Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-45

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** **[Text deleted], the Appellant, appeared in person**
HEARING DATE:	**December 2nd, 1997**
ISSUE:	**Whether Appellant entitled to continued payments 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, [text deleted], aged [text deleted] at the time, was driving her [text deleted] vehicle at a speed of about 40 to 50 kmph in the early afternoon of April 10th, 1994, when it was hit on the passenger side, toward the front, by another vehicle. She was wearing a 3 point seatbelt, but sustained a soft tissue strain as a result of being jolted from side to side by the impact. She did not sustain any fracture nor any apparent nerve root compression although, from all the

medical and chiropractic evidence, it seems probable that the collision exacerbated a pre-existing, degenerative discopathy in the cervical spine. Her neck and back became sore almost immediately after her motor vehicle accident. On April 21st, 1994, she consulted her chiropractor, [text deleted], who had been treating her since August of 1993 for 'cervical subluxations and fixations' and restricted sacroiliac mobility, an average of three to four times per month. She received a further twelve spinal manipulations from [Appellant's chiropractor #1] from April 21st to May 27th, 1994, when [Appellant's chiropractor #1] retired, transferring her to [Appellant's chiropractor #2]. She continued with chiropractic adjustments from [Appellant's chiropractor #2], whose professional fees were paid by Manitoba Public Insurance Corporation ('MPIC').

By May 5th, 1995, [the Appellant] was referred by MPIC for an assessment by one of its regular chiropractic consultants, [text deleted]. When [MPIC's chiropractor] examined her on June 16th, 1995, [the Appellant] had received some ninety-eight chiropractic treatments - twelve from [Appellant's chiropractor #1] and eighty-six from [Appellant's chiropractor #2]. [MPIC's chiropractor], basing his opinion partly on his own, objective findings and partly upon [the Appellant's] comments to the effect that she did not believe that she had improved materially despite the frequency and duration of her chiropractic treatments, felt that she had reached maximum therapeutic benefit and maximum medical improvement. He recommended that she should continue with light spinal exercises in either a light aerobic or aquafitness program geared specifically for seniors and that she should have her blood pressure rechecked from time to time. [MPIC's chiropractor] expressed the view that a continuance of further chiropractic treatment at the same frequency would be unlikely to alter her residual symptoms and that, while she might possibly benefit from supportive care (one or two times per month) to help maintain mobility, he did not feel

that all of her symptoms were accident-related since she had been symptomatic and under active treatment prior to her accident. [MPIC's chiropractor] added that a consultation with a rheumatologist might be useful.

Despite that opinion, as a result of subsequent discussions between [MPIC's chiropractor], [Appellant's chiropractor #2] and MPIC's adjuster, the insurer decided to continue to pay for [the Appellant's] chiropractic treatments, at least for some limited time, in order to give her an opportunity to consult a rheumatologist while, at the same time, gradually decreasing her chiropractic treatments with a view to discontinuing them over a period of a couple of months.

[The Appellant] was examined by [text deleted], a rheumatologist with the [text deleted] Clinic, on July 19th, 1995, at the request of her family physician, [text deleted]. It is in [MPIC's rheumatologist's] report of August 4th, 1995 that we find the first use of the term fibromyalgia, as well as degenerative disk disease of the cervical spine, both of which [MPIC's rheumatologist] speaks of as being long standing and predating [the Appellant's] automobile accident. [MPIC's rheumatologist] noted that [the Appellant] did have a post-MVA flare of her symptoms, in the form of a worsening of the myofascial pain at the cervical spine, but that the accident was not a sole contributor to her ongoing wide-spread symptoms. There were no metabolic disorders contributing to her ongoing myalgias.

[MPIC's rheumatologist] suggested that the most helpful treatment for [the Appellant's] ongoing condition would be to improve her quality of sleep, as well as to treat her arthritic symptoms. It is, perhaps, noteworthy that [the Appellant] acknowledged to [MPIC's

rheumatologist], as she had to [MPIC's chiropractor], her belief that her continuing treatments at [Appellant's chiropractor #2's] clinic were not persistently beneficial and that she, herself, had not been complying with [Appellant's chiropractor #2's] advice respecting her neck exercises. [MPIC's rheumatologist] felt that [the Appellant's] non-compliance with those exercises was a real problem and that she would not gain much benefit from [Appellant's chiropractor #2's] treatments without being compliant.

Following the hearing of [the Appellant's] appeal, this Commission wrote to [MPIC's rheumatologist] to ask the basis upon which he had concluded that [the Appellant's] fibromyalgia and degenerative disk disease of the cervical spine were longstanding and predated her automobile accident. He responded to the effect that [the Appellant] herself had reported neck and back discomfort for several years and a several-year history of pain in her hips and shoulders. [MPIC's rheumatologist] added, however, that he could not verify whether or not [the Appellant] did, in fact, have fibromyalgia prior to her accident, since in order to make that diagnosis specific tender points needed to be verified. [The Appellant] did complain of pain prior to her accident, but it was difficult to know whether or not that pain may have represented a fibromyalgic condition as opposed to pain of a different origin. He suggested that [text deleted], the referring physician, might be able to shed some light on that aspect of the matter. [Appellant's doctor], in response to a direct inquiry from this Commission, said that, on her visit to his office on October 13th, 1992, [the Appellant] had complained of cramps in her right leg, right loin, joints of fingers of both hands, and that her hands and her right arm were sore. [Appellant's doctor's] report, while undoubtedly accurate, does not shed much light upon the question of whether [the Appellant's] apparent fibromyalgic condition or

her degenerative disk disease of the cervical spine, or both of them, were of sufficiently long standing to have predated her automobile accident of April 10th, 1994.

In any event, MPIC provided [Appellant's chiropractor #2] with a copy of [MPIC's rheumatologist's] report on August 29th of 1995 and, on October 5th of that year wrote to [Appellant's chiropractor #2] again to suggest that the time had arrived for discontinuance of [the Appellant's] chiropractic care - at least in the context of her motor vehicle accident. MPIC's file reflects a discussion between [Appellant's chiropractor #2] and the adjuster, [text deleted], on October 11th of 1995, wherein [Appellant's chiropractor #2] appears to have agreed that his patient should be weaned off the MPIC system, that a sudden discontinuance of that care might prove to be counterproductive, but that December 31st would not an unreasonable date to aim at for MPIC to bow out of the chiropractic care. [Appellant's chiropractor #2's] subsequent report to MPIC of October 27th, 1995 indicates that [the Appellant] would require further active treatment, once or twice per month, for the next two months.

On January 4th of 1996, [Appellant's MPIC adjuster] requisitioned a further report from [Appellant's chiropractor #2] which, dated February 5th, 1996, suggests a need for further active treatment once per week. That report also reflected a report from [the Appellant] of increase in pain concurrent with the reduction in her frequency of treatments.

MPIC wrote again to [Appellant's chiropractor #2] on February 21st and on March 29th of 1996, seeking additional information about [the Appellant], her condition, treatment and prognosis. [Appellant's chiropractor #2] responded on April 24th, indicating that he, himself, did

not feel capable of determining the extent to which [the Appellant's] physical status at that date might or might not have differed from her pre-accident condition. As he put it, "The only person who can clearly state the contrast between pre and post-accident status is the patient herself". He clearly felt that [the Appellant] might need treatment indefinitely.

Despite [MPIC's chiropractor's] advice of June 19th, 1995, [Appellant's chiropractor #2's] candid comments of April 24th, 1996 and numerous, subsequent progress reports requested and obtained from [Appellant's chiropractor #2], it was not until December 13th, 1996, two years and eight months after her motor vehicle accident, that MPIC finally wrote to [the Appellant] to tell her that, in the insurer's view, she had now plateaued in chiropractic care and had probably reached her pre-accident status. In consequence, MPIC had decided to discontinue further payments for chiropractic care.

[The Appellant] appealed from that decision to MPIC's internal review officer, tendering in support of that appeal a report from [text deleted], an independent chiropractor. [Independent chiropractor], after a complete examination of [the Appellant] and after reading the reports from [MPIC's rheumatologist] and [Appellant's chiropractor #2], concludes that "Frankly, I find that there is basically nothing new to report on this case. [The Appellant] most certainly has genuine objective findings to support her subjective complaints". [Independent chiropractor] expressed the view that, since the only thing that appeared to give [the Appellant] relief was chiropractic care, it appeared that she should continue to receive that care at a frequency that was beneficial to her. He felt that this was a long term case and that care was required on a permanent basis. He could not, of course, directly relate [the Appellant's] present problems to her motor

vehicle accident, not having seen her until nearly three years after that accident.

MPIC's acting review officer upheld the decision of the adjuster, and from this latter decision [the Appellant] now appeals to this Commission.

The factors that complicate this appeal and which, therefore, make it difficult for us to arrive at an equitable decision, are these:

(i) [the Appellant's] medical and chiropractic history, reflecting several years of pre-accident treatments related to symptoms that were substantially the same as her post-accident complaints - that is to say, pain in the cervical spine and lessened sacroiliac mobility;

(ii) the acknowledged fact that her symptoms became more acute as a result of her accident;

(iii) the absence of any objective findings from post-MVA X-rays or other physical examinations that reflect any marked change from her pre-MVA condition;

(iv) if, as seems to be the case, [the Appellant] suffered a soft tissue strain in her accident, the natural history of such a strain would, in the normal course and despite the patient's prior condition, have healed or, at least, been restored to pre-accident condition, within six to eight months;

(v) [the Appellant], herself, as reported by [MPIC's chiropractor] and [Appellant's rheumatologist], agreed that chiropractic treatments have not be achieving any long term improvements, but have only been mildly helpful for a few days at a time - this, despite two years and eight months of chiropractic care;

(vi) [the Appellant's] evidence that, before her accident, she could do a number of things domestically that, she says, she can no longer do without pain, such as lawn mowing, gardening, washing and painting interior walls, et cetera.

It seems clear that [the Appellant's] degenerative disk disease does predate her MVA, but what about the fibromyalgia?

We accept the premise that fibromyalgia (FM) is not a disease but, rather, a syndrome or, as MPIC's medical team submits, a convenient label used to describe a group of symptoms involving pain, fatigue and other bodily complaints including non-restorative sleep, stiffness, mood disturbance, irritable bowel syndrome, headaches, paresthesias and other, less common features. In June of 1994 a committee of FM experts was convened at the University of British Columbia under the auspices of the Physical Medicine Research Foundation. The Consensus Report of that committee, which was published in the Journal of Rheumatology for 1996 at pages 534 to 539, makes it abundantly clear that both the causes and treatment of FM syndrome need a great deal more study before any reliable conclusions can be drawn. For example:

> *"While the association between work disability or compensation and FM is well established, data regarding causality are largely absent. The clinical dilemma, whether an injury or workplace stress caused the patient's FM, a retrodictive (or It Did) causal proposition can rarely be determined to be certainly true or certainly false.* ***Evidence that trauma can cause FM****, a potential (or It Can) causal proposition, comes from a few case series or case reports and* ***is insufficient to establish causal relationships****. That trauma might cause FM*

sometimes, a predictive (or It Will) causal proposition, can only be addressed by epidemiological studies that measure that risk of potential exposures on the development of FM. ***Epidemiologic studies of trauma and FM needed to address potential or predictive causality are currently not available****. The FM causality issue, as in other putative work and injury related syndromes, may be further complicated by the potential influence of the availability of compensation for the syndrome.* ***In settings where compensation is widely available, illnesses similar to FM have been shown to increase in apparent prevalence, as measured by physician visits, then to fall when compensation availability declines****.*

Overall, then, ***data from the literature are insufficient to indicate whether causal relationships exist between trauma and FM. The absence of evidence, however, does not mean that causality does not exist, rather that appropriate studies have not been been performed****.*

Multidisciplinary treatment programs, usually employing exercise, cognitive behavioral therapy, education, and pharmacotherapy are only now being reported. They appear to improve patients with FM in uncontrolled settings."

While emphasizing the need for further studies involving numerous aspects of FM syndrome, one of the concluding recommendations of the Consensus Report is that:

"When therapies and therapeutic programs are ordered, duration should be specified; treatment should not be continuous or indefinite. The goal of therapy is to make the patient independent."

[The Appellant's] present appeal is from a decision of MPIC to discontinue paying for further chiropractic care. We note [MPIC's rheumatologist's] comment that "non-compliance with her exercises is a real problem" and that although her prior condition had been exacerbated by her accident he did not feel that her ongoing, widespread pain was a result of that accident.

For the purposes of arriving at our decision, it is not necessary for us to decide whether or not [the Appellant's] fibromyalgic condition resulted from her motor vehicle accident; we content ourselves, in that context, with the comment that such a causality is, at least, entirely possible. However, a careful re-examination of all of the medical and chiropractic evidence submitted to us persuades us that, although [the Appellant] may continue to need, and to benefit from, intermittent chiropractic care, that need arises not from her motor vehicle accident but from her pre-existing condition. The nature and extent of her motor vehicle accident, while certainly exacerbating that condition, were not so severe as to have created a condition requiring ongoing chiropractic treatment for longer than that which she has already received. While [the Appellant's] other, physical problems may, perhaps, benefit from further, occasional chiropractic manipulation, that is not something for which the insurer can continue to be responsible. Her fibromyalgic syndrome appears to be a condition for which she should be referred back to [Appellant's doctor] who, if he deems it appropriate, may wish to refer her again to [MPIC's rheumatologist]. They may well feel that a multi-disciplinary program, involving exercises, cognitive behavioural therapy, education and pharmacotherapy, are called for, but that is a matter for their professional judgment, not ours.

DISPOSITION:

In light of the foregoing, we are obliged to dismiss [the Appellant's] appeal and to confirm the decision of the insurer's internal review officer of April 14th, 1997.

Dated at Winnipeg this 9th day of February 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED