

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-061**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Jacqueline Freedman
Ms Pat Heuchert

APPEARANCES: The Appellant, [text deleted] appeared on his own behalf, via teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: January 10, 2013

ISSUE(S): Entitlement to reimbursement of chiropractic expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 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, [text deleted], was involved in a motor vehicle accident on April 13, 2007. At the time, he was stopped at a red light when his vehicle was rear-ended by a pick-up truck pushing him into another vehicle stopped in front of him. As a result of that accident, the Appellant complained of headaches, tingling down his spine and back, and his shoulders were painful. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2

of the MPIC Act. The Appellant is appealing the Internal Review decision dated April 11, 2012, with respect to his entitlement to reimbursement of outstanding expenses for chiropractic treatments.

On October 11, 2011, MPIC's case manager issued a decision which advised as follows:

A review of the medical information on file, in consultation with our Health Care Services Team indicates the following:

- There is a significant history of prior low back pain pre-dating the MVA by at least three years.
- A letter from [Appellant's neurosurgeon], Neurosurgeon, dated June 13, 2006 detailing pre-existing significant low back discomfort.
- A report from [Appellant's doctor] dated February 22, states "It is now more than three years since the accident, and I think he has long since recovered from it".

Based on the above information, the file contents do not provide evidence of a probable relationship between your current necessity for chiropractic care directed to either your neck, mid or low back. The information does not support the requirement for Personal Care Assistance related to the MVA.

Therefore, there is no entitlement to benefits under the Personal Injury Protection Plan (PIPP) for chiropractic treatment or Personal Care Assistance.

The Appellant sought an Internal Review of that decision. In a decision dated April 11, 2012, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that:

1. the Appellant's medical conditions were not causally related to the motor vehicle accident; and
2. additional chiropractic treatment was not medically required as the Appellant had reached maximum therapeutic benefit, on the balance of probabilities.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of his outstanding expenses for chiropractic treatment.

Relevant Legislation:

Section 136(1)(a) 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(a) of Manitoba 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 is prescribed by a physician;

Appellant's Submission:

The Appellant submits that as a result of the injuries which he sustained in the motor vehicle accident of April 13, 2007 he has continued to require chiropractic treatment to treat his upper back, shoulders and neck. The Appellant advises that since MPIC terminated funding for his chiropractic treatments in June of 2008, his injuries continue to bother him. The Appellant argues that even though time has elapsed, the symptoms and pain from the accident have remained. The Appellant claims that he goes for chiropractic treatment when his back is

bothering him - approximately twice per month. He maintains that he is very careful with his daily activities so as to not aggravate his back injuries. He can't lift what he used to lift; he can't shovel and carry out the yard work that he once did. The Appellant submits that he should be entitled to a chiropractic treatment every two weeks.

MPIC's Submission:

Counsel for MPIC submits that ongoing chiropractic care (beyond Track 1 care) was not medically required for the Appellant. Counsel for MPIC argues that the Appellant had reached maximum medical improvement with the chiropractic care that he received by June of 2008. Counsel for MPIC argues that further chiropractic treatment will not significantly improve the Appellant's condition. Further, she submits that there is no healthcare report recommending Track 2 chiropractic care for the Appellant. Counsel for MPIC argues that the Appellant's treating chiropractor, [Appellant's chiropractor #1] continued to treat the Appellant after June 2008 when MPIC ceased funding the chiropractic treatments. Counsel for MPIC argues that if [Appellant's chiropractor #1] felt that ongoing chiropractic care was related to the motor vehicle accident, then reimbursement from MPIC and Track 2 care would have been requested from MPIC.

Counsel for MPIC argues that the Appellant has also not established that his ongoing medical conditions are causally related to the motor vehicle accident of April 13, 2007. She submits that the Appellant complained of back pain symptoms before the motor vehicle accident and he was involved in a number of incidents not related to the motor vehicle accident which could account for his ongoing back symptoms. Further, in support of her position, counsel for MPIC relies upon the medical report of [Appellant's doctor], wherein [Appellant's doctor] noted that "*It is now more than 3 years since the accident, and I think he has long since recovered from it.*"

[Appellant's doctor] also emphasized that the Appellant did not need extra physiotherapy, but should continue with back exercises on his own. Accordingly, counsel for MPIC submits that the Appellant has not met the standard of proof required in the circumstances. As a result, she submits that his appeal should be dismissed and the Internal Review decision of April 11, 2012 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of ongoing expenses for chiropractic treatment beyond June 2008.

Reasons for Decision:

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 1994; and
2. the treatments must be "medically required".

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing chiropractic treatment was related to the motor vehicle accident of April 13, 2007 and that ongoing chiropractic treatment was medically required beyond June 2008.

With respect to whether or not the Appellant's ongoing chiropractic treatments were related to the motor vehicle accident of April 13, 2007, the Commission finds that the Appellant's testimony was not consistent with the medical evidence on the file. The Appellant testified that he did not currently have lower back problems and he was not seeking chiropractic treatment for his lower back. However, it is clear from the evidence before the Commission that the Appellant had a significant history of prior low back pain pre-dating the motor vehicle accident by at least three years. After the accident of April 13, 2007, the Appellant was treated by both a physiotherapist and a chiropractor until June of 2008 when he was discharged from chiropractic care, having received 40 chiropractic interventions. Chart notes from [Appellant's chiropractor #1] indicate that between 2008 and 2011 the Appellant presented intermittently for treatment to his mid, low back and pelvic area. It is noted that on the majority of the visits, the Appellant was treated for mid, low back and full leg discomfort and on relatively few of the visits, he was treated for cervical spine discomfort. In April 2011, the Appellant presented to a different chiropractor, [text deleted], with complaints of upper and lower back pain. [Appellant's chiropractor #2], in her report dated March 7, 2012 notes that the Appellant continues to have low back symptoms and her chart notes reflect that he has continued to seek treatment for low back problems in addition to treatment to the upper back. The Commission finds that the evidence on the file clearly indicates that the Appellant has sought significant chiropractic care for his low back condition since June 2008.

Additionally, the Appellant testified that he continued to seek chiropractic treatment with [Appellant's chiropractor #1] even after June 2008 when MPIC ceased funding his chiropractic treatments. The Commission finds that [Appellant's chiropractor #1], the Appellant's treating chiropractor at the relevant time, did not seek ongoing care beyond Track 1 and advised that treatment was complete upon the completion of the 40 visits comprising Track 1 care. As a

result, the Commission is satisfied that the Appellant's accident-related injuries were appropriately treated with Track 1 care according to [Appellant's chiropractor #1]. Further, the Commission accepts the report from [Appellant's doctor] dated February 22, 2011, wherein [Appellant's doctor] opined that the Appellant's ongoing back problems were not connected to the motor vehicle accident of April 13, 2007. As a result, the Commission is unable to relate the Appellant's ongoing requirement for chiropractic care to the motor vehicle accident of April 13, 2007.

In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. The Appellant's testimony was that his symptoms have continued between chiropractic treatments. Based upon the Appellant's testimony and the chiropractic reports on the file, we find it most likely that the Appellant has indeed reached maximum medical improvement, as well as maximum therapeutic benefit from chiropractic treatment. Additionally, the evidence before the Commission did not establish that ongoing chiropractic care would provide further sustainable improvement with respect to the Appellant's condition. As a result, we are unable to conclude that ongoing chiropractic treatment was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of ongoing expenses for chiropractic care. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated April 11, 2012 is confirmed.

Dated at Winnipeg this 4th day of February, 2013.

YVONNE TAVARES

JACQUELINE FREEDMAN

PAT HEUCHERT