# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]**
**AICAC File No.: AC-99-51**

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| **PANEL:** | **Mr. J. F. Reeh Taylor, Q.C., Chairman**<br>**Mrs. Lila Goodspeed**<br>**Mr. Colon Settle, Q.C.** |
| **APPEARANCES:** | **Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;**<br>**the Appellant, [text deleted], appeared on her own behalf** |
| **HEARING DATE:** | **October 7th, 1999** |
| **ISSUE:** | **Whether Appellant entitled to further chiropractic treatments.** |
| **RELEVANT SECTIONS:** | **Section 136(1) of the MPIC Act and Section 5(a) of Manitoba Regulation No. 40/94** |

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.**

## REASONS FOR DECISION

[Text deleted], the Appellant, was injured in a motor vehicle accident on August 18th, 1995. The report of the accident indicates that [the Appellant] was a passenger in a vehicle being driven by her husband, when another vehicle pulled out suddenly from a side street, rendering it impossible for [Appellant's husband] to avoid a collision. The front of the [Appellant's] vehicle apparently collided with the side of the other one.

[The Appellant] was initially diagnosed by her family doctor, [text deleted] with "mild whiplash; tender paravertebrals, limiting range of motion neck/back/upper and lower limbs". He prescribed rest and Voltaren (an anti-inflammatory analgesic). [Appellant's doctor] noted that, since [the Appellant's] main occupation was in the field of health care, her working ability would be limited by whiplash-induced back pain. [Appellant's doctor] also referred [the Appellant] for physiotherapy, two to three times per week for about three weeks.

Having noticed no change or improvement respecting her neck and back pain, [the Appellant] started a course of treatment from [text deleted], a chiropractic practitioner, three days per week, for manipulation of her neck and spine. The frequency of those adjustments was reduced over time. As well, [the Appellant] received massage therapy about once a week for quite some time and attended a gymnasium three times a week.

The Appellant was referred by MPIC to [text deleted], rehabilitation consultants, where she underwent a functional capacity assessment over a period of two days, on January 31st and February 1st, 1996. Their report, prepared by [text deleted], occupational therapist, is extensive. It reflects very minor limitation in range of motion at the thoracic and lumbar spine, with all other active ranges of motion being within normal limits. However, her resistive capacity seemed to be at a sedentary work level, below the physical strength required for the occupation of a nurse's aid. (Sedentary work is defined as requiring the ability to lift a maximum of ten pounds, with occasional lifting or carrying of items such as small tools or ledgers.) There were psycho-social factors noted, including injuries to [the Appellant's] husband and one daughter in the same motor vehicle accident, as well as difficulties with another daughter who seemed to be

exhibiting symptoms of post-traumatic stress.

[rehabilitation consulting company #1] recommended a physical reconditioning program to build [the Appellant's] strength, tolerance and endurance for activity, with some guidance in pain management and the control of headaches. Once that had been achieved, a return-to-work program could be initiated. [Rehabilitation consulting company #1] also recommended psychological counseling "as her family issues related to the MVA appear to be creating a barrier to [the Appellant's] ability to return to work".

[The Appellant] was then referred by MPIC to [rehabilitation consulting company #2] for further rehabilitation.

[The Appellant] was involved in a second motor vehicle accident on August 6th, 1997, when the [text deleted] van that she was driving, travelling at a speed of about 40 kmph, collided head on with a half ton truck being driven by her husband. Fortunately, the injuries she sustained in that second accident appear to have been quite mild.

[The Appellant] continued to attend for chiropractic treatments from [Appellant's chiropractor] until June 16th, 1998, when her adjuster wrote to tell her that no further chiropractic treatments would be paid for by the insurer.

This latter decision was based, primarily, upon a chiropractic examination carried out by [independent chiropractor], who, in his report of June 9th, 1998, gave his opinion that [the

Appellant] had sustained a soft tissue strain, consistent with a Grade 2 Whiplash Associated Disorder (WAD2). He found that [the Appellant's] ranges of motion were not impeded and there were no signs of nerve root impingement. [The Appellant] was, he said, very pain focused and this was associated with subjective, ongoing pain in all spinal areas, but with no sign of radiculopathy. Indeed, aside from local subjective tenderness, the Appellant had very little in the way of positive, objective signs.

[Independent chiropractor] expressed concerns that [the Appellant's] motor vehicle accident was no longer the prime generator of her pain. She was under considerable stress, with some factors having been identified two years previously when she had been assessed at [rehabilitation consulting company #2] and, since that time, there had been more stressors associated with her family situation. He recommended:

1. continuance of [the Appellant's] home exercises;
2. psychological intervention to help her deal with her pain and stress, her husband's situation and the effects on their family;
3. the need for [the Appellant] to wean herself away from purely passive modalities of treatment in order to address her chronic pain condition.

In summary, [independent chiropractor] found that [the Appellant] was not disabled and had not sustained any type of permanent physical impairment. Her functional prognosis was good, however she might very well have a continuance of non-disabling pain, especially if the non-musculoskeletal issues referred to were not addressed. He felt that [the Appellant] had long since reached maximum therapeutic benefit. While she perceived the need for having passive

interventions such as massage and, possibly, acupuncture, he questioned whether any of those interventions would affect her overall symptom complex. As noted above, it was this assessment by [independent chiropractor] that brought about the decision by MPIC to discontinue payments for [the Appellant's] chiropractic treatments which, nonetheless, she continued to receive at a frequency of once or twice per week.

[The Appellant] sought and obtained an Internal Review of the decision to terminate her chiropractic benefits. The Internal Review Officer first consulted [text deleted], a chiropractic consultant with MPIC's Claims Services Department. In confirming the views of [independent chiropractor], [MPIC's chiropractor] noted that

> To date (January 14th, 1999) the claimant has had over 324 chiropractic treatments, 44 physiotherapy treatments, rehabilitation at [rehabilitation consulting company #2], along with an undetermined number of massage therapy and workouts at a gym. She has made countless trips for treatment which seem to amount to hundreds of hours of travel to and from her appointments. She has applied for over $12,000.00 in travel expenses to date and generally travels between 600 and 1100 km per month (receiving on average $21.00 per visit to either the gym or the chiropractor).
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> …..It appears that the claimant has had over 10 times the average number of chiropractic treatments needed to rehabilitate the average chiropractic claimant. The claimant appears to want a further continuation of chiropractic care, even when she receives only one to three days of relief from care.
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> …..The claimant may have developed an unhealthy understanding on the need for passive care.

We are conscious of the fact that, as [Appellant's chiropractor] points out, "The literature supports that 10% of MVA victims never recover from their injuries"; [Appellant's chiropractor] felt that [the Appellant] might fall into this category. We do not, for one moment, doubt the sincerity nor the abilities of [Appellant's chiropractor], whose willing support of her patient is

commendable. At the same time, we are obliged to look at the nature of [the Appellant's] injuries, [Appellant's chiropractor's] own periodic reports to MPIC and the Clinical Guidelines for Chiropractic Practice in Canada adopted by the Canadian Chiropractic Association. [Appellant's chiropractor's] report of September 5th, 1995 indicates an anticipated need for three treatments per week for about a month; by September 25th, [Appellant's chiropractor] was recommending further treatments for about six to eight weeks; by October 30th, she was recommending three treatments a week for two weeks, two per week for the next four weeks and once weekly for a further four weeks, with disability anticipated to end by about mid-November, 1995. On December 1st, 1995, [Appellant's chiropractor] wrote to MPIC to say that

> [The Appellant] is unable to continue with work at this time. Two hours of work causes her a migraine that takes seven to ten days to dissipate. I am recommending she stay off for four weeks with a home exercise program to strengthen her neck and shoulder muscles to help stabilize the area.

We understand that [Appellant's chiropractor] was really quoting her patient in that last letter, since we have difficulty accepting the suggestion that two hours of work would bring about ten days of unrelieved, disabling migraine.

By March 31st, 1998 [Appellant's chiropractor] was recommending further treatments twice weekly for up to six months, to be followed by weekly spinal adjustments for an indeterminate period. It was that set of recommendations that brought about the referral of [the Appellant] to [independent chiropractor] for an independent chiropractic assessment.

In the meantime, [the Appellant] had returned to work on September 7th, 1997, after a lengthy,

graduated return-to-work program. She was, however, still complaining of significant pain and attending for physiotherapy treatments and reconditioning workouts at a local gymnasium in addition to the chiropractic adjustments she was receiving from [Appellant's chiropractor].

At no time does [the Appellant] appear to have been diagnosed with anything greater than a WAD 2.

The Clinical Guidelines referred to above tell us that:

> A chronic condition is defined as one with an onset more than three months prior to treatment.
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> There is clear evidence that, of those whose symptoms persist for more than three to four months, more than half will still be disabled at the end of a year. If chiropractic treatment of patients with chronic conditions is to be successful, emphasis must be placed on patient participation and active care……..
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> As with acute care, the RAND consensus panel……also recommended two trial courses of two weeks each, using alternative manipulative procedures before considering treatment/care to have failed. Without evidence of improvement over this time, spinal manipulation is no longer indicated.
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> It is generally agreed that with the treatment/care schedule, any episode of symptoms that remain unchanged for two or three weeks should be evaluated for risk factors of pending chronicity. Warning signs include somatic complaints that remain static longer than two to three weeks, anxiety or depression, functional or emotional disability, family turmoil and drug dependence.
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> ……No improvement after twelve visits means one or more of the following:
> 1. the original diagnosis was incorrect;
> 2. the incorrect treatment was given;
> 3. there was incompatibility between the doctor and patient;
> 4. there is secondary gain for the patient;
> 5. there were co-existing conditions.
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> Any failure of the patient to progress at least consistently with the stages of natural history requires consideration of the above points and a search for complications, somatization, non-compliance or reinjury.

> (Subacute and chronic conditions are usually considered to be complicated in that they have exhibited regression or delayed recovery in comparison with expectations from the natural history.)……..After a maximum trial therapy session of manual procedures lasting up to two weeks, and consisting of three to five treatments per week, reassessment is required if no demonstrable improvement has been noted. An alternative approach consisting of a maximum of four weeks may be instituted if warranted. Should no demonstrable improvement be forthcoming following this second trial, the patient should be referred or discharged.
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> ……It is expected that patients will reach their maximum therapeutic benefit within six to sixteen weeks. To minimize the development of physician/patient dependence, treatment frequency should not exceed two visits per week after the first six weeks. An acute exacerbation may require more frequent care. Should pre-episode status not return, or additional improvement not be forthcoming, maximum therapeutic benefit should be considered to have been reached.

In the second edition of the well known text on whiplash injuries edited by Steven Foreman and Arthur Croft, Dr. Croft recommends an average of 33 treatments for a Grade 2 Whiplash Associated Disorder. We recognize, of course, that this is intended to be a norm or average, but 324 treatments should, in our respectful view, have enabled [the Appellant] to have reached maximum therapeutic benefit. We note, in particular, that her treatments have been almost entirely passive, whereas the assessment by [rehabilitation consulting company #1], as well as the several texts on the subject, all recommend the need for a more active program. MPIC did continue to provide chiropractic care for [the Appellant], through the good offices of [Appellant's chiropractor], throughout her graduated return to work. On her physiotherapy discharge summary prepared by [rehabilitation consulting company #2] on April 3rd, 1997, her physiotherapist noted that "She continues to receive chiropractic treatments three times per week, which she states gives her relief for the remainder of the day……". By May 22nd, 1997, [Appellant's chiropractor] was advising [rehabilitation consulting company #1] that "[the Appellant's] status is unchanged".

In sum, while we do not necessarily find that [the Appellant] has reached pre-accident status, we are unable to find any reason to order the insurer to pay for further chiropractic treatments. There seems little doubt that [the Appellant] will benefit from continuing her exercise programs, at home and, if possible, at a gymnasium or other, similar facility. Equally important, if not more so, we express the view that, even at this late date, [the Appellant] could probably find substantial benefit from competent psychological counseling although, since that aspect of her rehabilitation is not the subject of this appeal, we refrain from embodying that in any order of this Commission.

Since the only issue before us is the continuance of [the Appellant's] chiropractic adjustments at the expense of the insurer, and since we have found no reason to order that continuance, it follows that [the Appellant's] appeal must be dismissed.

Finally, we note a complaint recorded by [Appellant's chiropractor] that neither [independent chiropractor] nor [MPIC's chiropractor] appeared to have made any attempt to contact her to discuss their respective findings or recommendations. She regarded that as a breach of professional protocol. It is not within the mandate of this Commission to comment upon the propriety or impropriety of such an omission. We note, only, our belief that the important person, here, is the patient and that the care and rehabilitation of that patient is more likely to be achieved by full and free communication between all medical, chiropractic and paramedical personnel involved in her assessment or care.

Dated at Winnipeg this 22nd day of November, 1999.

**J. F. REEH TAYLOR, Q.C.**

**LILA GOODSPEED**

**COLON SETTLE, Q.C.**