optimal course to follow was physiotherapy at a rate of two to three times per week, with frequency gradually declining. [Appellant's doctor] reiterated this opinion in his report dated December 13, 2000.

A careful consideration of the totality of the evidence before us, including both the written submissions received from the Appellant and by counsel for MPIC, does not persuade us of the cause-and-effect relationship between the Appellant's motor vehicle accidents and the soft tissue problems of which she now complains. Rather, we agree with [Appellant's physiatrist] that her symptoms are attributable to the pre-existing degenerative changes involving her cervical spine. We therefore find that, although the Appellant may, perhaps, benefit from occasional physiotherapy or chiropractic care, those modalities of treatment have not been established as 'medically necessary' within the meaning of Section 5 of Manitoba Regulation No. 40/94.

We are of the opinion that MPIC was justified in terminating payment for further treatment benefits for [the Appellant] on September 30, 2000, as it did.

Accordingly, for these Reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date May 18, 2000.

Dated at Winnipeg this 26th day of October, 2001.

YVONNE TAVARES
DEPUTY CHIEF COMMISSIONER

F. LES COX

WILSON MacLENNAN