Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-061, AC-11-062, AC-14-142, AC-14-143

PANEL:	**Mr. Mel Myers, Q.C., Chairperson** **Mr. Trevor Anderson** **Ms Susan Sookram**
APPEARANCES:	**The Appellant, [text deleted], was represented by Mr. Ken Kalturnyk of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.**
HEARING DATES:	**June 2, June 18, June 23, June 25, and July 2, 2015**
ISSUE(S):	**1. Whether there is a causal relationship between the Appellant's left shoulder and left hip symptoms and the motor vehicle accident.** **2. Entitlement to supportive chiropractic treatment.** **3. Whether acupuncture, herbal remedies and other forms of alternate treatment are medically required.** **4. Whether the Dr. Ho Pain Management System is a medical requirement.**
RELEVANT SECTIONS:	**Section 5(a) of Manitoba Regulation 40/94 (Appendix 1).**

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

On April 9, 2009 the Appellant was involved in a motor vehicle accident. In her Application for Compensation the Appellant stated:

> "I was a pedestrian walking with my walker east bond (sic) on [text deleted] crossing [text deleted] with a walk light, when a vehicle struck the left front basket of my walker and then remember being jolted around. I did not fall on the ground or onto the vehicle.

> Driver got out of the vehicle asked how I was. I asked what his name and he got back into vehicle and drove away. I remembered his plate number."

The Appellant then walked to the police station and filed a report for an accident and was subsequently driven to the [hospital #1] emergency department.

The hospital's report dated April 9, 2009 contained the following comments made by the Appellant:

1. She was walking on the street when a car hit her walker on the left side and gave her a "jolt" but that she did not fall down.
2. The walker basket was slightly twisted to the side and the frame was unaffected.
3. She had been previously diagnosed with fibromyalgia, suffered from chronic pain and was intolerant to many medications.

The hospital report documented a diagnosis of muscle spasm.

The Appellant was referred to physiotherapy at [hospital #2]. In a Client Characteristic Profile report the Appellant indicated that she suffered from multiple chemical sensitivity ("MCS"), fibromyalgia and myofascial pain.

In 2005 the Appellant was referred to [hospital #2] by [Appellant's doctor #1] and was assessed by a physiatrist, [Appellant's physiatrist #1]. [Appellant's physiatrist #1] provided a report dated March 3, 2005 to [Appellant's doctor #1] at the [text deleted] Clinic in which she stated that:

1. The Appellant was a [text deleted] woman with a long standing history of widespread pain.

2. She stated that her pain started in approximately 1990 and was initially localized in her legs and gradually progressed and spread all over her body.

[Appellant's physiatrist #1] further stated:

> "... At that time, she was diagnosed with sarcoidosis and was treated by steroids. She tried different non-conventional treatments and some of them partially alleviated her pain. She attends a chiropractor once a month and finds it is helpful in relieving her back pain. ...
>
> The patient has a history of chronic long-standing widespread pain that involves the left and right halves of her body, above and below her waist with axial involvement. She also has 14 out of 18 tender points characteristic for fibromyalgia sites. She often feels fatigued and tired and has interrupted sleep. These signs and symptoms fulfill the ACR criteria for a diagnosis of fibromyalgia. She has a history of chronic headaches and query chemical sensitivity syndrome that often accompany fibromyalgia. ..."

A Rheumatology Assessment Form dated April 4, 2005 stated that:

1. The Appellant lived on her own and had difficulties walking and managing housework.
2. She stopped working in 1997 and was receiving a government disability pension.
3. She had been receiving physiotherapy treatments from [hospital #2] and these treatments were terminated on December 14, 2005.
4. She continued to receive physiotherapy treatments at [rehab clinic] which were terminated on May 9, 2007.

[Appellant's physiatrist #1] reported to [Appellant's doctor #1] on July 31, 2007 and indicated that the Appellant was seen on July 30, 2007 regarding her widespread pain and stated:

> "... In the past she was diagnosed with fibromyalgia and myofascial pain syndromes. She responded well to acupuncture, chiropractic adjustments and trigger point injections in the past. She stated that acupuncture sessions were completed in January 2007. She recently attended a chiropractic treatment for her low back pain that significantly alleviated her low back pain. She noticed that her widespread pain increased in intensity within the last 2-3 months and currently is more prominent in the neck, shoulder blade and left thigh areas. ..."

The Appellant saw [Appellant's chiropractor], a chiropractor, for the first time following the motor vehicle accident. He provided an Initial Chiropractic report dated April 13, 2009. [Appellant's chiropractor] diagnosed the Appellant with sacroiliac strain, cervical facet strain and thoracic facet strain.

The Appellant was assessed by a physiotherapist, [Appellant's physiotherapist], on April 21, 2009 and April 27, 2009. The physiotherapist diagnosed soft tissue injuries, myofascial pain, neck, shoulder and knee pain. The Appellant was seen for a total of 25 appointments and discharged in July 2009.

The [hospital #2] Physiotherapy department issued a Discharge Summary dated April 29, 2009 which reported treatments of:

- Education and home program
- Exercises for range of motion, stretches, strengthen, pool therapy
- Acupuncture
- Gait retraining
- Massage
- Posture/Movement Re-education
- Mobilizations/Manual therapy
- Ultrasound

The report noted that "We tried it all!".

MPIC's case manager advised the Appellant on June 10, 2009 that:

1. Based on the report of the physiotherapist, [Appellant's physiotherapist], funding for up to a maximum of 24 physiotherapy visits would be provided.

2. Based on the information provided by the physiotherapist she qualified for Category 1 physiotherapy treatments.
3. The chiropractic report from [Appellant's chiropractor] supported funding for up to 40 chiropractic visits and based on this information she was qualified for Track 1 chiropractic treatments.

The case manager requested MPIC's Health Care Services consultant, [MPIC's doctor #1], to comment on whether the Appellant was entitled to physiotherapy treatments beyond the Category 1 range. [MPIC's doctor #1] replied on August 4, 2009 that she had reviewed all the medical documents and stated:

> "... The claimant suffered from a chronic pain condition at the time of the MVC. She suffered no injuries of significance as a result of the MVC. In my opinion if she was to respond to PT it will occur within the scope of Cat 1 PT care. Treatment beyond Cat 1 range not warranted."

On October 19, 2009 [Appellant's chiropractor] examined the Appellant and requested MPIC allow funding for chiropractic treatments under Category 2.

On November 10, 2009 MPIC's Health Care Services consultant, [MPIC's chiropractor], approved additional Track II chiropractic treatments.

On November 17, 2009 the case manager wrote to the Appellant and stated:

1. Entitlement to funding for further chiropractic treatments based on [Appellant's chiropractor's] report.
2. From the date of the Appellant's 52nd treatment, she would be entitled to funding for up to a maximum of 12 further in-clinic chiropractic visits.

On December 10, 2009, [Appellant's chiropractor] completed a Chiropractic Track II report and requested MPIC to provide further funding for chiropractic treatments.

[Appellant's chiropractor's] request was reviewed by MPIC's Health Care consultant, [MPIC's chiropractor], chiropractor.

MPIC's case manager wrote to the Appellant on December 30, 2009 and stated that:

1. MPIC had approved funding for further chiropractic treatments based on [Appellant's chiropractor's] report.
2. From the date of her 64th treatment, the Appellant was entitled for funding for up to a maximum of 10 further in-clinic chiropractic visits.

A Chiropractic Track II report from [Appellant's chiropractor] requesting MPIC to fund Phase 5 treatments was reviewed by [MPIC's chiropractor] on February 11, 2010 who stated:

> "Although improvement has been modest I would suggest that Phase 5 would be reasonable as a transition to self care. I would expect the claimant to be at or very near MMB [maximum medical benefit] by the end of Phase 5."

[Appellant's chiropractor] requested Phase 6 chiropractic treatment in his report of April 12, 2010. [MPIC's chiropractor] reviewed this request on August 24, 2010 and commented:

> "The current file contents are most descriptive of this claimant having reached MTB [maximum therapeutic benefit] with respect to the chiropractic management of her MVA related injuries. Her shoulder remains essentially unchanged. As well given the date of loss and the treatment to date it would appear that her other complaints have also, on the balance of probabilities reached MTB." (Underlining added)

The Appellant was referred by her physician to [Appellant's physiatrist #2], a physiatrist who saw the Appellant on April 30, 2010. [Appellant's physiatrist #2's] report stated that:

1. She had a history of chemical insensitivity.
2. She has fibromyalgia and had been treated by [Appellant's physiatrist #1] and that her fibromyalgia worsened her chronic fatigue syndrome.
3. [Appellant's chiropractor], a chiropractor, was treating the Appellant with ultrasound and other treatments for her left shoulder and that these treatments had helped considerably.
4. She had resolved many of her other pains resulting from the car accident.

[Appellant's physiatrist #2] arranged for an X-ray of the Appellant's left shoulder. The X-ray of the Appellant's left shoulder indicated:

> "There appears to be early degenerative spurring at the inferior margins of the AC joint although the joint space is reasonably well preserved. The examination is otherwise essentially unremarkable." (Underlining added)

On June 25, 2010, [Appellant's physiatrist #2] advised the Appellant's physician that the X-ray of the Appellant's shoulder revealed some spurs inferior to the AC joint.

On August 24, 2010, the case manager sent a letter to [Appellant's chiropractor] stating that:

1. His request for Chiropractic Track 2, Phase 6 treatment had not been approved.
2. The Health Care Services consultant had reviewed the medical information provided by [Appellant's chiropractor] which supported that the Appellant was now at maximum therapeutic benefit.
3. Therefore, there would be no further funding for chiropractic treatment beyond Phase 5, with up to a maximum of 84 visits approved under Track 1 & 2.

Case Manager's Decision dated August 25, 2010 – Entitlement to Chiropractic Treatments:

The case manager wrote to the Appellant on August 25, 2010 and indicated that [Appellant's chiropractor's] request for further treatment as outlined in the Track II report dated April 12, 2010 was rejected. She stated:

> "That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information on file supports that you have reached a plateau in your recovery and that additional treatment is not "medically required." Therefore, there is no entitlement to further funding of chiropractic treatment beyond Track II, Phase 5, which is a maximum of 84 treatments including your initial assessment.
>
> We base our decision on Section 5(a) of Manitoba Regulation 40/94 (appendix 1), a Regulation under The Manitoba Public Insurance Corporation Act."

Application for Review dated September 23, 2010:

The Appellant made an Application for Review of the case manager's decision on September 23, 2010.

[Appellant's physiatrist #2] arranged for an MRI to be taken of the Appellant's left shoulder. The MRI report was provided to [Appellant's physiatrist #2] on October 1, 2010 and stated:

> "<u>Severe acromiociavicular arthrosis with hypertrophic spurring as described.</u> This finding can be associated with impingement however impingement is a clinical diagnosis. Minimal low grade articular surface tearing at the posterior supraspinatus tendon with no full thickness rotator cuff tear seen." (Underlining added)

On January 10, 2011 [Appellant's physiatrist #2] reported:

1. The final diagnosis of the Appellant's left shoulder condition was an impingement syndrome.

2. He recommended surgery and he further stated that he did not think osteoarthritis of the AC joint or the spur of the AC joint was caused by the motor vehicle accident but the condition was aggravated by the injury.
3. In those situations symptoms can last for months if not years.

Internal Review Officer's decision dated March 18, 2011 – Chiropractic Care:

On March 18, 2011 the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review for the following reasons:

> "1. On April 9, 2009 while walking with your four wheeled walker, your walker was struck by a vehicle which fled the scene. As a result of the accident, you sustained a sacroiliac, cervical facet and thoracic facet strain. Prior to this motor vehicle accident you were diagnosed with fibromyalgia.
>
> 2. An Initial Chiropractic Report completed by [Appellant's chiropractor] (sic) based on an examination of April 13, 2009, documents a specific diagnosis of cervical, thoracic, and sacroiliac strain.
>
> 3. A Physiotherapy Report completed by therapist [Appellant's physiotherapist] based on an examination of April 21 and 27th, 2009, documents a clinical diagnosis of soft tissue injury and myofascial sprain/strain to the cervical and lumbar spine. You attended for 25 physiotherapy treatments and were discharged on July 26, 2009.
>
> 4. A Chiropractic Track II Report completed by [Appellant's chiropractor] based on an examination of October 19, 2009, requested Track II treatment.
>
> 5. The medical information was reviewed by [MPIC's chiropractor], chiropractic consultant with MPI's HCS on November 10, 2009 and December 17, 2009. [MPIC's chiropractor] approved Track II Phase 1, 2, 3 and 4 Chiropractic treatments consecutively.
>
> 6. A Chiropractic Track II report completed by [Appellant's chiropractor] based on an examination of February 3, 2010, requests Phase 5 Chiropractic treatment. HCS reviewed this report on February 11, 2010 and provided the following response:
>
> > "Although improvement has been modest I would suggest that Phase 5 would be reasonable as a transition to self care. I would accept the claimant to be at or very near MTB by the end of Phase 5."

7. A Chiropractic Track II report completed by [Appellant's chiropractor] based on an examination of April 12, 2010, requests Phase 6 Chiropractic treatment.

8. A narrative report completed by [Appellant's physiatrist #2] dated April 30, 2010, documents that you were currently seeing [Appellant's chiropractor] for ultrasound and other treatments of the left shoulder.

9. [Appellant's chiropractor's] April 12, 2010, report was reviewed by [MPIC's chiropractor] on August 24, 2010. He provided the following comments:

> "The current file contents are most descriptive of this claimant having reached MTB with respect to the chiropractic management of her MVA related injuries. Her shoulder remains essentially unchanged. As well given the date of loss and the treatment to date it would appear that her other complaints have also, on the balance of probabilities reached MTB."

<u>Notice of Appeal dated April 26, 2011:</u>

The Appellant filed a Notice of Appeal and stated:

> "I disagree with [MPIC's doctor #2's] interpretation of [Appellant's physiatrist #2's] report. [Appellant's physiatrist #2] clearly identified that my pre-existing condition of the left shoulder was aggravated by the motor vehicle accident. [Appellant's physiatrist #2] concurs that additional chiropractic treatment is necessary."

The relevant provision of the MPIC Act relating to this appeal is Manitoba Regulation 40/94 which provides:

> 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;
> ...

In reply to a letter from the Claimant Adviser Office, [Appellant's physiatrist #2] stated on June 2, 2011:

1. <u>"She was taken to [hospital #1] and seen in the E.R. and soft tissue injuries were diagnosed. I do think it is possible that this kind of mechanism of injury could aggravate a pre-existing severe acromioclavicular arthrosis and lead to impingement</u>

of the hypertrophic spur at the AC joint into the myotendinitis junction of the supraspinatus muscle as documented on the MR done September 29, 2010." (Underlining added)

2. He did not think the Appellant's arthrosis and spur of the AC joint were caused by the injury to the left shoulder but it could have been aggravated by the injury to the left shoulder in 2009.

[MPIC's doctor #2] reviewed [Appellant's physiatrist #2's] report of January 10, 2011 and did not agree with [Appellant's physiatrist #2] that the motor vehicle accident in question aggravated the Appellant's pre-existing shoulder condition. [MPIC's doctor #2] was of the view that the medical evidence did not indicate that the Appellant sustained a traumatic injury to her left shoulder that adversely affected a pre-existing condition. He further stated:

> "... The information obtained from [the Appellant] does raise the possibility of a pre-existing condition being aggravated by the incident in question. At this time, the file does not contain any information indicating a pre-existing condition was enhanced by the incident in question."

[Appellant's chiropractor] reported to the Claimant Adviser Office on January 31, 2012 and disagreed with [MPIC's chiropractor's] report of August 24, 2010 which resulted in MPIC rejecting [Appellant's chiropractor's] request for Chiropractic Track II, Phase 6 treatments being approved.

On January 31, 2012 [Appellant's chiropractor] wrote to the Claimant Adviser and commented on [Appellant's physiatrist #2's] June 2, 2011 report. In that report, [Appellant's physiatrist #2] described the mechanism of injury that [the Appellant] described to him and suggested that it was very possible that this type of mechanism would aggravate the pre-existing findings from his previous report. As a result, [Appellant's chiropractor] stated that he believes it highly likely

that the Appellant had a pre-existing condition and that her described mechanism of injury could likely have aggravated it.

[Appellant's chiropractor] also stated:

> "To state it again, it seems very likely based on the reports of examination, case history, and x-ray testing, that this patient had a pre-existing medical condition in her left shoulder that was aggravated by the mechanism of the injury caused by the motor vehicle accident. [Appellant's physiatrist #2], a specialist in this type of injury, has stated that he "thinks it is possible for this kind of mechanism of injury to aggravate a pre-existing severe acromioclavicular arthrosis and lead to impingment (sic) of the hypertrophic spur at the AC joint into the myotendinitis of the supraspinatus muscle as documented on the MRI done on September 29, 2010."
>
> I certainly feel that the recommendation for Track 2 extended chiropractic care is related to [the Appellant's] April 9, 2009 motor vehicle accident, and am on record already with MPIC stating that contention. [The Appellant's] initial visits to my office were directly related to the upper back strain stemming from the motor vehicle accident. Her hip condition which may have been chronic before hand, was aggravated by the injuries sustained in the motor vehicle accident, and as previously noted, her pre-existing left shoulder injury was aggravated by the motor vehicle accident. There is also on record [Appellant's physiatrist #2's] report of January 10, 2011 suggesting that until such time as it may be possible to do corrective surgery, that it is beneficial to [the Appellant] to continue the soft tissue treatment that she has been getting at our office for her shoulder.
>
> ...
>
> [The Appellant] has continually found that when she has to miss treatments at such times as noted just previously that her condition indeed deteriorates. She has found that her lower back and hips become more sensitive and she has a harder time moving. She finds that her shoulder becomes more sensitive and more easily aggravated by her limited day to day activities. ...
>
> In my opinion supportive care would definitely contribute to the rehabilitation of this victim. It is already contributing to her rehabilitation as she is able to do more, albeit still on a relatively limited basis, to do more activities for herself and do a better job of looking after herself, her own home and needs. This means that the disability that she suffered from her injury is certainly lessened to that degree and that she is therefore becoming progressively more able to return to a more normal life. This of course will help her reintegrate into society to the degree that she is able to be out and about a little more frequently and look after her own needs to a greater degree than she was able to previously." (Underlining added)

[Appellant's chiropractor] further stated in his letter to the Claimant Adviser that:

1. The Appellant had been receiving treatment twice weekly and that these treatments had been very helpful in reducing the Appellant's level of stress.
2. At this stage he believed she still needed two treatments a week as her progress was still relatively slow and indicated that two treatments a week would be enough and noted this was also recommended by [Appellant's physiatrist #2] until such time as surgery was decided upon and she should continue with treatment.

On April 16, 2012 [MPIC's doctor #2] reviewed [Appellant's chiropractor's] report of January 31, 2012 and stated that:

1. The report did not contain any new medical evidence relating to the Appellant's claim.
2. In the absence of new medical evidence the opinions previously rendered by [MPIC's doctor #2] remained unchanged.

[MPIC's chiropractor] was asked to comment on his advice to MPIC's case manager in his report of August 24, 2010 and to review [Appellant's chiropractor's] January 31, 2012 report. On May 8, 2012 [MPIC's chiropractor] stated:

1. The Appellant was involved in a motor vehicle accident when the left front of her walker was struck by a vehicle while crossing the street.
2. The vehicle did not strike the Appellant, nor did she fall or that she was otherwise impacted, rather the mechanism of injury was that the vehicle jolted her body as she hung onto her walker.
3. Prior to the motor vehicle collision, the Appellant had a long history of chronic musculoskeletal complaints to the extent that she had been on total disability for at least the previous five years.

[MPIC's chiropractor] also stated:

> "I reviewed the file on several occasions through the Track program and had approved chiropractic Track 2 care, Phase 1 – 5. As of the date of my final review (August 24, 2010), the claimant had nearly 100 chiropractic interventions over the previous 16 months. As well, the claimant had extensive exposure to physiotherapy treatments. Despite what can only be described as a significant exposure to a variety of physical modalities, the balance of file information at that time was most descriptive of the claimant having reached her maximum therapeutic benefit. Indeed, the reports submitted did not detail significant areas of objectifiable improvement to suggest that there was a further therapeutic necessity for accident-related chiropractic care.
>
> The most recent report on file dated January 31, 2012, although quite extensive, has only a short note in point No. 2 regarding the claimant's ongoing necessity for chiropractic care. In this report, [Appellant's chiropractor] acknowledges that the claimant has occasional recurrent flare ups of her generalized musculoskeletal pain. He subjectively indicates that the claimant continues to improve albeit slowly and with occasional setbacks.
>
> Unfortunately, [Appellant's chiropractor] does not in any way objectify the claimant's improvement. There is no indication of status inventories, numeric pain scales or other concrete ways of determining to what extent the claimant is improving. [Appellant's chiropractor] further goes on in his report to advocate for supportive care and describes situations where the claimant gets worse following a cessation of care; however, again, he does not describe any objectifiable way to quantify these periods of exacerbation.
>
> After reviewing the information on file and taking particular account of the mechanism of injury, which did not result in any physical impact to the claimant, as well as the date of loss and the number of therapeutic interventions that the claimant attended, it is difficult to opine that there is an ongoing accident-related necessity for chiropractic care.
>
> It is clear from the file contents that the claimant has a long history of chronic musculoskeletal complaints, I have no doubt that she continues to suffer from ongoing infirmity related to these complaints.
>
> The file contents, however, do not provide sufficient evidence to A) suggest that the balance of these complaints are "probably" related to the motor vehicle collision in question; B) to suggest that the claimant would meet the criteria for supportive chiropractic care as it would relate to the motor vehicle accident in question.
>
> In short, a detailed review of the file contents does not provide additional evidence that would lead me to change my previously rendered opinion that with respect to her accident related condition the claimant has on balance reached her maximum therapeutic benefit." (Underlining added)

Case Conference dated February 27, 2014 – Entitlement to Chinese Acupuncture Treatment of Left Hip, Naturopathic Treatment and Ultrasound Machine Treatment:

On February 19, 2014 the Appellant wrote to MPIC's case manager and requested the following treatments be paid by MPIC:

1. Request for Chinese acupuncture at a local naturopathic clinic.

   "Medical records from [hospital #2] provide evidence that I benefited from Chinese acupuncture in the past, so I therefore am requesting that it be provided as a treatment for my hit-and-run injuries.

   My hit-and-run injuries have left me unable to travel to [hospital #2], so I therefore am requesting that treatment be provided at the [text deleted], which is the only facility in [text deleted] providing Chinese acupuncture.

   I currently am unable to tolerate chiropractic or physiotherapy treatments, which is why I am requesting a less aggressive treatment modality such as Chinese acupuncture, at least to get me to a point where I could resume chiropractic care.

   Both my family doctor ([Appellant's doctor #2]) and physical medicine specialist ([Appellant's physiatrist #2]) support acupuncture as a treatment option."

2. Request for treatment of left hip. The Appellant indicated that the motor vehicle accident resulted in an injury to her left hip which changed her gait which never returned to normal. The Appellant then set out the difficulty she has in entering a pool for therapy, navigating stairs, inability to use her walker to carry out local errands and as a result being confined to her housing complex and difficulty sitting for any length of time.

3. Request for naturopathic treatment. The Appellant requested an evaluation by a naturopath who could prescribe a proper treatment plan that would accommodate the Appellant's chemical sensitivities.

4. Request for transportation to local appointments.

5. Request for personal ultrasound machine.

   "[Appellant's chiropractor's] medical reports indicate he routinely used ultrasound to temporarily alleviate shoulder pain. I recently found out about an Ultralieve ultrasound machine designed for home use. This would be a drug-free source of pain relief for my shoulder that I could use as-needed while confined to my home."

In response, the case manager requested a Health Care Services review of the Appellant's letter of February 15, 2014 requesting the treatments as listed above.

On March 25, 2014, [MPIC's doctor #2] replied to this request and stated:

> "As noted previously, [the Appellant] had diffuse body pain prior to the incident in question. It is noted that [the Appellant] reported symptoms involving various regions of her body after the incident in question including the left shoulder and left buttock/hip region. The documents presently contained in the claim file do not indicate diagnostic tests performed to assess the left shoulder or left hip identified structural changes, causally related to the incident in question, which would account for the symptoms she continues to report at this time. ...
>
> The underlying cause for [the Appellant's] left hip symptoms has not been identified. Information obtained from [the Appellant] as well as the documents submitted by the health care professionals involved in her care suggests a soft tissue component to the hip symptoms. Since [the Appellant] was noted to have diffuse body pain prior to the incident in question that did affect the back and hip regions, it is assumed there was a soft tissue component to her pain prior to the incident in question. In other words, the origin of [the Appellant's] hip symptoms, at this time, is in keeping with the origin of her symptoms prior to the incident in question, in all probability.
>
> It is noted that [the Appellant] is requesting coverage for various forms of treatment she is pursuing to help manage the symptoms affecting the left shoulder and hip. The interventions include the following:
>
> - Chinese acupuncture;
> - Naturopathic treatment (i.e. acupuncture, herbal remedies and other alternative treatments);
> - Home ultrasound machine – Ultralieve.
>
> <u>I am unaware of any scientific evidence that indicates these forms of treatment are medically required in the management of chronic diffuse soft tissue pain. These treatment interventions would be considered elective and as such would not fall under Manitoba Public Insurance definition of a medically required intervention.</u>" (Underlining added)

The case manager also requested that [MPIC's doctor #2] review the Appellant's request for the Dr. Ho pain relief package. The case manager stated:

> "The purpose of this task is to summarize our meeting where we discussed [the Appellant's] request for the Dr. Ho pain relief package to help relieve her left shoulder and left hip pain.

> After you reviewed this request you indicated that the Dr. Ho package isn't considered a medically required device to treat the musculoskeletal system or her symptoms of chronic pain. You also indicated as per your Health Care Services Report dated March 25th 2014, where you state that the medical evidence does not support that [the Appellant's] left shoulder and left hip symptoms are causally related to the incident. MPI therefore, would not consider covering the Dr. Ho package to treat [the Appellant's] left hip and shoulder pain.
>
> Please advise if this is accurate."

[MPIC's doctor #2] responded on May 1, 2014 and stated:

> "Your summary of our meeting is an accurate reflection of what took place." (Underlining added)

Entitlement to Acupuncture, Herbal Remedies, Naturopathic Treatment, and Home Ultrasound Machine:

The Appellant applied formally to MPIC for the following treatments:

1. Chinese Acupuncture treatment at a local naturopathic clinic for her injuries to allow her to resume Chiropractic care;
2. Treatment of her injuries to her left hip,
3. Evaluation and Naturopathic treatment including acupuncture, herbal remedies, other alternative treatments for her left shoulder,
4. The use of a home ultrasound machine, Ultralieve, for her left shoulder injury.

Case Manager's Decision dated April 7, 2014 - Entitlement to Acupuncture, Herbal Remedies, Naturopathic Treatment, and Home Ultrasound Machine:

The case manager wrote to the Appellant on April 7, 2014 and stated:

> "There is no evidence that suggests that these forms of these treatments are medically required in the management of chronic diffuse soft tissue pain. These treatments are considered elective and therefore would not fall under Manitoba Public Insurance's definition of a medically required intervention.

> It was also determined that there was no new medical evidence that supports the position that your left hip symptoms are causally related to your accident of April 9, 2009. It was determined that the underlying cause of your left hip symptom has not been identified, but that the origin of your hip symptoms at this time are in keeping with the origin of your symptoms, in all probability prior to the accident."

<u>Internal Review Officer's Decision dated August 26, 2014 - Entitlement to Acupuncture, Herbal Remedies, Naturopathic Treatment, and Home Ultrasound Machine:</u>

The Internal Review Officer wrote to the Appellant on August 26, 2014 and indicated that the issue under review was whether Chinese acupuncture treatment, herbal remedies and other forms of alternative treatments be considered a medical requirement in the treatment of her left shoulder and left hip symptoms and the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for the following reasons:

- In respect of the Appellant's request for treatment for her left hip symptoms, the Internal Review Officer relied on [MPIC's doctor #2's] opinion who indicated that the medical documentation disclosed a soft tissue component to the Appellant's symptoms. [MPIC's doctor #2] stated:

> "... Since [the Appellant] was noted to have diffuse body pain prior to the incident in question that did affect the back and hip regions, it is assumed there was a soft tissue component to her pain prior to the incident in question. In other words, the origin of [the Appellant's] hip symptoms, at this time, is in keeping with the origin of her symptoms prior to the incident in question, in all probability."

- The Internal Review Officer also relied on [MPIC's doctor #2's] opinion that the interventions including Chinese acupuncture, neuropathic treatment (i.e. acupuncture, herbal remedies and other alternative treatments), and home ultrasound machine were not medically required. [MPIC's doctor #2] stated:

> <u>"I am unaware of any scientific evidence that indicates these forms of treatment are medically required in the management of chronic diffuse soft tissue pain. These</u>

> treatment interventions would be considered elective and as such would not fall under Manitoba Public Insurance definition of a medically required intervention." (Underlining added)

- The Internal Review Officer concluded:

> "There are two conditions which must be met before Manitoba Public Insurance becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:
>
> 1. The expenses must have been incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the *Manitoba Public Insurance Corporation Act* ...
>
> 2. The treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation 40/94 ..."

The Internal Review Officer concluded "I must agree with the medical consultant's opinion that it is not medically probable that you sustained an injury to your left hip as a result of the accident". (Underlining added)

Entitlement to Purchase of the Dr. Ho – Pain Management System:

Case Manager's Decision dated May 7, 2014 - Dr. Ho – Pain Management System:

The case manager wrote to the Appellant on May 7, 2014 rejecting her request for the purchase of the Dr. Ho – Pain Management System for treatment of her left hip and left shoulder pain. The case manager indicated that the purchase of this system had been reviewed by MPIC's Health Care Services consultant on April 28, 2014. It was determined that this system was not considered a medically required device to treat the musculoskeletal system or the chronic pain in the Appellant's left shoulder and hip.

The case manager further stated that since there was no evidence to suggest that the treatment was medically required, MPIC would not pay for the Dr. Ho – Pain Management System.

Internal Review Officer's Decision dated August 26, 2014 -- Dr. Ho – Pain Management System:

The Internal Review Officer wrote to the Appellant on August 26, 2014 and indicated that the issue under review was whether the Dr. Ho – Pain Management System be considered a medical requirement in the treatment of the Appellant's left should and left hip symptoms. The Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of May 7, 2014.

The Internal Review Officer, in rejecting the Appellant's Application for Review, relied on [MPIC's doctor #2's] opinion who considered the request for Chinese acupuncture, neuropathic (sic) treatment (i.e. acupuncture, herbal remedies and other alternative treatments), and home ultrasound machine were not medically required. [MPIC's doctor #2] stated:

> "I am unaware of any scientific evidence that indicates these forms of treatment are medically required in the management of chronic diffuse soft tissue pain. These treatment interventions would be considered elective and as such would not fall under Manitoba Public Insurance definition of a medically required intervention." (Underlining added)

The Internal Review Officer further indicated that:

1. The Dr. Ho – Pain Management System would be considered elective and would not fall under MPIC's definition of a medically required intervention.
2. For MPIC to reimburse the Appellant for expenses incurred the treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation 40/94.

3. For these reasons MPIC rejected reimbursement for coverage of the Dr. Ho – Pain Management System.

The case manager met with [MPIC's doctor #2] to review the Appellant's request for a Dr. Ho Pain Management System and stated:

> "After you reviewed this request you indicated that the Dr. Ho package isn't considered a medically required device to treat the musculoskeletal system or her symptoms of chronic pain. You also indicated as per your Health Care Services Report dated March 25th 2014, where you state that the medical evidence does not support that [the Appellant's] left shoulder and left hip symptoms are causally related to the incident. MPI therefore, would not consider covering the Dr. Ho package to treat [the Appellant's] left hip and shoulder pain."

[MPIC's doctor #2] replied on May 1, 2014 and stated "Your summary of our meeting is an accurate reflection of what took place."

<u>Notice of Appeal dated September 30, 2014 - Entitlement to Acupuncture, Herbal Remedies, Naturopathic Treatment, and Home Ultrasound Machine:</u>

The Appellant filed a Notice of Appeal on September 30, 2014 in respect of the Internal Review decision of August 26, 2014 relating to the remedies for acupuncture, herbal remedies and other forms of alternative treatment and in respect of the Appellant's entitlement to purchase the Dr. Ho - Pain Management System.

The relevant provision in the MPIC Act in respect of this appeal is Manitoba Regulation 40/94 which provides:

> 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;
> ...

Appellant's Testimony:

The Appellant testified that:

1. While walking with her four-wheeled walker, the left front basket of her walker was struck by a motor vehicle which fled the scene.
2. The motor vehicle hit the walker but it resulted in her being jolted and caused a rapid forward and upward motion of her left arm.
3. She did not fall to the ground and her walker was not damaged, but the basket attached to the walker was damaged.
4. She was able to walk to the local police station two blocks away and was transported to the hospital.
5. The result of the jolt by the motor vehicle accident was an aggravation of her left shoulder condition and her left hip.
6. Prior to the motor vehicle accident the pain to her left shoulder and hip had resolved itself.
7. The motor vehicle accident had a negative effect on her quality of life resulting in an inability to perform her daily activities.
8. She suffers from the conditions of fibromyalgia, myofascial syndrome, multiple chemical sensitivities ("MCS"), dizzy spells, and headaches.

9. As a result of these conditions, she is in constant pain throughout her entire body resulting in chronic fatigue, as well as arthritis in her left shoulder.

The Appellant testified that:

1. After to the motor vehicle accident she had been treated by [Appellant's chiropractor], a chiropractor and as a result of these treatments there was a significant improvement to her low back and to her left and right shoulders.
2. Subsequent to the motor vehicle accident, [Appellant's chiropractor], funded by MPIC, treated her and that these treatments were important for her to maintain her daily activities.
3. However, these treatments did not resolve her left shoulder and left hip injuries caused by the motor vehicle accident.
4. MPIC was not justified in terminating the chiropractic treatments provided by [Appellant's chiropractor].
5. As a result of the termination of the treatments, her condition deteriorated.
6. The pain in her left shoulder and left hip were not resolved at the time of the termination of the chiropractic treatments and requested that the Commission direct MPIC to fund further chiropractic treatments.
7. Her previous problems were resolved as a result of the chiropractic treatments but unfortunately, the pain in her left shoulder and hip caused by the motor vehicle continued after the time when MPIC terminated the treatments.
8. She requested that MPIC reinstate the chiropractic treatments provided by [Appellant's chiropractor].

[Appellant's chiropractor's] Testimony:

[Appellant's chiropractor], a chiropractor, provided chiropractic treatments to the Appellant following the motor vehicle accident. [Appellant's chiropractor] testified that as a result of the motor vehicle accident:

1. The Appellant's left shoulder and left hip were aggravated and negatively affected her ability to carry out her daily duties.
2. He saw the Appellant after the motor vehicle accident on April 13, 2009 and diagnosed that she had suffered sacroiliac strain, cervical facet strain and thoracic facet strain.
3. He saw the Appellant on October 19, 2009 and requested that MPIC fund Chiropractic Track II treatments.
4. MPIC did approve Chiropractic Track II treatments.
5. He received funding for Chiropractic Track II, Phase 4 and 5 treatments by MPIC.
6. His request for Chiropractic Track II, Phase 6 treatments was not approved by MPIC.
7. He was advised by MPIC that [MPIC's chiropractor], MPIC's Health Care Services Consultant, had reviewed the medical information and determined that the Appellant had reached maximum therapeutic treatment and MPIC was therefore not justified in funding Phase 6 treatments.
8. He disagreed with [MPIC's chiropractor's] opinion that the Appellant had reached maximum therapeutic benefits.

[Appellant's chiropractor] testified that:

1. The Appellant found that when she missed chiropractic treatments her condition deteriorated.
2. In his opinion, further treatments would definitely contribute to the rehabilitation of the victim.

3. The chiropractic treatments assisted the Appellant in doing more activities for herself and to do a better job of looking after herself in her own home and in carrying out her daily activities.
4. The Appellant had been receiving treatments twice weekly following the motor vehicle accident and that these treatments should continue.

[MPIC's chiropractor's] Testimony:

[MPIC's chiropractor] testified that:

1. The request from [Appellant's chiropractor] to fund chiropractic treatment of the Appellant was referred to him by MPIC's case manager.
2. He reviewed the medical information provided by [Appellant's chiropractor] and approved funding of Track II, Phase 1, 2, and 3 chiropractic treatments consecutively.
3. [Appellant's chiropractor] made a further request for chiropractic Track II, Phase 5 treatment.
4. He reviewed the request on February 11, 2010 and advised that the Appellant's improvement had been modest and that the Phase 5 treatment would be a reasonable transition for the Appellant to self-care.
5. In his view the Appellant was at or very near maximum treatment benefit by the end of Phase 5.
6. [Appellant's chiropractor] made a further request following an April 12, 2010 examination to fund Phase 6.
7. He indicated that he reviewed [Appellant's chiropractor's] request and informed MPIC's case manager that his review indicated that the Appellant had reached maximum therapeutic benefit.

He further testified that:

1. He was requested by MPIC to review [Appellant's chiropractor's] letter of January 31, 2012 wherein [Appellant's chiropractor] set out his reasons for disagreeing with [MPIC's chiropractor's] decision of August 14, 2010 recommending that funding for Chiropractic Phase VI treatment be rejected.
2. As of his final review the Appellant had received nearly 100 chiropractic treatments over the previous 60 months.
3. As well, the Appellant had received extensive exposure to physiotherapy treatments and in his view the Appellant had reached maximum therapeutic benefit.
4. [Appellant's chiropractor's] reports did not indicate any objectifiable improvement which would suggest that as a result MPIC should not approve any further chiropractic treatment.
5. In his view [Appellant's chiropractor] suggested the Appellant continued to improve slowly with occasional setbacks, but that [Appellant's chiropractor] could not in any way objectify the Appellant's improvement.
6. There were no indications of status inventories, common numeric pain scales or other concrete ways of determining to what extent the Appellant was improving.
7. Prior to receiving supportive care the chiropractor must determine maximum therapeutic benefit (`"MTB").
8. After it is determined that a patient has received MTB, a plan is developed to determine whether supportive care is justified. In order to do so, the chiropractor will need to:

   a) Withdraw chiropractic treatment from the patient.

   b) After a period of time you do an evaluation.

   c) Conduct a shoulder examination.

   d) Conduct a series of procedures using the pain schedule to determine whether or

not there has been any change in the pain level of the Appellant in her left shoulder.

e) Ask the patient questions to determine whether there is a change in pain.

By employing this plan the chiropractor will be able to objectively determine whether or not there is a need for supportive care, requiring continued chiropractic treatments.

[MPIC's chiropractor] further stated:

1. [Appellant's chiropractor] did not apply the criteria recognized to determine whether the Appellant required supportive care, therefore he did not objectively testify on the use of supportive care.
2. There was insufficient evidence that the Appellant met the criteria for supportive chiropractic care as it related to the motor vehicle accident.

Submission for the Appellant:

The Claimant Adviser submitted that:

1. [MPIC's chiropractor] and [MPIC's doctor #2] agreed it was difficult to predict how long an aggravation of a pre-existing condition caused by a motor vehicle accident may persist and agreed in general with [Appellant's physiatrist #2's] statement that such aggravation may persist for months or even years.
2. However, [MPIC's doctor #2] did qualify his agreement with that statement by saying that he did not believe that the Appellant's aggravation was serious enough to last more than a few weeks.
3. He acknowledged that the chiropractor, [Appellant's chiropractor], did not examine the Appellant until after the motor vehicle accident and did not have access to various pre-

accident medical records. However, he stated that [Appellant's chiropractor] had the opportunity of reviewing these documents before testifying.

The Claimant Adviser further submitted that:

1. [Appellant's chiropractor] commenced treating the Appellant after the motor vehicle accident.
2. [Appellant's chiropractor] sought and received approval from MPIC to fund Chiropractic Track II treatments for Phase 1, 2, 3 and 4.
3. [Appellant's chiropractor] testified that based on his personal assessment of the Appellant she was entitled to receive Track II, Phase 5 chiropractic care in order to assist her in supporting her lifestyle.
4. [Appellant's chiropractor] testified that while the Appellant was still improving slightly from treatment, she was fairly close to maximum therapeutic benefit ("MTB") and should have been given the opportunity to receive his treatment in order to reach MTB.

The Claimant Adviser submitted that:

1. Based on [Appellant's chiropractor's] reports, [MPIC's chiropractor] concluded that the Appellant had reached MTB prior to the cessation of treatment.
2. [Appellant's chiropractor] disagreed with [MPIC's chiropractor] and was of the view that the Appellant was entitled to further chiropractic treatments because when she missed treatments for various periods of time her condition noticeably deteriorated, but when treatments were continued, her condition improved.

The Claimant Adviser also submitted that:

1. Although [Appellant's chiropractor] did not follow the protocol, he testified that he based his recommendation on his direct observation of the Appellant's ability to function.
2. [Appellant's chiropractor] observed the manner in which the Appellant walked, the way she sat and the way she could get on and off the chiropractic table.
3. [MPIC's chiropractor] agreed that these observations would be more objective than the Appellant's own observations.
4. The pain surveys demanded by MPIC to justify supportive care amounted to the Appellant's subjective observations which were agreed to by [MPIC's chiropractor] when he recommended funding for the Phase 5 chiropractic treatments.
5. [MPIC's chiropractor] also agreed that these pain surveys were the main factor in the decision to grant Track II, Phase 5 chiropractic care and more objective measures such as range of motion measurements did not affect these decisions.

The Claimant Adviser further submitted that:

1. [Appellant's chiropractor] had not treated the Appellant for the past three years and he had treated her twice this spring.
2. [Appellant's chiropractor] testified that the Appellant's condition had deteriorated so much during the past five years that he was limited to providing her with ultrasonic treatments.
3. The Appellant would have benefitted from supportive care three years ago but he could not provide an objective opinion at this time.

The Claimant Adviser submitted that the best course of action would be for MPI to provide chiropractic care for a period of time so the Appellant could regain some ground lost over the past three years and then have [Appellant's chiropractor] go through the supportive care

protocols and then provide MPIC with the required pain surveys and other required information this time.

The Claimant Adviser further submitted:

1. That the Appellant had requested MPIC to provide alternative treatment such as acupuncture, left hip treatment and ultrasound.
2. The Appellant testified that she responded well to this therapy she had received at [hospital #2].
3. The Appellant felt strongly that this type of treatment would be extremely beneficial in terms of reducing her general pain levels and the specific pain in her left shoulder and left hip.
4. The Appellant felt that reduction of these pain levels would in turn permit more extensive and aggressive chiropractic treatment with the ultimate goal of improving the Appellant's levels of function and mobility.

The Claimant Adviser therefore submitted that the Appellant has established on a balance of probabilities that supportive chiropractic care was justified and submitted that having regard to the effluxion of time [Appellant's chiropractor] had not treated the Appellant for the past three years and only treated her twice this spring. He therefore submitted that MPIC should provide chiropractic care for a period of time so the Appellant could regain some of the ground that she lost over the past three years, then [Appellant's chiropractor] should be given the opportunity of proceeding with the supportive care protocols and provide MPIC with the required pain surveys and other required information.

Submission for MPIC:

At the commencement of his submission, MPIC's legal counsel stipulated that MPIC acknowledged that the motor vehicle accident aggravated the Appellant's left shoulder but MPIC was not required to fund any further chiropractic treatments in respect of the Appellant's left shoulder.

MPIC's legal counsel submitted that the Appellant failed to establish, on a balance of probabilities, that the chiropractic treatments were medically required pursuant to Section 5 of Manitoba Regulation 40/94.

In his submission, MPIC's legal counsel relied on the opinions of their consultant, [MPIC's chiropractor] in rejecting the application of the Appellant's request for additional chiropractic treatment. MPIC's legal counsel submitted that [MPIC's chiropractor] had testified that:

1. The aggravation to the Appellant's left shoulder had long since resolved itself.
2. He had approved Chiropractic Track II, Phase 1-5, treatments and as of the date of his final review the Appellant had received nearly 100 chiropractic interventions over the 60 month period and the Appellant had received extensive exposure to physiotherapy treatments.
3. As a result of these treatments, the Appellant had reached maximum therapeutic benefit and therefore could not justify additional chiropractic treatments because they were not medically required.

MPIC's legal counsel submitted:

1. [MPIC's chiropractor] disagreed with [Appellant's chiropractor's] opinion that further chiropractic treatments were required in order to provide supportive care to the Appellant because chiropractic treatments had improved the Appellant's condition.
2. His report indicated that [Appellant's chiropractor] did not demonstrate an objective assessment of this improvement by providing status inventories, numeric pain scales or other concrete ways of determining to what extent the Appellant was improving.

MPIC's legal counsel further submitted that:

1. Although [Appellant's chiropractor] suggested supportive care was required because of situations when the Appellant got worse following cessation of care, [MPIC's chiropractor] was of the view there was no objective way of quantifying these periods of exacerbation.
2. [MPIC's chiropractor] concluded, having regard to the date of loss and the number of therapeutic interventions attended by the Appellant, it was difficult to opine that there was an ongoing accident related necessity for chiropractic care.

MPIC's legal counsel submitted that the Appellant had failed to establish on a balance of probabilities that further chiropractic treatments were medically required in accordance with Section 5 of Manitoba Regulation 40/94.

Discussion:

The relevant provisions of the MPIC Act in this appeal provides:

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;
>
> ...

The relevant provision of the MPIC Act relating to this appeal is Manitoba Regulation 40/94 provides:

> 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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

Entitlement to Chiropractic Treatment:

The onus is upon the Appellant to establish on a balance of probabilities that the Internal Review Officer erred in finding that further chiropractic treatments were not medically required.

The Appellant took the position that these treatments were required on a supportive care basis.

The Commission in several of its previous decisions has accepted the following definition of "supportive care" to include the following elements:

1. It is for patients who have reached maximum therapeutic benefit but failed to maintain it and, in fact, progressively deteriorate when treatment is periodically withdrawn.
2. It applies after a trial and passive modalities of treatment, including rehabilitation and lifestyle modifications.

3. It is appropriate after alternative care options (including but not limited to, home based self-care) have been considered and attempted.
4. It may be inappropriate when it interferes with other appropriate primary care, or when the risk outweighs its expected benefits.

The Commission has reviewed the testimony of the Appellant, [Appellant's chiropractor] and [MPIC's chiropractor], as well as the reports submitted by [Appellant's chiropractor], [MPIC's chiropractor] and [MPIC's doctor #2]. The Commission has also considered the submissions of both parties.

The onus is on the Appellant to establish on a balance of probabilities that the Internal Review Officer erred in finding that additional chiropractic treatments for which she seeks coverage were not required on a supportive care basis.

The Commission finds that the evidence of the Appellant is based largely upon subjective reporting. Although the Commission finds the Appellant to be credible in her belief that she required chiropractic treatments in order to function, this evidence was limited to subjective reporting.

The Claimant Adviser in his submission:

1. Acknowledged that [Appellant's chiropractor] did not examine the Appellant until after the motor vehicle accident and did not have access to various pre-accident medical reports when he indicated that supportive care was required.
2. Stated that although [Appellant's chiropractor] had not followed the protocol for supportive care he had provided core information necessary to justify supportive care.

[MPIC's chiropractor], in his testimony referred to the criteria of supportive care and he testified that [Appellant's chiropractor] had not complied with the criteria that had to be satisfied before supportive care was justified.

<u>[MPIC's chiropractor], in his interdepartmental memorandum to MPIC's legal counsel, stated that on several occasions at the request of [Appellant's chiropractor] to MPIC to fund chiropractic treatments, he had approved chiropractic care in Phases 1-5, and that at the date of his final review on August 24, 2010 the Appellant had received nearly 100 chiropractic interventions over a period of 16 months as well as having received extensive exposure to physiotherapy treatments.</u>

[MPIC's chiropractor], in his report of May 8, 2012 stated:

> "... Despite what can only be described as a significant exposure to a variety of physical modalities, the balance of file information at that time was most descriptive of the claimant having reached her maximum therapeutic benefit. Indeed, the reports submitted did not detail significant areas of objectifiable improvement to suggest that there was a further therapeutic necessity for accident-related chiropractic care."

[MPIC's chiropractor] further stated:

> "The most recent report on file dated January 31, 2012, although quite extensive, has only a short note in point No. 2 regarding the claimant's ongoing necessity for chiropractic care. In this report, [Appellant's chiropractor] acknowledges that the claimant has occasional recurrent flare ups of her generalized musculoskeletal pain. He subjectively indicates that the claimant continues to improve albeit slowly and with occasional setbacks.
>
> Unfortunately, [Appellant's chiropractor] does not in any way objectify the claimant's improvement. There is no indication of status inventories, numeric pain scales or other concrete ways of determining to what extent the claimant is improving. [Appellant's chiropractor] further goes on in his report to advocate for supportive care and describes situations where the claimant gets worse following a cessation of care; however, again, he does not describe any objectifiable way to quantify these periods of exacerbation.
>
> After reviewing the information on file and taking particular account of the mechanism of injury, which did not result in any physical impact to the claimant, as well as the date

> of loss and the number of therapeutic interventions that the claimant attended, it is difficult to opine that there is an ongoing accident-related necessity for chiropractic care.
>
> It is clear from the file contents that the claimant has a long history of chronic musculoskeletal complaints, I have no doubt that she continues to suffer from ongoing infirmity related to these complaints.
>
> The file contents, however, do not provide sufficient evidence to A) suggest that the balance of these complaints are "probably" related to the motor vehicle collision in question; B) to suggest that the claimant would meet the criteria for supportive chiropractic care as it would relate to the motor vehicle accident in question.
>
> In short, a detailed review of the file contents does not provide additional evidence that would lead me to change my previously rendered opinion that with respect to her accident related condition the claimant has on balance reached her maximum therapeutic benefit." (Underlining added)

The Commission notes that:

1. [Appellant's chiropractor], in requesting chiropractic treatments Phase 6, his assessment of the Appellant's condition and the Appellant's need for chiropractic treatments, failed to go beyond the accounting of the Appellant's subjective reporting of her symptoms.
2. [Appellant's chiropractor] did not include the objective measurements and observations which are required to establish that the need for supportive care is medically required.

The Commission finds that [MPIC's chiropractor] was correct in determining:

1. The first criterion (objective evidence of deterioration following discontinuation of care) had not been met by [Appellant's chiropractor].
2. There was no objective evidence of deterioration in the Appellant's status with discontinuation of chiropractic treatment.
3. Whether treatment is medically required for the Appellant's condition where the condition remains virtually unchanged after completion of the Phase 5 chiropractic

treatments. One of the key considerations is whether there is any real likelihood that treatments would lead to a demonstrable improvement of the patient's condition.

The Commission finds that:

1. Since [Appellant's chiropractor] did not meet the criteria necessary to establish that supportive care was medically required the Commission gives greater weight to the testimony of [MPIC's chiropractor] than it does to that of [Appellant's chiropractor].
2. [MPIC's chiropractor] was correct in determining that the Appellant had reached maximum therapeutic benefit upon completion of Chiropractic Track II, Phase 5 treatments since there was no evidence that there was any improvement to the Appellant's condition after receiving 100 treatments over a period of 16 months.

Decision:

The Commission finds that for these reasons the Appellant has failed to meet the onus upon her of providing sufficient objective evidence which would, on a balance of probabilities, support the need for further chiropractic treatment in the relevant period, which is medically required as a result of the motor vehicle accident or meets the definition of supportive care set out above. As a result, the Appellant's appeal is dismissed in respect of her request for additional chiropractic care and the decision of the Internal Review Officer dated March 18, 2011 is confirmed.

Entitlement to Naturopathic Chinese Acupuncture Treatment:

The onus is upon the Appellant to establish on a balance of probabilities that the Internal Review Officer erred in finding that the Chinese acupuncture treatment requested by the Appellant in respect to the injury to her left hip and buttock were causally related to the motor vehicle accident and were medically required.

The Appellant reported in her Application for compensation to MPIC on April 9, 2009:

> "I was a pedestrian walking with my walker east bond (sic) on [text deleted] crossing [text deleted] with a walk light, when a vehicle struck the left front basket of my walker and then remember being jolted around. I did not fall on the ground or onto the vehicle. Driver got out of the vehicle asked how I was. I asked what his name and he got back into vehicle and drove away. I remembered his plate number."

The Appellant then walked to the police station and filed a report for an accident and was subsequently driven to [hospital #1] emergency department.

The hospital's report dated April 9, 2009 contained the following comments made by the Appellant:

1. She was walking on the street when a car hit her walker on the left side and gave her a "jolt" but she did not fall down.
2. The walker basket was slightly twisted to the side and the frame was unaffected.
3. She had been diagnosed with fibromyalgia, suffered from chronic pain and was intolerant to many medications.

The hospital report documented a diagnosis of muscle spasm.

[MPIC's doctor #2], MPIC's medical consultant, was requested to reply to the Appellant's request for the naturopathic acupuncture treatment. [MPIC's doctor #2] stated:

> "As noted previously, [the Appellant] had diffuse body pain prior to the incident in question. It is noted that [the Appellant] reported symptoms involving various regions of her body after the incident in question including the left shoulder and left buttock/hip region. The documents presently contained in the claim file do not indicate diagnostic tests performed to assess the left shoulder or left hip identified structural changes, causally related to the incident in question, which would account for the symptoms she continues to report at this time. ..." (Underlining added)

[MPIC's doctor #2] further stated:

> "The underlying cause for [the Appellant's] left hip symptoms has not been identified. Information obtained from [the Appellant] as well as the documents submitted by the health care professionals involved in her care suggests a soft tissue component to the hip symptoms. Since [the Appellant] was noted to have diffuse body pain prior to the incident in question that did affect the back and hip regions, it is assumed there was a soft tissue component to her pain prior to the incident in question. In other words, the origin of [the Appellant's] hip symptoms, at this time, is in keeping with the origin of her symptoms prior to the incident in question, in all probability." (Underlining added)

The Commission finds that:

1. There was no medical evidence to contradict [MPIC's doctor #2's] opinion that there were no diagnostic tests performed to assess the Appellant's left hip identified structural changes and that the underlying cause for the Appellant's left hip symptoms had not been identified.
2. There is no medical evidence to contradict [MPIC's doctor #2's] opinion that the injuries that the Appellant complained about in respect of her left hip were consistent with a soft tissue injury.

The Appellant suggested in her request to MPIC that she had responded very well to Chinese acupuncture therapy when she was treated with it at [hospital #2] and that [Appellant's doctor #2] and [Appellant's physiatrist #2] reported that acupuncture was a treatment option.

The Commission finds, however, these treatments related to the Appellant's symptoms prior to the motor vehicle accident and there is no medical evidence to indicate that acupuncture would be of any assistance to the injuries the Appellant may have suffered to her left hip/buttock subsequent to the motor vehicle accident.

The Commission further notes that [MPIC's doctor #2] has stated in his report of March 25, 2014 that he is unaware of any scientific evidence that indicates Chinese naturopathic acupuncture is medically required in the management of diffuse soft tissue pain. [MPIC's doctor #2] indicated that this treatment would be considered elective and as such would not fall under the Manitoba Public Insurance definition of a medically required intervention.

Decision:

The Commission therefore finds for these reasons the Appellant has failed to establish on a balance of probabilities that there was a causal relationship between the Appellant's her (sic) left hip/buttock symptoms and the motor vehicle accident. As a result the Appellant's appeal is dismissed in respect of her request for entitlement to Chinese naturopathic acupuncture treatment and the decision of the Internal Review Officer dated August 26, 2014 is confirmed.

Entitlement to Naturopathic Treatment:

The Appellant requested an evaluation to be made by a naturopath to prescribe the proper treatment that would accommodate the Appellant's chemical sensitivity.

The Appellant also requested that MPIC fund treatment of her left hip. The Appellant stated:

1. The motor vehicle accident resulted in an injury to her left hip which changed her gait which never returned to normal.
2. She had difficulty entering a pool for therapy, navigating stairs, inability to use her walker to carry out local errands and as a result being confined to her housing complex and difficulty sitting for any length of time.

The Commission notes that the Appellant made the additional requests to MPIC to fund the following treatments:

1. "[Appellant's chiropractor's] medical reports indicate he routinely used ultrasound to temporarily alleviate shoulder pain. I recently found out about an Ultralieve ultrasound machine designed for home use. This would be a drug-free source of pain relief for my shoulder that I could use as-needed while confined to my home."

2. The Appellant further stated that the ultrasound treatments routinely used by [Appellant's chiropractor] temporarily alleviated her shoulder pain.

[MPIC's doctor #2] responded to these requests by the Appellant for treatment as follows:

> "It is noted that [the Appellant] is requesting coverage for various forms of treatment she is pursuing to help manage the symptoms affecting the left shoulder and hip. The interventions include the following:
>
> - Chinese acupuncture;
> - Naturopathic treatment (i.e. acupuncture, herbal remedies and other alternative treatments);
> - Home ultrasound machine – Ultralieve.
>
> I am unaware of any scientific evidence that indicates these forms of treatment are medically required in the management of chronic diffuse soft tissue pain. These treatment interventions would be considered elective and as such would not fall under Manitoba Public Insurance definition of a medically required intervention."

On August 26, 2014, the Internal Review Office wrote to the Appellant and indicated that there were two issues to be reviewed by the Internal Review Officer as follows:

1. Did the medical information on the file establish a causal relationship between the Appellant's left shoulder and left hip symptoms and the accident of April 9, 2009?
2. Would Chinese acupuncture treatment, herbal remedies and other forms of alternative treatments be considered a medical requirement in the treatment of the Appellant's left shoulder and left hip symptoms?

The Internal Review Officer found

> "There are two conditions which must be met before Manitoba Public Insurance becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:
>
> 1. The expenses must have been incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 163(1)(a) of the *Manitoba Public Insurance Corporation Act*... ;
> 2. The treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation 49/94... ;
>
> It is clear from the available information that you sustained soft tissue injuries as a result of the accident of April 9, 2009. I have reviewed the evidence currently available on file and there is no new information provided which would interfere with my Internal Review decision of March 18, 2011. In addition, I must agree with the medical consultant's opinion that it is not medically probable that you sustained an injury to your left hip as a result of the accident.
>
> Given that the evidence does not support a causal relationship between your left shoulder and left hip and the accident, funding for treatment would not be provided under PIPP. As an aside, coverage of naturopathic/alternative interventions would be considered elective and would not fall under MPIC's definition of a medically required intervention.
>
> The case manager's decision of April 7, 2014, is confirmed."

The Commission finds that there was no medical evidence provided by the Appellant to contradict [MPIC's doctor #2's] statement that these treatments were not medically required pursuant to Section 5(a) of Manitoba Regulation 40/94.

The Commission further finds that [MPIC's doctor #2] was correct in concluding that there was no causal relationship between the Appellant's left shoulder and left hip symptoms as a result of the motor vehicle accident.

Decision:

For these reasons the Internal Review Officer was correct in rejecting the Appellant's request for Chinese acupuncture, naturopathic treatments, and home ultrasound machine – Ultralieve.

The Commission therefore finds the Appellant has failed to establish on a balance of probabilities that MPIC was required to fund these alternative treatments.

The Commission therefore dismisses the Appellant's appeal in this respect and confirms the decision of the Internal Review Officer dated August 26, 2014.

Entitlement to Dr. Ho's Pain Management System:

On April 14, 2014 the Appellant emailed the case manager setting out a request which would require MPIC to fund a program regarding Dr. Ho's pain management system as follows:

> "On the weekend I watched a program regarding Dr. Ho's pain management system designed for home use. Since all of my previous requests were rejected by you, I am now asking that this system be considered as an alternative. The program claimed Dr. Ho is a pain specialist, and it also specifically mentioned accident pain as a category of pain that benefits from his system."

The Internal Review Officer rejected this request on the grounds the expenses incurred for the treatment is not medically required in accordance with Section 5 of Manitoba Regulation 40/94. [MPIC's doctor #2] confirmed the decision of the Internal Review Officer.

There is no medical evidence provided by the Appellant to contradict MPIC's decision to reject this request.

Decision:

For these reasons the Commission:

1. Agrees with the decision of the Internal Review Officer that this treatment is elective and would not fall under MPIC's definition of medically required intervention.

2. Finds that the Appellant has failed to establish on a balance of probabilities that MPIC is required to reimburse the Appellant for expenses incurred for this treatment since it was not medically required in accordance with Section 5(a) of Manitoba Regulation 40/94.

For these reasons the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated August 26, 2014.

Dated at Winnipeg this 20th day of August, 2015.

MEL MYERS, Q.C.

TREVOR ANDERSON

SUSAN SOOKRAM