

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-58**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Dr. Patrick Doyle

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

HEARING DATE: October 27, 2010

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 PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on April 28, 2006. As a result of that accident, the Appellant complained of neck stiffness and tingling in the left shoulder and upper back. 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 January 25, 2010, with respect to his entitlement to reimbursement of outstanding expenses for chiropractic treatments.

On September 8, 2009, MPIC's case manager issued a decision which advised as follows:

The Chiropractic Agreement reflects what the experts in the field consider to be "medically required treatments" in relation to the nature and extent of bodily injuries covered by each "track".

On March 13, 2009, [Appellant's Chiropractor] provided an Initial Chiropractic Report supporting funding for Track 1 chiropractic care.

The agreement between MPI and the MCA states that Track 1 primary chiropractic care will consist of a maximum of 40 medically-required chiropractic treatments. This includes all primary care, all supervisory visits, and all visits for unique procedures such as active release therapy (ART), acupuncture, and general rehabilitation.

On August 10, 2009, [Appellant's Chiropractor] provided a further report requesting funding for Track 2, extended chiropractic care.

In reviewing the medical information on file, our Health Care Services Consultant has advised in his memorandum of September 2, 2009 that [Appellant's Chiropractor] has not provided sufficient evidence to establish that you require treatment at a higher level than Track 1, primary care treatment. You are therefore entitled to Track I chiropractic care only.

The Appellant sought an Internal Review of that decision. In a decision dated January 25, 2010, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical documentation on the file did not support further chiropractic treatment as a medical requirement as a result of the motor vehicle accident as of April 28, 2006.

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 he sustained in the motor vehicle accident of April 28, 2006, he has continued to require chiropractic treatment since funding was cut off by MPIC. The Appellant advises that even though time has elapsed, the symptoms and intermittent discomfort from the accident has remained. He submits that chiropractic treatment has helped his condition continue to improve. His visits to a chiropractor have now decreased to once every three to four weeks and those treatments are working very well. The Appellant claims that even though physiotherapy and subsequently chiropractic treatments have helped him a great deal, he is still not at pre-collision condition. He argues that although he is generally low on the pain scale, he had no pain before the collision. The Appellant submits that he should be entitled to chiropractic treatment until he is at pre-accident status.

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 submits that the Appellant has reached maximum medical improvement with chiropractic care and that further chiropractic care cannot be deemed medically required. Counsel for MPIC notes the Appellant's own testimony that there was not much change in his symptoms between chiropractic treatments. Counsel for MPIC therefore argues that further chiropractic treatments will not significantly improve the Appellant's condition. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for further chiropractic treatment. She submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated January 25, 2010 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 outstanding expenses for chiropractic treatment.

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 medically required. 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 remained virtually unchanged 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 motor vehicle collision-related injuries. 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 January 25, 2010 is confirmed.

Dated at Winnipeg this 24th day of November, 2010.

YVONNE TAVARES

DIANE BERESFORD

DR. PATRICK DOYLE