Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-23

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Keith Addison** **[Text deleted], the Appellant, appeared in person by way of telephone conference call**
HEARING DATE:	**January 9th, 1997**
ISSUE(S):	**1. Termination of chiropractic benefits - whether premature?** **2. Whether an order for alternative treatment is appropriate?**
RELEVANT SECTIONS:	**Sections 136(1) and 138 of the MPIC Act ('the Act') and Sections 5 and 9 of 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 FACTS:

On December 17th, 1994 the Appellant, [text deleted], who was then a [text deleted] year old, part-time housekeeper at [text deleted], was involved in an automobile accident when the vehicle that she was driving in a westerly direction collided with a truck headed south.

She describes the accident by saying that the left front corner of her vehicle was hit by the truck, pushing her car over toward the left side, and that she hit her head on the left side window.

[The Appellant's] initial complaints related to a painful neck and back, for which she consulted her chiropractor, [text deleted], on December 21st, and her family physician, [text deleted], on December 23rd. [Appellant's chiropractor] diagnosed a "subluxation at C1 and C2 due to a sprain/strain type of injury" and indicated that he would be administering adjustments two to three times per week for three to four months. [Appellant's doctor] prescribed some nonsteroid anti-inflammatory drug and range of motion exercises.

Thereafter, she attended upon [Appellant's doctor] on January 12th of 1995, complaining of a painful left knee that had been troubling her for several days; he diagnosed chrondromalacia patellae, or softening of the cartilage behind the kneecap. [The Appellant] told [Appellant's doctor] that she felt that this problem might be related to her motor vehicle accident ('MVA'). [The Appellant] saw [Appellant's doctor] again on February 7th of 1995, complaining of a stiff neck and, again, on February 28th, 1995 with respect to continuing pain in her left knee. [Appellant's doctor] referred her to an orthopaedic surgeon who performed arthroscopic surgery on July 3rd, 1995. For reasons that are not too clear, that surgery seems only to have been temporarily successful since, by November of that year, the symptoms in her knee reappeared. [The Appellant] was then referred by [Appellant's doctor] to [text deleted], an orthopaedic surgeon at the [text deleted], who examined her knee on December 13th, 1995. It was, however, [Appellant's orthopaedic surgeon #2] of the [text deleted] in Saskatchewan who actually performed a second arthroscopy in April of 1996. [Appellant's orthopaedic surgeon #2] saw her

again on January 27th of 1997, when [the Appellant] was again complaining of pain in her left knee. [Appellant's orthopaedic surgeon #2's] report of June 25th, 1997 indicates that [the Appellant's] left knee had behaved quite well for her from the second surgical procedure in April up to about October of 1996 when the knee again started troubling her with pain, swelling and the sensation of locking in the knee. [Appellant's orthopaedic surgeon #2's] report goes on to say that

> "Clinical evaluation showed a good range of motion with slight quads wasting. There was tenderness over the medial fat pad with apparent lateral laxity that was probably related to some muscle wasting. No swelling was detected at that time and no other signs of instability was noted. X-rays did not show any specific abnormality.
> She was placed on a course of physiotherapy and was advised to take nonsteroidal anti-inflammatories to relieve her symptoms.
> She was not seen again by myself since that time but the impression I had then was that she would not benefit from any further aggressive or surgical treatment and that she should best be served by conservative measures such as physiotherapy. The arthroscopy that was done by myself in April did not reveal any significant intra articular pathology and a definite cause for her pain could not be found. As already mentioned, she experienced some relief after that. The only definite procedure that was done then was division of the medial plica."

Meanwhile, [the Appellant] had also been attending regularly at [Appellant's chiropractor] chiropractic clinic at [text deleted]. It is primarily the decision of MPIC to quit paying for [the Appellant's] chiropractic treatments that is at issue in this appeal, in which context the following factors are, in our view, of primary importance:

1. [the Appellant] had been attending at [Appellant's chiropractor's] clinic regularly for some three years prior to her MVA, and on an average of twice per month in the twelve months immediately preceding her MVA.
2. From the beginning of January to the end of October 1995, her visits to [Appellant's chiropractor's] clinic tapered off gradually from a high of nine in February to six in March, four in each of April, May and June, two in July, three in August, once in

September (when she was on vacation) and six, including some 'catchup' visits, in October.

3. By mid-August of 1995, therefore, the insurer concluded that [the Appellant] was at least back to pre-accident status, if the frequency of her visits to [Appellant's chiropractor's] office were any gauge. In consequence, her adjuster met with her on October 31st when, the adjuster notes, "After some discussion, she agreed with me that she is more or less where she was prior to the accident. I therefore advised her that we would be discontinuing coverage for chiropractic treatments. She agreed." The extent of [the Appellant's] 'agreement' may be a matter of some conjecture but it is a fact that the adjuster, [text deleted], wrote to [the Appellant] and to [Appellant's chiropractor] accordingly, on November 3rd, 1995, to confirm the termination of payments for chiropractic treatments.

4. [Appellant's chiropractor] took strong exception to that decision, making his views known by way of a letter of November 29th, 1995 addressed to MPIC. He provided further information, in response to a request from MPIC's internal review officer, by letter of February 9th, 1996. The difficulty that we face in reviewing [Appellant's chiropractor's] several reports, including his further, explanatory report of December 13th, 1996 addressed to the office of this Commission, lies in three areas:

   (a) in his letters of November 29th, 1995 and February 9th, 1996, [Appellant's chiropractor] places great emphasis upon certain thermographic readings indicating the heat reflected by certain aspects of [the Appellant's] cervical spine; those readings become the justification for continued chiropractic treatments for injuries purportedly continuing as a result of an MVA on December 17th, 1994. In Gaudiuso v. Walker, 56 D.L.R. (4th), at page 355, a decision of the Supreme Court

of British Columbia on January 31st, 1989, in which several other, unreported decisions are also referred to, the Court found that the efficacy of thermography as a diagnostic tool was the subject of some controversy within the medical community and, in a factual situation not far removed from that of [the Appellant], refused to allow expert evidence of thermographic readings, and of the interpretation of those readings, to be presented. Similarly, in the case of Bisset v. Romaine, 38 C.P.C. (2d) 10, another decision of the Supreme Court of British Columbia, evidence based on thermographic investigation was also ruled inadmissible because the theory that vascular blood concentration was reflected in temperature change had not been established, the connection between blood concentration and nerve irritation was not established, it was not established that the device used to ostensibly detect the thermal variations accurately detected them and there was, in any event, an issue as to the accuracy of the interpretation of the findings. Further, our own reading of the available literature persuades us that there is, as yet, insufficient scientific evidence to support the use of thermography in the context described by [Appellant's chiropractor]. For example, in the publication 'Clinical Guidelines for Chiropractic Practice in Canada', being the proceedings of a consensus conference commissioned by the Canadian Chiropractic Association and held in April of 1993, on page 119 we find the following comments under the subheading 'Thermography':

> "The accuracy of thermographic devices is influenced by room temperature, ambient infrared radiation materials on the skin surface and pressure....the few reliability studies that exist are not particularly encouraging nor conclusive....no randomized controlled trials have been done using thermography as an outcome measure. There have been some

> published reports of thermographic changes while under conservative care,....but these have been uncontrolled, non-blinded, small sample observational efforts at best."

(b) [Appellant's chiropractor's] letter of December 13th, 1996 emphasizes [the Appellant's] need for 'supportive care', but from [the Appellant's] own evidence and from the earlier reports of [Appellant's chiropractor] it appears to us that she was receiving supportive care in the months prior to her MVA and that, therefore, she appears to have reached pre-accident status by the time that MPIC discontinued paying for her chiropractic treatments;

(c) in his report of November 29th, 1995, [Appellant's chiropractor] says, in part:

> "In this case damage has been done to the central nerve system at the level of the first and second cervical vertebra (sic) due to the forces created by the accident."

However, this report, some eleven months after the MVA, is the first indication of any such neurological deficit and, in our respectful view, is not supported by any reliable, objective evidence.

Following the formal hearing of [the Appellant's] appeal, we concluded that we were not in a position to render a proper decision on this matter without receiving further medical reports. [The Appellant] undertook to ask [Appellant's orthopaedic surgeon #2] to send us an up-to-date report, and that is the letter of June 25th, 1997 which we received on July 7th and is quoted, in part, earlier in these reasons. In addition, we referred [the Appellant] to [text deleted], a specialist in orthopaedic surgery at the Brandon Clinic who, unfortunately, was prevented by the demands of his practice from seeing her before May 27th. We have received, and have shared with both [the Appellant] and MPIC, the results of [independent orthopaedic surgeon's]

examination and report. In essence, [independent orthopaedic surgeon] attributes [the Appellant's] present knee condition to her motor vehicle accident primarily and, he adds, "Despite the somewhat protracted recovery period following her initial arthroscopy, I don't see any good evidence for surgical complication". He recommends that treatment is best likely to be non-operative in nature, and directed at the optimization of her quadricep and extensor function, possibly with the help of physiotherapy and a home exercise program. [Independent orthopaedic surgeon] suggests that "It would be reasonable to obtain a magnetic resonance imaging study of her knee to assess the patellar articular cartilage if this is not clear from her previous arthroscopies, as well as her prepatellar fat pad for evidence of fibrosis". He adds that an MIR study might also give further information regarding the other soft tissue components of her knee, as well as the possibility of bone bruise. [Independent orthopaedic surgeon] recommends that the MIR evaluation should be carried out before any further arthroscopy is considered.

CONCLUSIONS:

1. We find that, in the context of her neck and back, [the Appellant] had achieved pre-accident status by the time that MPIC discontinued payments for her chiropractic treatments and that, apart from the resumption of the intermittent, supportive care that she was receiving before her accident, there is insufficient evidence to justify further chiropractic adjustments.
2. [Appellant's chiropractor] does not appear to have been treating [the Appellant's] knee, and continued chiropractic care in that context is, therefore, unnecessary.
3. All of the available evidence points to the MVA as being the source of [the Appellant's]

continuing problem with her knee and, here, we find that the opinion and advice of [independent orthopaedic surgeon], supported as it is by the opinion of [Appellant's orthopaedic surgeon #2] and also, to some extent at least, by the opinion of [Appellant's orthopaedic surgeon #1], should be adopted.

DISPOSITION:

1. The decision of MPIC's internal review officer, to the effect that the Appellant is not entitled to further coverage for chiropractic treatment by MPIC for injuries sustained in her motor vehicle accident of December 17th, 1994, is confirmed.

2. The Appellant is entitled to such further medical treatment as may be required in order to restore her left knee to a state of maximum medical improvement and, to the extent that such treatment may not be covered by Manitoba Health Services Corporation, is entitled to that treatment at the expense of MPIC.

   For greater certainty, the expression "medical treatment", where used herein, means and includes such diagnostic and other procedures (including, but not limited to, magnetic resonance imaging) and such physiotherapy, as may be deemed requisite by the Appellant's medical advisors.

3. The continuance of medical treatments for the Appellant's left knee is, therefore, referred back to MPIC for arrangements to be made, in cooperation with the Appellant and her general practitioner, to obtain and follow such professional medical or surgical advice as they may deem appropriate. This Commission will remain seized of the matter so that, should the parties and the Appellant's general practitioner be unable to agree upon a proper

course of examination and treatment, either MPIC or the Appellant may apply to this Commission for final disposition of the matter.

Dated at Winnipeg this 10th day of July 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED