Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-132

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. Tom Strutt** **[text deleted], the Appellant, appeared in person**
HEARING DATE:	**November 20th, 1998**
ISSUE:	**Whether the Appellant is entitled to continued payment for chiropractic treatments.**
RELEVANT SECTIONS:	**Section 136(1) of the MPIC Act and Section 5 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:

[The Appellant] was involved in a motor vehicle accident on January 5, 1996 on the [text deleted]. She was a passenger in the rear left hand seat of a vehicle travelling on an icy bridge when a car spun out ahead of them turning 180 degrees and hitting their car head on and subsequently within seconds another car rear- ended their vehicle.

She was pushed forward and hit her knee on the back of the front seat and at that point blacked

out. She was in shock and as their vehicle was not driveable she was helped into another vehicle. She attended at the office of her chiropractor, [text deleted] on the day of the accident. He reported her injuries as follows:

> Headaches, ringing in the ear, neck stiffness and spasms, difficulty swallowing, shoulder joint pain, mid back pain, tingling in arms and legs, rib pain, lower back pain into the tail bone, difficulty walking, a nervous stomach, bruises, anxiety and depression.

At the time of the accident the appellant was employed as a secretary with [text deleted]. There is no dispute that the accident greatly altered [the Appellant's] life, her work and the things that she enjoyed as a family member. As well, there is full understanding about the seriousness of [the Appellant's] accident and the long period of time it required to get her to the point at which she could work without pain and distress. She explained in a clear and cogent manner all the measures that she undertook upon returning to work to make it possible to do her job such as lying down at lunch hour, doing exercises and taking frequent breaks. In the months following her accident, when she arrived home all she could do was lie down with ice packs to relieve the pain. [the Appellant] reported that her desire was to manage the pain and stay off medication. She reported that the numbness in her legs ended in the fall of 1997 and that she was able to drive again in the summer of 1998. At this time she is able to drive, take long walks and is just recently able to completely vacuum her home without experiencing pain. She feels that by January 6th,1999, three years after the accident, she will be fully recovered.

On November 27, 1996, MPIC arranged for [the Appellant] to have an independent assessment with [independent chiropractor], to help determine her entitlement to continuing benefits related

to her accident. On the same date a letter was sent to [independent chiropractor] along with reports and records of the treatment benefits received by [the Appellant] to that date.(an average of 7-9 times per month for a total of 125 treatments).

The independent assessment with [independent chiropractor] took place on January 31, 1997. [Independent chiropractor], at the conclusion of his examination and after discussion with [the Appellant] provided his prognosis and recommendations to MPIC, as follows:

PROGNOSIS AND RECOMMENDATIONS:

1. It is my opinion that there is no pre-existing condition that has been aggravated by the motor vehicle accident.

2. I note, in your letter of November 27, 1996 that despite 125 chiropractic treatments, [the Appellant] still has ongoing subjective complaints. Based on her subjective complaints, it is my opinion that she should actively challenge these residual symptoms with a home exercise/rehabilitation program. This program should include stretches, strengthening exercise, stabilization and cardiovascular fitness. Based on my examination findings, it is my opinion that [the Appellant] is not in need of any further chiropractic manipulation as it relates to the accident in question.

3. Based on my examination findings, it is my opinion [the Appellant] is presently not disabled, and I do not anticipate any permanent physical impairment arising from the accident in question.

On March 12, 1997, [the Appellant's] adjuster relayed to her that "the independent chiropractic examination indicated that her stiffness and soreness could likely be alleviated by doing the appropriate basic/rehabilitation program for the paravertebral muscles. Our opinion at this time is to have [Appellant's chiropractor] instruct you over the next three weeks on this treatment

program for home exercises at a duration of one treatment a week for a three week period." He advised her that no further treatments would be considered for payment at the end of that exercise program.

On April 14, 1997, [Appellant's chiropractor] reported to MPIC, about [the Appellant's] treatment program and his position regarding the type of care that he felt she should continue to receive. In this report he stated that, prior to the January 5, 1996 accident, [the Appellant] had attended his clinic for spinal care. He reported that she had started care with him "... in March, 1995 and had progressed to an asymptomatic state. The care totalled 9 months and 62 visits." He further stated that her last visit prior to the accident was January 3, 1996 and that she had progressed to a point of moderate stability. He stated that her care was a corrective program to strengthen and stabilize her spine at a frequency of approximately once every two weeks .

He went on to explain the nature of her injuries after the accident and the type of treatment that he provided to her. He reported that [the Appellant's] care plan "consisted of specific spinal adjustments and recommended use of a cervical orthopaedic pillow, a lumbosacral support, ice therapy, and prescribed spinal exercise and stretching." He further stated that "At the date of her latest visit of April 9, 1997 her spine shows signs of slight improvement and stabilization. She is still unable to perform everyday duties, work related duties and housework without physical discomfort and occasional re-aggravation of her previous symptoms. She will require corrective chiropractic spinal care to achieve maximum spinal integrity and stability."

On April 25, 1997, [the Appellant] filed an application for review of her adjuster's decision.

On June 27, 1997, [Appellant's chiropractor] provided a report listing numerous delaying/complicating/modifying factors that, in his view, would cause [the Appellant] to require extended care past the normal recovery period that is widely accepted by the chiropractic profession.

The factors to which [Appellant's chiropractor] refers are these:

> "- No headrest (backseat passenger)
> - Multiple vector impact
> - Multiple collisions/impacts
> - Head and body turned during impact
> - Improper restraints usage
> - Posture abnormalities/biomechanical stresses of spinal structure
> - Lack of awareness of accident
> - Pre-esixting degenerative processes (cervical and lumbars)
> - C5 discopathy
> - Occupational hazards (prolonged sitting)
> - Congenital anomalous structure, S1 lumbarization
> - Facet asymmetry
> - Multiple areas of injuries
> - Arm and leg numbness
> - Symptoms persisting for more than 4 months
> - Prior spinal injury
>
> These above factors have resulted in Mrs. Jarsachke's care to be extended past the normal 12 month recovery period that is widely accepted in the literature (Croft, and Nordoff)." With deference, we do not entirely concur; these are not all factors delaying recovery. In a subsequent memorandum of October 14, 1997, [text deleted], MPIC's Chiropractic Consultant, refers to the foregoing list and offers the following comments:
>
> It should be understood that the "delaying/complicating/modifying factors" which [Appellant's chiropractor] has listed, do not all delay patient recovery. Factors such as: no head rest, multiple vector impact, multiple collisions, head and body turnory impact, improper restraint use, lack of awareness, etc. are factors which modify the injury (that is to mean makes the injury more or less severe). These factors help create the injury and make it what it is.

> Once a patient is injured, the rate at which they recover is largely independent to these factors and is more dependent on the individuality of the patient. Characteristics such as: C5 discopathy, pre-existing degenerative changes, congenital anormalies, etc. are factors which may lead to delayed recovery. The problem is some practitioners combine the two which is rather confusing to the reader.
>
> The literature, however, reports that on average, WAD II injuries recover in six to seven months time (with average patients having average delayed recovery factors).

[MPIC's chiropractor] refers to a Grade II Whiplash Associated Disorder, whereas [Appellant's chiropractor] had diagnosed [the Appellant's] injuries as Grade III a----that is to say, of moderate severity, with some limitation of motion, some ligamentous injury and the possible presence of neurological findings. We have difficulty with [Appellant's chiropractor's] diagnosis of a WAD III a in that, as [MPIC's chiropractor] points out in a later memorandum of September 15, 1998:

> The WAD III classification of a claimant would be made if the claimant was found to have reflex, myotome and/or dermatomal anomalies which would indicate neurological compromise. One would expect the accompanying orthopaedic findings as well as the appropriate subjective claimant complaints. It is for the following reasons that I felt this claimant was a WAD II (not having neurological compromise).
>
> The Foraminal Compresssion Test (which evaluated facet joints and nerve root impingement) was never positive. There were also no myotomal or dermatomal pattern sensation anomalies reported on. The small reflex changes which were noted in the biceps were not, in my view, consistent with any specific symptomatic complaints and not consistent with any other orthopaedic findings. Apart from the initial examination, they were never reported as being abnormal again.
>
> The treating chiropractor does provide the Croft guidelines for grading injuries. When we examined these we find the claimant also falls under the Grade II level of injury.
>
> The claimant's cervical range of motion was not limited at all in right or left rotation, or left lateral flexion. It was marginally limited by 5 degrees in flexion and 15 and 10 degrees in extension and right lateral flexion respectively. These limitations are not functional and are considered minor or slight. The flexion and extension radiographs taken January 5, 1996 did not reveal any significant ligament injury, or did any of the orthopaedic findings which were provided by

> the claimant's treating chiropractor or the independent chiropractic examination. As stated previously, there were no neurological findings which were consistent with neurological injury.
>
> It is for the above reasons that this claimant would fall under a Grade II injury as described by Dr. Croft. It should be noted from the treating chiropractor's report that a Croft Grade II injury is suggested to recover in less than 29 weeks and require less than 33 visits.

Even with a Grade III a Whiplash Associated Disorder, the average patient should expect to reach maximum therapeutic benefit after some 76 treatments over a period of about 56 weeks. [the Appellant] had certain conditions that might have been expected to delay her achievement of maximum therapeutic benefit: her pre-existing degenerative process, to which most adults over the age of 45 are subject; her 'congenital anomalous structure, described, in her case, as a shallow or altered spinal lordosis', although with a well-aligned cervical spine; and a discopathy at the C5 level, described in her first X-ray of January 5, 1996, as 'minimally thinned' and not even found significant enough to warrant mention in the report of her June 12, 1996 X-rays. These so-called 'modifying factors' are not, in our respectful view, of a sufficiently serious nature to call for the extension of her chiropractic treatments at the insurer's expense until June 30, 1998, the date to which she apparently seeks reimbursement.

By March 26, 1997, when MPIC ceased paying for her care [the Appellant] had already received at least 151 chiropractic adjustments over some 60 weeks.

The adjuster forwarded [the Appellant's] chiropractic reports to [MPIC's chiropractor], for his review and opinion. He reported to MPIC on September 8, 1997, in part, as follows:

> **...EXAMINATION FINDINGS**
>
> It is known that this patient has pre-existing degenerative disc disease at the C5-C6 and L5-S1 level and the patient did have mid-back treatment prior to the motor vehicle accident. From all of the above information, it might seem reasonable that in November of 1996, this patient was essentially recovered. When considering the fact that there was very little objective information reported on by her chiropractor and that she already had over 123 treatments (which is approximately four times the average number of visits the literature reveals is generally required for spinal injuries such as these from Croft and from Nordoff) to recover.

The foregoing is a direct quotation from [MPIC's chiropractor's] memorandum, but since the last sentence has no conclusion we believe that the fourth line of that paragraph was intended to read, in part, "... of 1996 this patient was essentially recovered, considering the fact..."

> **...CONCLUSION**
>
> Seeing that this patient's care was terminated at the end of March, 1997 (two months after [independent chiropractor's] report and four months since [Appellant's chiropractor's] last examination, November 21, 1996), one would have expected [Appellant's chiropractor] to report new objective findings (from January to April, 1997), knowing that such are needed to substantiate the continuation of this patient's care to MPI.

Following this opinion, [the Appellant] was forwarded a decision from the Internal Review Officer, dated October 27, 1997. [the Appellant] is appealing from that decision which reads, in part, as follows:

> "At issue is your adjuster's letter dated March 12, 1997 which resulted in a termination of your chiropractic benefits after a three week exercise program administered by [text deleted], your chiropractor. Our Medical Consultant has pointed out that you required 62 treatments during a nine month period prior to this accident for spinal stability which was directed to the neck, thoracic and lower spine. As well you had degenerative disc disease at the C5 to C6 and L5 to S1 levels prior to the motor vehicle accident which did receive prior treatment. It was also his opinion that after receiving 123 treatments you were essentially recovered as of November of 1996 from the injuries which resulted from your accident January 5, 1996. There is also a decided lack of objective findings in both [independent chiropractor's] and [Appellant's chiropractor's] reports to substantiate the continuation of your chiropractic care. Therefore, it is my decision that you have reached

> maximum therapeutic benefit from chiropractic treatments and as a result you are no longer entitled to chiropractic benefits stemming from your motor vehicle accident of January 5, 1996".

[The Appellant] is asking for the reimbursement of the expenses she incurred for chiropractic treatments from the date that they were terminated on March 26, 1997 until June 30, 1998 when she felt that she was able to resume her former lifestyle and was back to the frequency of treatments that she had received prior to the motor vehicle accident.

At this appeal, [the Appellant] raised a claim for reimbursement for physiotherapy and travel to physiotherapy, related to pain she started to experience in her foot at the beginning of February, 1997. Reference to this physiotherapy care appears in the record in the appellant's application for review dated April 25, 1997. She testified that after her independent examination with [independent chiropractor], she believed that his rough manipulation at the January 31,1997 examination resulted in flare-ups on February 1, 1997 that caused problems with her feet. In March, she reported this condition to her family practitioner, [text deleted], who referred her to [text deleted]. She was provided with 13 treatments and an orthopaedic insert for her shoe, which relieved the problem with her feet. Because [the Appellant] did raise this claim in the Internal Review Application, we interpret the Internal Review Officer's silence on the point as a denial of the claim and are thus able to deal with it. Unfortunately, there is no evidence before us that her foot problem was caused by her motor vehicle accident and we are obliged to deny that portion of her claim for that reason.

THE ISSUE:

The only issue before us is whether MPIC was justified in its decision to cease paying for [the Appellant's] chiropractic treatments as of March 26, 1997.

[Te Appellant] also provided a list of several other new items for which she was making a claim. The items were: Parking for hearings ($11.52); travel for chiropractic care ($56.16); and a payment of $600.00 for the loss of the status of health that she had enjoyed prior to the motor vehicle accident, for which latter portion of her claim the MPIC Act makes no provision in the absense of proof of a permanent impairment.

In that the claim for these last-noted items had never been submitted to [the Appellant's] adjuster, and had not been decided by MPIC's Internal Review Officer, they are not matters on which we can properly make a decision. Clearly any expenses related to any approved medical care could be considered for reimbursement by MPIC. We have explained to [the Appellant] that there is no provision within the Act to pay for inconvenience, pain or suffering and thus that kind of claim, which is not based on any incurred expense, is not compensible under the Act.

THE LAW:

The relevant section of the MPIC Act is section 136(1), which reads as follows:

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 care;.....

In conjunction with this section of the Act, reference must be made to Section 5 of Regulation 40/94, which reads in part as follows:

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 Service 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 dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;.....

Following the motor vehicle accident of January 5, 1995 [Appellant's chiropractor] determined that [the Appellant] had received a WAD III injury. [The Appellant] attended [Appellant's chiropractor] for treatments 23 times in January and 21 times in February reducing to 13 or 14 treatments per month until June and July when she had 9 treatments. The rate of treatment then averaged 7to 8 times a month or a frequency of twice per week until the end of December 1996. Treatments dropped to a rate of 5 or 6 times per month from January 1997 to the end of April

when she attended for treatments on average 3 times a month. By the end of July 1997, apart from October 1997 and April and May 1998 when she received 3 treatments a month, she was receiving treatments at a frequency of two times a month until the time of this hearing.

From the chart of chiropractic treatments provided by the appellant, it would appear that [the Appellant] was back to the same pre-accident treatment pattern of approximately once every two weeks by the end of July, 1997.

MPIC took the position that, even assessing [the Appellant], at a Wad III level, the 156 treatments she had received to the end of March, 1997, were roughly twice the suggested numbers of treatments in the guidelines. We agree that these are merely guidelines and that exceptions must be taken into account for risk factors such as those referred to above. However, she has far surpassed the normal range of treatments recommended in the guidelines.

The Commission is persuaded based on the lack of objective findings to substantiate continuation of care beyond July 31, 1997, that the effect of [the Appellant's] accident was resolved and she was restored to her pre-accident status by that date. While the commission has the greatest sympathy with [the Appellant] for the difficulties she has experienced, we find that these difficulties from which she suffered since July, 1997, can not be attributed to the motor vehicle accident but are, rather a continuance of her pre-existing condition.

We find that [the Appellant] is entitled to reimbursement of treatment expenses from the date of

termination, March 26, 1997 until the end of July, 1997.

DISPOSITION:

The Acting Review Officer's decision of October 27, 1997 is, therefore, rescinded and MPIC is ordered to reimburse [the Appellant] for the costs that were incurred for chiropractic treatment from March 26, 1997 to the end of July, 1997.

Dated at Winnipeg this 14 day of December 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT Q.C.

LILA GOODSPEED