

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-32**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt; the Appellant, [text deleted], was represented by her son, [text deleted]

HEARING DATE: June 19, 2000

ISSUE: Whether chiropractic benefits terminated prematurely.

RELEVANT SECTIONS: Sections 138 and 184(1)(b) 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

At the commencement of the hearing of her appeal, [Appellant's son] advanced three issues on behalf of his mother: the first related to travel expenses, but had not yet been the subject of a decision by [the Appellant]'s adjuster at MPIC and was not, therefore, within the mandate of this Commission; the second was a claim for her compensation for the pain and discomfort suffered by [the Appellant] but, when it was explained to [the Appellant] that these are not covered by the Personal Injury Protection Plan, that facet of the claim was withdrawn; the third, and only

substantive claim before this Commission, therefore, is whether MPIC was justified in terminating payments for chiropractic treatments after September 15th, 1999.

The only person from whom [the Appellant] has been receiving care since being injured in a motor vehicle accident on January 29th, 1997, is [text deleted], a doctor of chiropractic, who first saw her on February 26th, 1997. At that juncture, [Appellant's chiropractor] indicated his belief that [the Appellant] could work full duties and maintain all her usual activities. He prescribed spinal manipulations two to three times per week until the end of July 1997, at which point he intended to re-evaluate the situation.

In subsequent treatment plan reports, [Appellant's chiropractor] (on June 16th, 1997) estimated a discharge date in March of 1998, then September 30th, 1998, then January of 1999, then April 30th, 1999, then May 31st, 1999, until, on May 31st, 1999, [Appellant's chiropractor] was estimating a discharge date of September 30th, 1999.

At that point, MPIC, which had approved all of the extensions briefly referred to above, decided to refer [the Appellant] to [text deleted] for an independent chiropractic examination.

[Independent chiropractor] saw [the Appellant] on July 5th, 1999. He agreed that she had sustained a soft-tissue strain-type injury to the various regions of her spine, along with an apparent strain to her knees and left hand, with an injury to her chest and ribs. He found that, clinically, [the Appellant] did have some limitation of her cervical and thoraco-lumbar ranges of motion due, in part, to underlying degenerative changes. He noted a prior history of lower back and left hip trouble which had required chiropractic care.

[Independent chiropractor] recommended that [the Appellant] could benefit from appropriate exercises for her cervical dorsal area to help increase her range of motion and alleviate some of the muscular component to her problem. He also recommended that she should try to increase her physical activity levels, although that should be proportionate to her own capabilities. For general health purposes, including factors associated with her spine, [independent chiropractor] felt that [the Appellant] could benefit from weight reduction.

With respect to chiropractic treatment, [independent chiropractor] felt that [the Appellant] was “very close to maximum therapeutic benefit.” He felt, however, that some treatment should be directed to the soft-tissue structures in [the Appellant’s] cervical dorsal region. Since she had indicated that she was sometimes sore after cervical adjustments, and in light of her delayed recovery, [independent chiropractor] felt that an alternative adjustive procedure ought to be considered. If no significant improvement had been obtained over the next four to eight weeks, said [independent chiropractor], she would probably have reached a plateau and maximum medical improvement.

As a result of [independent chiropractor’s] recommendations, MPIC advised [Appellant’s chiropractor] on July 15th, 1999, that the Corporation would pay for further chiropractic care, once per week, for the following four to eight weeks, with an anticipated discharge date of September 15th, 1999.

By September 15th, 1999, [the Appellant] had received about 120 chiropractic adjustments from [Appellant’s chiropractor] and had, by her own testimony, reached a plateau. She did not feel that she was improving at all but, rather, that visits to [Appellant’s chiropractor] at a frequency of at least once per month were necessary for her to maintain mobility as well as control pain.

[Independent chiropractor] and MPIC's chiropractic consultant, [text deleted], have both expressed the view that [the Appellant] has attained maximum therapeutic benefit and that further chiropractic treatments are unlikely to be of benefit to her. We concur. The evidence strongly supports that view, which is also borne out by the Clinical Guidelines for Chiropractic Practice in Canada, adopted by both the Canadian and Manitoba Chiropractic Associations. [The Appellant] has testified that the type and frequency of treatments she has received from [Appellant's chiropractor] have remained essentially unchanged for approximately three years, until mid-September of 1999, despite an apparent absence of improvement for, at the very least, the last 12 months or more.

In his report of October 12th, 1999, [Appellant's chiropractor] writes of "recurring trigger point phenomena". [The Appellant], in her own testimony, spoke of continuing episodes wherein her neck and upper back will "seize up".

Sections 138 and 184(1)(b) of the MPIC Act read as follows:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Powers of commission on appeal

184(1) After conducting a hearing, the commission may

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(b) make any decision that the corporation could have made.

We find that, although, MPIC's adjuster and Internal Review Officer were correct in finding that further chiropractic treatment from [Appellant's chiropractor] was no longer justifiable as a

medical necessity, [the Appellant] does appear still to be experiencing some sequelae from her motor vehicle accident. Therefore, by virtue of the obligations reflected in Section 138 of the Act, and pursuant to the powers contained in Section 184(1)(b), we are prepared to order that [the Appellant] be referred to [Appellant's psychiatrist] of [text deleted], for further assessment and for such recommendations for the treatment of any aspect of her present condition that [Appellant's psychiatrist] may attribute to [the Appellant's] motor vehicle accident and as [Appellant's psychiatrist] may deem appropriate. This Commission will make the appropriate arrangements with [Appellant's psychiatrist's] office; her report, when received, will be shared with both parties and, if further treatment is recommended in that report, will be referred back to MPIC's case manager to be given effect.

Dated at Winnipeg this 21st day of June, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

F. LES COX