Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-35

PANEL:	**Ms Laura Diamond**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.**
HEARING DATE:	**December 14, 2009**
ISSUE(S):	**Entitlement to further chiropractic treatment benefits.**
RELEVANT SECTIONS:	**Section 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 of Manitoba Regulation 40/94.**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was involved in a motor vehicle accident on February 9, 2006. Following this accident, he attended [Appellant's Chiropractor #1] who diagnosed lumbosacral strain and sprain and cervical and upper thoracic strain.

On November 30, 2006, [Appellant's Chiropractor #1] completed a Chiropractic Track I Report for MPIC, discharging the Appellant from care, and indicating that he had reached pre-accident status and that his ongoing physical findings were normal.

However, the Appellant sought further chiropractic care from [Appellant's Chiropractor #2]. Her report based on an examination date of October 2, 2006 recommended further, Track II treatment, with a diagnosis of Traumatic VSC associated with whiplash syndrome.

The Appellant's case manager wrote to him on December 22, 2006 indicating that his file had been reviewed by MPIC's Health Care Services team and that the medical information on file indicated that he had reached pre-accident status in his recovery. Additional chiropractic treatment was not a medical necessity and MPIC would not fund further treatment effective December 21, 2006.

The Appellant sought an Internal Review of this decision. On March 15, 2007, an Internal Review Officer for MPIC upheld the case manager's decision. She indicated that the Appellant's file had been reviewed by [MPIC's Chiropractor] [text deleted] who provided the opinion that the medical documentation on file did not support the need for Track II treatment. The Appellant had had 40 chiropractic treatments from [Appellant's Chiropractor #1], who stated that the Appellant had reached pre-accident status and that his complaints were resolved and physical findings were normal. Although [Appellant's Chiropractor #2's] report requested further treatment, [MPIC's Chiropractor] believed that, when considering [Appellant's Chiropractor #1's] contrary report, further treatment was not medically required.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant appeared at the hearing into his appeal, but indicated that he had not received his indexed file from the Claimant Adviser Office. The Commission reviewed its file which

indicated that the Appellant had been instructed, both verbally and in writing to obtain his file from the Claimant Adviser's Office and that the Claimant Adviser's Office had stated, in a letter to the Appellant, that they were sending it to him.

However, the Appellant agreed that he could review the contents of his indexed file during a recess from the hearing. Accordingly, the Appellant was given a period of time prior to beginning the hearing to review his file. When he had done so, the hearing commenced.

The Appellant testified that following the motor vehicle accident his back was sore and he went to see [Appellant's Chiropractor #1]. MPIC approved 40 visits and the Appellant saw [Appellant's Chiropractor #1] regularly. After the initial visit, there was no discussion about the progress that was being made or what hurt him. [Appellant's Chiropractor #1] treated his neck and legs primarily. He spent approximately half an hour with the Appellant at every visit. [Appellant's Chiropractor #1] left the Appellant to understand that MPIC approved 40 treatments and that there was no point in asking for any more as it would never be approved. He did not X-ray the Appellant. After 40 treatments, he sent a note to MPIC indicating that no further treatment was required.

However, prior to the end of the 40 treatments the Appellant started seeing a different chiropractor, [Appellant's Chiropractor #2]. She put him on a different, more aggressive treatment plan and he attended far more often for treatment.

The Appellant stated that he believed that somewhere during that time he was in another motor vehicle accident and that another, second MPI claim was opened for him.

He testified that he now sees [Appellant's Chiropractor #3] once a month because that is all he can afford. He felt that he should be going once a week. He indicated that his back is still sore, and then he wears a back brace if he has to do anything physical.

The Appellant submitted that [Appellant's Chiropractor #1] had no idea what his pre-motor vehicle accident condition was. Sometimes he wondered why [Appellant's Chiropractor #1] was treating certain parts of his body or twisting his back in a certain way. Some days it felt good, and other days it made him feel worse. He told his case manager that he was seeing two chiropractors, and believes that he still needs further treatment, completely disagreeing with [Appellant's Chiropractor #1's] report and with the Internal Review Officer's decision.

Evidence and Submission for MPIC:

Counsel for MPIC noted that the Appellant had reported that he had sustained a sore back and neck in his application for compensation arising out of the motor vehicle accident. He was approved for Track I treatment, which consisted of 40 chiropractic treatments and attended for these treatments with [Appellant's Chiropractor #1].

At the completion of that treatment, the Appellant was discharged from care and a note was made that his low back pain and stiff neck had resolved on November 30, 2006.

However, while he was still seeing [Appellant's Chiropractor #1], the Appellant also saw [Appellant's Chiropractor #2] who provided an initial chiropractic report on December 11, 2006.

[Appellant's Chiropractor #2's] conclusion that the Appellant required further care was a very different conclusion, within a very short period of time, from [Appellant's Chiropractor #1's] report.

[MPIC's Chiropractor] reviewed all of the medical information and provided a report on December 21, 2006. [MPIC's Chiropractor] indicated that the file contents did not provide evidence that the Appellant qualifies for Track II care. Nor did it provide evidence that more than 40 treatments would be required due to the motor vehicle accident. On the contrary, [MPIC's Chiropractor] noted [Appellant's Chiropractor #1's] comment in his discharge report that the Appellant's complaints had resolved and the patient had reached pre-motor vehicle accident status.

Counsel for MPIC submitted that [Appellant's Chiropractor #1's] opinion ought to be preferred to that of [Appellant's Chiropractor #2] because he had treated the Appellant since February 13, 2006, just days after the motor vehicle accident, and would be more familiar with the progress of the Appellant's injuries than [Appellant's Chiropractor #2], who did not examine the Appellant until October of 2006. In addition, she submitted that [Appellant's Chiropractor #1's] opinion was supported by [MPIC's Chiropractor], who had an opportunity to review all of the medical information on the file in arriving at this conclusion.

In summation, counsel submitted that the medical information on file indicated that further chiropractic treatment is not medically required as a result of injuries sustained in the motor vehicle accident of February 9, 2006, and that the Appellant's appeal should be dismissed.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that he is entitled to further chiropractic care.

Pursuant to Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation 40/94 a Claimant is entitled to medical or paramedical care where that care is medically required as a result of a motor vehicle accident.

> **Reimbursement of victim for various expenses**
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> 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;
>
> (b) the purchase of prostheses or orthopedic devices;
>
> (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
>
> (d) such other expenses as may be prescribed by regulation.

> **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;
> (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The Commission has reviewed the Appellant's evidence, as well as the evidence on the indexed file and the submissions of the Appellant and of counsel for MPIC. The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that further chiropractic care is medically required as a result of injuries arising out of this motor vehicle accident. [Appellant's Chiropractor #1], the treating chiropractor since shortly after the motor vehicle accident, provided his opinion that the Appellant's complaints had resolved and discharged the Appellant from care. [MPIC's Chiropractor] agreed with his assessment. The Appellant has failed to provide evidence, aside from [Appellant's Chiropractor #2's] request for treatment, that the Appellant's injuries in this motor vehicle accident were more serious, and no further indication as to why he would require further treatment when [Appellant's Chiropractor #1] had discharged him from care, was put forward by the Appellant. The Appellant has failed to meet the onus upon him of showing, on a balance of probabilities, that further treatment was medically required.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated March 15, 2007 is confirmed.

Dated at Winnipeg this 28th day of January, 2010.

LAURA DIAMOND