



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-98-141**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
The Honourable Armand Dureault  
Mr. Bill Joyce

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

**HEARING DATE:** April 14, 2003, October 28, 2003 and October 29, 2003

**ISSUE(S):** Entitlement to reimbursement of cost of chiropractic  
treatments

**RELEVANT SECTIONS:** Section 136(1)(a) of the Manitoba Public Insurance  
Corporation Act ('MPIC Act') and 5(a) 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] is appealing the decision of the Internal Review Officer dated August 18, 1998 which confirmed the case manager's decision that chiropractic funding would not be provided. At issue in the Appellant's appeal is whether chiropractic treatments were medically required as a result of injuries caused by the motor vehicle accident on February 22, 1996.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136(1)(a) of the MPIC Act which 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(a) of Manitoba Regulation 40/94 which 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 is prescribed by a physician;

As a result of the motor vehicle accident the Appellant suffered a whiplash injury and had pain to her back and both areas of the neck and lower back. The Appellant saw [text deleted], her personal physician, in respect of these complaints and he provided a report to MPIC, dated November 12, 1996. In this report [Appellant's doctor] outlined the Appellant's complaints and indicated that because of the Appellant's basic condition of degenerative arthritis to her whole spine, the injuries she sustained in the motor vehicle accident were exacerbated due to this condition. In respect of her neck and lower back complaints, the Appellant was treated by a chiropractor, [text deleted], and MPIC funded these treatments.

MPIC subsequently requested [text deleted], MPIC's chiropractic consultant, to provide an assessment in respect of these chiropractic treatments. [MPIC's chiropractor] provided a report to MPIC dated November 2, 1997 wherein he indicated the Appellant had stopped progressing in respect of the chiropractic treatments and her condition appeared to be the same as it was five months previously. As a result [MPIC's chiropractor] indicated it was unlikely that the continuation of chiropractic treatments would result in further progression of the Appellant's medical condition. Upon receipt of that report the MPIC case manager informed the Appellant, by letter dated December 9, 1997, that MPIC would cease payment of the chiropractic treatments.

The Appellant, upon receipt of that letter, applied to have the decision of the case manager reviewed by an Internal Review Officer.

[Text deleted], an orthopaedic surgeon, had been treating the Appellant in respect of injuries she sustained in several motor vehicle accidents since February 24, 1986. On December 23, 1997 the case manager wrote to [Appellant's orthopaedic surgeon] in respect of the February 22, 1996 accident. In this letter the case manager stated:

We have been advised that [the Appellant] has an appointment to see you on January 6, 1998. We would appreciate if you could provide a report addressing the following:

1. What are [the Appellant's] current complaints?
2. List [the Appellant's] history of complaints regarding nose bleeds, ear problems and headaches.
3. Your current objective findings.
4. The cause of [the Appellant's] current complaints.
5. What if any treatment would you recommend?

[Appellant's orthopaedic surgeon] responded to the case manager's letter, in a letter dated January 26, 1998, wherein he stated that:

- A. he treated the Appellant in respect of injuries she sustained in a motor vehicle accident on February 24, 1986;
- B. he subsequently saw the Appellant on November 6, 1991 in respect of a motor vehicle accident she was involved in on November 6, 1991. He reported that clinically he found the Appellant showed evidence of ongoing osteoarthritis of the small joints of both hands and wrists, as well as cervical and lumbar spine. He further stated *"X-rays of cervical spine revealed degenerative changes, particularly worse around C6/C7, as well as C5/C6, disc spaces."*
- C. *"[The Appellant] reported back to my office on 18<sup>th</sup> April, 1995, when she was concerned about pain and stiffness of her lumbar spine. She mentioned that her ache and discomfort would travel to her hips and shoulders. Additionally, the ache and discomfort of her fingers and wrists were continuing. Apparently, there was no further episode of accident in her history."*
- D. he indicated that the Appellant returned to his office on February 10, 1997 and complained about ache and stiffness of her cervical spine associated with some headaches. She informed him that on February 22, 1996 while a front seat passenger, the automobile that she was riding in was struck in the rear end by another automobile, jerking her forward. He further reported that she informed him that in 1995 she received a similar injury due to a road traffic accident.

In response to the case manager's questions relating to the Appellant's current complaints, and

the cause of her current complaints, [Appellant's orthopaedic surgeon] indicated that:

1. his examination of the Appellant and x-rays of her cervical spine revealed long standing arthritis with disc space narrowing of C5/C6, as well as C6/C7, vertebrae.
2. x-rays of her lumbar spine showed evidence of long standing arthritis.
3. with a diagnosis of ongoing multiple joint osteoarthritis, the Appellant was encouraged to continue with her daily exercises and oral medication.

The case manager also wrote to the [text deleted] Chiropractic Centre on April 3, 1998 requesting a report in respect of the Appellant. [Appellant's chiropractor] replied to the case manager in a letter dated May 29, 1998 and stated that the Appellant had been receiving chiropractic treatments and that maximum chiropractic improvement had not been reached. In [Appellant's chiropractor's] view the Appellant had reached a 75% pre-accident status and prognosis for further improvement with care remained good at that time. [Appellant's chiropractor] recommended that further chiropractic treatment was required at a frequency of one treatment every two weeks over a one year period with possible gradual decrease in treatment frequency with further improvement.

The Internal Review Officer, upon receipt of the reports of [Appellant's chiropractor] dated June 8, 1998 and [Appellant's orthopaedic surgeon] dated January 26, 1998, forwarded these reports to [text deleted], [MPIC's chiropractor], who had previously reviewed the Appellant's medical file. [MPIC's chiropractor] was requested by the Internal Review Officer to provide his opinion in respect of the case manager's decision to terminate MPIC's funding of chiropractic treatments in respect of the Appellant.

[MPIC's chiropractor] replied in his Inter-Departmental Memorandum dated August 4, 1998 and indicated that there had been no demonstrable improvement to the Appellant. As a result of chiropractic treatments, [MPIC's chiropractor] concluded:

3. There is a clear underlying degenerative process as identified on x-ray taken March 1996, described as degenerative in nature in both the cervical and lumbar spines. A later report from [Appellant's orthopaedic surgeon] (sic), a local orthopedist, describes the claimant in 1991 as having evidence of ongoing arthrosis of the cervical and lumbar spines.
4. The underlying degenerative condition was symptomatic for a long period of time prior to the motor vehicle accident in question. [Appellant's orthopaedic surgeon] (sic), in his narrative of January 26, 1998, indicates a history of care by himself directed to the claimant's cervical and lumbar spine as far back as 1991.
5. There is frequent mention in the chiropractic reports of epistaxis and tinnitus. Following his examination of this claimant, [Appellant's orthopaedic surgeon] was of the opinion that these conditions related to medication use rather than directly to the effects of the motor vehicle accident in question.

#### **SUMMARY**

This woman has now been treated for in excess of two years with little or no evidence of improvement. There is historical and radiographic evidence of a pre-existing degenerative spinal condition. It does not seem likely that ongoing care at this time will progress her further since it has failed to do so for the most recent many months.

The Internal Review Officer in her decision dated August 18, 1998 indicated that she had reviewed the reports of [Appellant's chiropractor], [Appellant's orthopaedic surgeon] and [MPIC's chiropractor] and stated:

After a full review of the medical information it is the consultant's opinion that there has been no significant change in your subjective status over the course of treatment and there is little as well to suggest objective improvement in your condition. Added to the lack of improvement in your condition is an underlying degenerative process for which [Appellant's orthopaedic surgeon] has been treating you since 1991. This is an ongoing arthrosis of the cervical and lumbar spines. There is also frequent mention in the chiropractic reports of epistaxis and tinnitus. It was [Appellant's orthopaedic surgeon's] opinion that these conditions were related to medication use rather than directly to the effects of the motor vehicle accident in question.

Therefore, as you have been treated for over two years with little or no evidence of improvement and as well there is historical evidence of a pre-existing degenerative spinal condition it is the opinion of our medical consultant that ongoing care at this time will not

provide you with any further progress or help. Therefore, I see no reason to disagree with his opinion and it is my decision that as chiropractic care has not helped you for quite some time it will not now continue to help you and therefore no further chiropractic benefits will be funded by the Manitoba Public Insurance Corporation as a result of your accident of February 22, 1996.

The Commission notes that there is a conflict in the medical opinions of [Appellant's chiropractor] and [MPIC's chiropractor] in respect of the issue as to whether or not the chiropractic treatments to the Appellant were medically required.

The Commission notes that [Appellant's orthopaedic surgeon] in response to the case manager's question as to the cause of the Appellant's complaints, did not assert that the motor vehicle accident caused these complaints but rather [Appellant's orthopaedic surgeon] determined that the complaints of the Appellant related to her osteoarthritis.

The opinion of [MPIC's chiropractor] rejecting continuation of funding of chiropractic treatments by MPIC is consistent with the assessment of [Appellant's orthopaedic surgeon] that the complaints of the Appellant are not the result of the motor vehicle accident but are due to a degenerative condition of her cervical and lumbar spine. The Appellant had received chiropractic treatments in excess of two years with little or no evidence of improvement. It is for these reasons the Commission rejects the opinion of [Appellant's chiropractor] and accepts the opinion of [MPIC's chiropractor] in the issue of causation.

The Commission notes that the Appellant is suffering from a very significant rotator cuff tear to her shoulder which has materially affected the quality of the Appellant's life and made it extremely difficult for her to carry on her ordinary daily activities both in the household and on

the farm. However, upon a careful review of all of the documentary evidence made available to us, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that chiropractic treatments were medically required by her as a result of the injuries arising from the motor vehicle accident on February 22, 1996 pursuant to Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94. As a result, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated August 18, 1998.

Dated at Winnipeg this 9 day of December, 2003.

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**MEL MYERS, Q.C.**

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**HONOURABLE ARMAND DUREAULT**

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**BILL JOYCE**