AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-10

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 Ms Joan McKelvey;** **The Appellant, [text deleted], represented by [Appellant's representative.**
HEARING DATE:	**May 5th, 1997**
ISSUE(S):	**Termination of Income Replacement Indemnity benefits and chiropractic treatments - whether justified.**
RELEVANT SECTIONS:	**Sections 81, 110 & 136 of the MPIC Act ('the Act'),**

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:

The Appellant's accident occurred on June 4th, 1996 when the [text deleted] automobile that he was driving was hit from behind. He was stationary in a line of traffic, waiting for a red light to change, when the vehicle behind him was hit in the rear and

pushed into his vehicle. The Appellant saw the accident occurring in his rear view mirror a split second before the impact upon his own vehicle. He was wearing a shoulder-lap seat belt and was jolted forward and back but did not make any bodily contact with his vehicle. His car was moved approximately five feet forward, but did not hit the vehicle in front of him as it had moved on.

The Appellant was [text deleted] years old at the time of the accident and had been under chiropractic care of [Appellant's chiropractor] for approximately ten years. He had had ongoing lower back problems since an auto accident in July of 1991 and prior to the accident now under review he had been receiving chiropractic treatments once or twice a month. His last treatment had been on May 30th, 1996.

At the time of the accident, the Appellant had been a part-time taxi driver since October 1995, working two days a week and extra shifts when he could get them. For a period of two weeks, shortly before his accident, he had also been working for a moving company, driving their truck and moving furniture, lifting loads varying from 10 lbs. to 300 lbs., with one or more helpers as required. That job was temporarily suspended on May 30th, 1996, because the Company's only moving van (which the Appellant had been driving at the time) had been involved in an accident and was out of commission for a period of time. The Appellant had not been injured in that accident with the truck but, after his accident of June 4th, 1996, advised [text deleted] (MPIC's own consultant) that he was not planning on returning to this type of work.

The Appellant saw [Appellant's chiropractor] later in the day of his accident on June 4th, 1996, complaining of pain in his neck, upper and lower back. After examining [the Appellant], [Appellant's chiropractor], using a widely accepted method of grading the severity of trauma suffered by the victim of a motor vehicle accident, diagnosed him as having a Grade IIIa Whiplash Associated Disorder (WAD IIIa).

It will be useful, here, to note that, with certain sub-divisions, the basic grades of severity may be categorized as follows:

Grade 1: minimal, no limitation of motion, no ligamentous injury, no neurological findings;

Grade 11: slight, limitation of motion, no ligamentous injury, no neurological findings;

Grade 111: moderate, limitation of motion, some ligamentous injury, neurological findings present;

Grade 1V: moderate to severe, limitation of motion, ligamentous instability, neurological findings present, fracture or disc derangement; and

Grade V: severe, requiring surgical management/stabilization.

[Appellant's chiropractor], having diagnosed the Appellant as having a Grade 111 Whiplash Associated Disorder, prescribed 3-4 chiropractic treatments per week until his condition improved. Due to these injuries, MPIC commenced paying the Appellant Income Replacement Indemnity (IRI) and for his chiropractic treatments.

MPIC had the Appellant examined by [MPIC's chiropractor #1] on July 5th, 1996; he diagnosed the Appellant as having sustained a soft tissue spinal strain to various regions of his spine, consistent with a WAD Grade II injury. [MPIC's chiropractor #1] made a number of recommendations that the Appellant could do on his own to improve his over-all

health, namely, to do regular spinal exercises, lose weight and have his blood pressure checked regularly. He recommended that the the Appellant would benefit from intermittent care over the next two or three months with the frequency of treatments decreasing as he improved. He also advised that the Appellant was not in need of any long term care as a direct result of the accident.

[MPIC's chiropractor #1] came to the conclusion that the Appellant was not disabled from working as a taxi driver. [MPIC's chiropractor #1] added that, although [the Appellant] had told him that he had no intention of returning to work as a furniture mover, ".... I believe that if there was work available he could return to this type of work by July 22, 1996".

Based on [MPIC's chiropractor #1's] report MPIC advised the Appellant that they would be terminating his IRI benefits as of July 22nd, 1996 and would only pay for chiropractic treatments based on the following schedule: 3 treatments per week from July 22nd to August 18th; 2 treatments per week from August 19th to September 15th; and 1 treatment per week from September 16th to October 13th, 1996 - a total of 24 treatments over a twelve-week period.

It is from this decision the the Appellant has appealed.

[Appellant's chiropractor] had initially recommended 3-4 chiropractic treatments per week for the Appellant and advised him that he should remain off work for 8 weeks from the date of the accident - that is to say, until about July 30th - and then be re-evaluated. In a later report dated September 10th, 1996, [Appellant's chiropractor] stated that the Appellant

had been totally unable to work from June 4th to July 22nd, upon which latter date he had attempted resuming work on a modified basis. It was [Appellant's chiropractor's] opinion that, as of September 6th, the Appellant was still unable to return to a full work load as he should not lift any more than 50 lbs at any one time nor remain sitting or standing for more than four hours at a stretch. He goes on to state in his report that the Appellant may be able to resume his full time employment by October 15th, 1996. He recommends that the Appellant should still receive treatments three times a week for the next two months, then twice a week for the following two months and then be re-evaluated. In fact, [the Appellant] received 15 chiropractic adjustments between June 4th and June 27th, both inclusive, of 1996, 9 in July, 12 in August, 10 in September, 6 in November, 9 in December and another 32 in the first four months of 1997. Interestingly enough, during the period for which [MPIC's chiropractor #1] had recommended the administration of 24 adjustments, namely from July 22nd to October 13th, [Appellant's chiropractor] had, in fact, administered 28 - not a major divergence. The question facing us is whether the need for the continuance of those treatments on into the end of December could properly be attributable to [the Appellant's] motor vehicle accident of June 4th, 1996.

We are faced with two problems given the conflicting evidence presented to us on behalf of the Appellant and MPIC namely:

1. What was the nature of the Appellant's injury?
2. What type and duration of treatment should be prescribed for that type of injury?

During the hearing we heard evidence from three chiropractors: [Appellant's chiropractor], on behalf of the Appellant, and [MPIC's chiropractor #1] and [MPIC's chiropractor #2] on behalf of MPIC. We were also referred to the following texts and references: Clinical Guidelines for Chiropractic Practice in Canada; the Quebec Task Force Report on Whiplash-Associated Disorders; a text by Lawrence S. Nordhoff, Jr. entitled "Motor Vehicle Collision Injuries: Mechanisms, Diagnosis and Management", and an article by Dr. Arthur C, Croft entitled "MVA and MHI: How Much is Enough". The aforementioned Clinical Guidelines have been adopted by the Canadian and Manitoba Chiropractic Associations.

It was agreed by all of the doctors that, as noted above, a person with a Grade 11 Whiplash Associated Disorder (WAD II) has a neck complaint and musculoskeletal signs, i.e. decreased range of motion and point tenderness; a person with a WAD III has a neck complaint and one or more neurological signs, i.e. decreased or absent deep tendon flexes, weakness, and sensory deficits. From the reports and oral evidence given to us, we are unable to find that any of the factors that would indicate a WAD III, as opposed to a WADII, was present in [Appellant's chiropractor's] reports. [MPIC's chiropractor #1] conducted similar tests and could not find any deficits or problems that would lead him to believe that the Appellant was suffering from a WAD III injury. His diagnosis was that of a WAD II injury. [Appellant's chiropractor]'s report was best described as "long on symptoms and short on signs to support his treatment".

As the neurological signs indicative of a WAD III injury were missing, we are obliged to accept the conclusion, shared by [MPIC's chiropractor #1] and [MPIC's chiropractor #2], that the Appellant suffered a WAD II type of injury.

What then is the appropriate type and frequency of treatment for the Appellant? It has appeared to us, in many of the cases we have heard in the past, that there has been an over-prescription of chiropractic care. This has not been so in all of the cases we have heard but it has occurred often enough to cause us some concern.

All of the literature referred to in this hearing sets out suggested guidelines for patient care, depending on the diagnosis of the problem to be treated. All of these guidelines recommend that there be a diagnosis of the injury and the establishment of a treatment plan with measurable objectives. They also set out what should be done in the event that there is little or no improvement in the patient's condition. We recognize, of course, as does the literature, firstly that guidelines are just that; they are not intended to be a set of rules to be applied rigidly but, rather, are to be viewed as establishing some norms against which a program of treatments can be measured. We also recognize the obvious fact that each patient brings with him or her a physical system and a set of problems that may be unique to that patient and that may render it impractical to follow the guidelines. By the same token, when we are presented with a set of guidelines approved and adopted by the chiropractic profession, both nationally and regionally, if the treating practitioner elects not to follow those guidelines - a decision that may well be appropriate in a given case - we need to be told why the regimen that was adopted differed

from the norm. Without that explanatory evidence, we have little option but to find, as we do in the present case, that both the diagnosis and the type and length of treatment prescribed by [MPIC's chiropractor #1] were, on a reasonable balance of probabilities, the correct ones, and that it was therefore not unreasonable for MPIC to have discontinued [the Appellant's] IRI as of July 22nd, 1996, and to have started diminishing the number of chiropractic treatments that the insurer would pay for over the period from July 22nd until and including October 13th. All of the literature tells us that the primary objective of the treatment of whiplash-associated disorders must be to return the patient to an active lifestyle at the earliest possible date, and to avoid chronicity or dependence upon the care-giver by repeated use of passive, acute care methods.

> "*After a maximum trial therapy session of manual procedures lasting up to two weeks, and consisting of 3 to 5 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."* (Clinical Guidelines for Chiropractic Practice in Canada, page 94.)

The foregoing excerpt is intended by the learned authors to refer only to complicated cases, i.e. cases in which the patient, because of one or more identifiable factors, exhibits regression or delayed recovery in comparison with expectations from the natural history. By 'reassessment' is meant that it is obviously time for the practitioner to reconsider whether his treatment of the patient is appropriate, whether some other method of treatment might be called for, whether the patient should be referred out of the practitioner's office altogether - either to another practitioner or to another discipline, or whether the patient has reached maximum chiropractic benefit and, thus, can reap no further healing from continued adjustments.

In an article by Dr. Arthur D. Croft, published in the July 31st, 1992 issue of 'MPI's Dynamic Chiropractic and entitled 'MVA and MMI: How much is Enough?' (MVA, in this context, meaning motor vehicle accident, and MMI meaning maximum medical improvement), Dr. Croft provides a table indicating the normal frequency and duration of care in cervical acceleration/deceleration cases, of which the relevant portions are these:

	Daily	3x/wk	2x/wk	1x/wk	1x/mos	Duration of treatment	Treatment - total number.
Grade II	**1 wk**	**4wks**	**4wks**	**4wks**	**4mos.**	**25 wks**	**29***
Grade III	**1-2wks**	**10wks**	**10wks**	**10wks**	**6mos.**	**56wks***	**76**

(Dr. Croft's figures seem to be slightly inaccurate since, by our calculation, the total for Grade II should be 33 and the number of weeks for Grade III should be 57-58, but they are close enough for present purposes.)

As noted above, the number and duration of treatments contemplated by [Appellant's chiropractor] seem to be far in excess of those recommended by the guidelines or by Dr. Croft and, without more detailed explanation of that divergence than has hitherto been furnished to us, we cannot find an acceptable reason for requiring MPIC to continue payments for chiropractic care beyond mid-October, 1996.

DISPOSITION:

We therefore dismiss the appeal and confirm the Acting Review Officer's decision dated January 21st, 1997.

Dated at Winnipeg this 11th day of June 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED