

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-183**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted] via teleconference; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: November 27, 2006

ISSUE(S): Entitlement to coverage for further chiropractic treatment benefits

RELEVANT SECTIONS: Section 136(1)(a) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Section 5 of Manitoba Regulation 40/94

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE 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

The Appellant, [text deleted], was a passenger in a [text deleted] Bus on December 23, 2000, when the bus veered off the road and rolled three and one-half (3 ½) times down an embankment. As a result of the accident, the Appellant's injuries included a WAD III injury, a bruised abdomen and headaches. She was admitted to [hospital] and was released on December 30, 2000. While in hospital, it was discovered that the Appellant was pregnant. After release from the hospital, the Appellant received physiotherapy treatment until July 20, 2001. In April

2002, she began chiropractic treatment, funded by MPIC, with [Appellant's chiropractor], for headaches and neck pain.

Treatment with [Appellant's chiropractor] continued until May 2004, when the Appellant attended for a third-party chiropractic examination with [independent chiropractor]. He recommended further chiropractic treatment to run concurrently with active rehabilitation therapy. Chiropractic treatment recommended was at a frequency of three (3) times per week for eight (8) weeks, twice a week for six (6) weeks, once a week for four (4) weeks and then once every other week for eight (8) weeks. The Appellant continued seeing [Appellant's chiropractor] for treatment.

On March 23, 2005, [Appellant's chiropractor] recommended one (1) treatment every three (3) weeks for the next six (6) months, possibly to be extended for an additional six (6) months.

On April 21, 2005, [text deleted], chiropractic consultant with MPIC's Health Care Services Team, reviewed the Appellant's file. It was his opinion that given the extended period of time and the number of chiropractic treatments which the Appellant had received, [Appellant's chiropractor's] recommendation was not appropriate and that the Appellant should be prepared to self-manage with a more self-directed, active program. He recommended that [Appellant's chiropractor] provide only intermittent supervision of the claimant's exercises and progress one (1) time per month over the next two (2) to four (4) months.

On May 18, 2005, the Appellant's case manager wrote to her indicating that Manitoba Public Insurance would only fund chiropractic treatment one (1) time per month over the next two (2) to four (4) months.

The Appellant sought internal review of this decision and on September 12, 2005, an Internal Review Officer for MPIC confirmed the case manager's decision, concluding that further chiropractic care was not medically required. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant provided testimony regarding her background, education and employment prior to the accident, and the effects of the accident upon her. She testified that her therapy during the first year following the accident was somewhat limited and complicated by her pregnancy and the delivery of her child on [text deleted].

Prior to the accident, the Appellant had only attended for chiropractic care on a couple of occasions, as a result of a special program offered and recommended through her employment as [text deleted].

The Appellant testified that after she began chiropractic care with [Appellant's chiropractor], she began to see some improvements. She followed up on his recommendation that she begin an exercise program, which included working out with weights. She began to see improvements in her condition and was able to sleep better and look after her son better. She testified that prior to receiving chiropractic treatment, she was in a great deal of pain and had no quality of life. The chiropractic treatment gave her a 'new lease on life'.

The Appellant also tried aquatherapy, but found that the greatest improvement came from chiropractic care combined with attending yoga classes three (3) times a week and going to the

gym to do weights and exercises on alternate days. She received chiropractic treatment once every three (3) weeks, unless she suffered a flare-up, when she attended more often. The Appellant went back to school in order to receive training for a career which was more back and neck friendly than her previous employment. She hopes to graduate as [text deleted], and has been very successful in her studies.

The Appellant described the difficulties and pain which she continues to encounter periodically when she suffers from flare-ups of her neck, back pain and headaches. At these times, her family provides assistance with the care of her son and with housework, but it also causes disruptions in her school work and ability to concentrate in class. At these times, she attends for chiropractic care two (2) or three (3) times a month. Without chiropractic care, she testified, she would become bed ridden, miss school and cease to function.

The Appellant submitted a list of treatment dates and balance sheet from her chiropractor, who had continued treatments even after MPIC stopped funding them. As of November 8, 2006, she had an outstanding balance for chiropractic treatments in the amount of \$[text deleted]. She sought payment of this amount, as well as ongoing chiropractic care benefits.

It was submitted on behalf of the Appellant that continued chiropractic care was medically required. She had experienced improvement over time and hoped to improve to the point where she would no longer require chiropractic care, although counsel could not indicate when this might be. It was also submitted that the Appellant required chiropractic care because of the extent that it improves her quality of life. It was clear that the Appellant was not a malingerer and had pursued active rehabilitation such as stretching, gym, yoga, cold packs and self-

education regarding her disability. Continued chiropractic care allows her to lead a normal lifestyle complete with school, and caring for her son and her home.

It was submitted that [Appellant's chiropractor's] treatment plans set out reasonable treatment for the Appellant's condition. The Appellant's condition had improved slightly and continued to improve. In his estimation, the Appellant had seen approximately seventy-five percent (75%) improvement in her condition and was going in the right direction; improving, albeit slowly. Periodic flare-ups, however, incapacitated her and she required chiropractic care to overcome this, and regular care to maintain her condition.

Evidence and Submission for MPIC

Counsel for MPIC submitted that the Appellant had suffered a soft tissue injury in a motor vehicle accident which occurred almost six (6) years ago. Prior to beginning chiropractic treatment, the Appellant had approximately forty-nine (49) physiotherapy treatments. This was followed, as pointed out by [MPIC's chiropractor] in his Memorandum of April 21, 2005, with '*significant exposure to active and passive care*'.

By the Appellant's own testimony, her marks at school are good and there was no evidence that her disability is incapacitating her or preventing her from continuing with her studies. Although the Appellant argued that she could not manage without continued chiropractic treatment, this could not be established since there had not been a significant period since she began chiropractic treatment, when she has gone without it.

Counsel for MPIC submitted that the Appellant had failed to establish that continued chiropractic care was medically required, on a balance of probabilities. The Appellant had received

significant chiropractic care over a lengthy period of time, and any further benefit from this treatment would have been realized within the period of time.

Discussion

Section 136(1)(a) of the MPIC Act 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;

Section 5 of 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, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

On March 23, 2005, [Appellant's chiropractor] noted that the Appellant reported significantly less pain in her lower back. He indicated that she had improved approximately seventy-five percent (75%) since her accident and felt her recovery would require a plan of action which should take place over the next two (2) years.

The onus is on the Appellant to show, on a balance of probabilities, that the further chiropractic treatment she seeks is medically required. I have reviewed the evidence on file, as well as the

testimony of the Appellant and the submissions of counsel. While [Appellant's chiropractor] still continues to advocate further chiropractic care, [Appellant's doctor #1], in May of 2004, anticipated that the Appellant would reach full recovery following approximately twenty-eight (28) weeks.

[Appellant's doctor #2], on March 24, 2005, recommended that:

From an orthopaedic point of view, I think she should be encouraged to go on with her self directed and group exercise programs, and gradually discontinue her chiropractic treatment.

[MPIC's chiropractor], in reviewing the question of further care, once every three (3) weeks for an extended period of time stated:

. . . I would suggest that given the date of loss and the degree of care to date that she should be suitably prepared to self manage and that the balance of potential improvement in her condition will come from a self directed, more active program.

In short, it is my opinion that the current information does not provide sufficient evidence to suggest that ongoing in office chiropractic visits are a necessity related to the motor vehicle accident. There may be some benefit to intermittent supervision by [Appellant's chiropractor] for the purpose of evaluating the claimant's exercises and progress however that supervision could take place at 1 time per month over the next 2 to 4 months.

While the Commission was impressed by the Appellant's efforts at rehabilitation, I find that she has failed to establish, on a balance of probabilities, that further chiropractic treatment is medically required and/or will result in any demonstrable improvement. I agree with the opinion of [MPIC's chiropractor] that the Appellant has received sufficient chiropractic care to allow her to manage her condition through an active program. The weight of the medical evidence does not indicate that further chiropractic treatments are required to improve the Appellant's medical condition.

The Appellant has failed to show, on a balance of probabilities, that further chiropractic

treatment is medically required. The rather extensive amount of chiropractic treatment undertaken by the Appellant, coupled with the lack of recent improvement in her condition, lead me to the conclusion that the Appellant had likely reached maximum therapeutic benefit from chiropractic care within two (2) to four (4) months following the case manager's decision of May 18, 2005. Accordingly, ongoing chiropractic treatment beyond that time cannot be deemed medically required within the meaning of Section 5(a) of Manitoba Regulation 40/94.

Therefore, the Commission finds that MPIC was justified in terminating payments for further chiropractic treatment for the Appellant, as it did. As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date September 12, 2005.

Dated at Winnipeg this 12th day of December, 2006.

LAURA DIAMOND