

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-55**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Mr. Charles T. Birt, Q.C.
Mr. Colon C. Settle, Q.C.

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Ms Joan McKelvey;
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: February 12th, 1999

ISSUE(S): Whether Appellant entitled to continued chiropractic
benefits.

RELEVANT SECTIONS: Section 136 (1) of the MPIC Act and Section 5 of Manitoba
Regulation No. 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], the Appellant, was involved in a motor vehicle accident on October 9th, 1995 and, again, on November 24th, 1995. In that first accident he appears to have sustained musculoligamentous injuries to the left side of his neck, the left side of his lower back and his left hip; he also complained of occasional numbness and decreased strength in his left hand.

Following his first motor vehicle accident, he initially received chiropractic care from [Appellant's chiropractor] who diagnosed him as having sustained a Grade 3a Whiplash Associated Disorder. (It should, perhaps, be noted that, if one follows the descriptions of the five grades of whiplash associated disorders spelled out by Drs. Foreman and Croft in the 2nd edition of their text entitled "Whiplash Injuries - the Cervical Acceleration/Deceleration Syndrome", the apparent of absence of neurological findings would bring [the Appellant's] injuries into the Grade 2 category. [the Appellant] attended upon [Appellant's chiropractor] on a daily basis, to start with, with the frequency of his treatments gradually diminishing, he testified, to three times per week, then twice weekly and, eventually, to once a week. His motor vehicle accident of November, 1995, appears to have exacerbated his earlier symptoms to a moderate extent, retarding his progress by about four to six weeks.

At some point in June of 1996 (by which time he appears to have received about sixty chiropractic adjustments), [the Appellant] voluntarily quit attending [Appellant's chiropractor's] office. [The Appellant] emphasized that this was not because [Appellant's chiropractor] had discharged him but, rather, because the demands of two successive new positions with his employer, [text deleted], including night shifts, early morning shifts and extremely heavy overtime expectations, rendered it difficult and, at times, impossible for him to see his chiropractor. We are constrained to say that this portion of [the Appellant's] testimony is not clothed with total credibility: night shifts would normally make daytime medical appointments easier, not more difficult, and [the Appellant] himself testified that, although he had a very demanding supervisor, he was merely told that, if he needed to take time off for medical treatment, he only needed to produce a doctor's certificate.

However, the fact is that it was not until February 18th, 1997, that [the Appellant], having experienced what he describes as a 'flareup' of his earlier complaints, again sought help from [Appellant's chiropractor].

MPIC's Adjuster, in a decision confirmed by the insurer's Internal Review Officer on January 13th, 1998, refused to pay for any continuing chiropractic care for [the Appellant] from February 18th and thereafter. The basis of that decision lay in the view of MPIC and its chiropractic consultant that the hiatus of some eight months between the time when [the Appellant] had quit attending for chiropractic treatments in June of 1996 until he recommenced those treatments in February of 1997, militated against the conclusion that the problems of which he complained in February 1997 were causally related to either or both of his 1995 motor vehicle accidents.

[The Appellant] testified that, in reality, there was no 'hiatus' in that, although he had discontinued his chiropractic treatments because his discomfort had been brought down to a manageable level by June of 1996, his symptoms increased over the next eight months - sporadically at first and then with greater frequency. As he put it "At the time I quit going, I wasn't doing too badly, but I would get muscle spasms every few days - sometimes I could go for even a few weeks - ; my hip would kick out and that was the most painful thing of all. My neck, during the 'hiatus', wasn't bothering me so much; it was more my lower back. Moving my head quickly in the car would also cause real pain." [The Appellant] also testified that, from time to time during that eight-month period, his hip would occasionally 'slip in and out' also giving him pain and resulting in an antalgic walk. Even those episodes, he testified, were comparatively short lived and not, therefore, of major concern. The first major event that sent [the Appellant] back to [Appellant's chiropractor], he said, occurred on a Sunday morning in

February of 1997 when he awoke in such extreme discomfort that he could not get out of bed without assistance.

At this point, the evidence of [the Appellant] and that of [Appellant's chiropractor] seem to diverge quite dramatically. [The Appellant] testified that he had continued to attend upon [Appellant's chiropractor] for adjustments at a frequency of two to three times per week from February 18th, 1997 until the date of his third accident (not the subject of this appeal) on October 7th, 1998. [Appellant's chiropractor], on the other hand, having also recorded that [the Appellant] "Presented to my facility on the 18th of February 1997 for treatment of injuries he had sustained in the motor vehicle accident of October 9th, 1995", goes on to say this:

Diagnosis

[The Appellant] (sic) signs and symptoms are consistent with is description with (sic) the accident and of the persistent nature of his unresolved symptoms since June 1996. A diagnosis of a (sic) exacerbation of his cervical acceleration/deceleration injuries, similar left-hand symptoms and symptoms to the left neck, present virtually identically to the presentation noted on my initial health care examination report dated the 5th of November 1996 with left-hand numbness and a right lumbo-pelvic dysfunction.

Treatment continued through March 1997 during which time the arm and hand numbness was improving. He experienced another less severe flareup in symptoms toward the end of April and late May 1997 had made improvement to a degree where treatment on a once per two-week basis was sufficient to bring about positive clinical responses. This continued through early September, 1997.

We are inclined to accept the evidence of [the Appellant] that, although [Appellant's chiropractor] had not discharged him from further treatments in June of 1996, he stayed away of his own volition in the belief that he could manage, albeit with some discomfort, but that he continued, on a gradually increasing basis, to experience the same forms of discomfort as had been caused by his initial motor vehicle accident. However, the only medical evidence with which we are left to support [the Appellant's] claim of the need for chiropractic treatments after February 18th, 1997, related to his 1995 motor vehicle accidents, is that of [Appellant's chiropractor]. We cannot accept as rational the suggestion that [the Appellant] needed chiropractic adjustments two or three times per week from February 18th, 1997 until October 7th, 1998, in order to treat one or more 'flareups' from a Grade 2 Whiplash Associated Disorder. We are prepared to accept the evidence of [Appellant's chiropractor] that his patient needed adjustments in the last half of February, through March, April and May of 1997, followed by one adjustment every two weeks from the end of May through the first half of September. We shall therefore order MPIC to reimburse [the Appellant] for the cost of chiropractic treatments during those months. He may well have attended for further adjustments from September 16th of 1997 through until October 7th of 1998 but, in our respectful view, if there was any need for those adjustments it was not caused by his 1995 motor vehicle accidents and the insurer should not be responsible for those treatments.

Dated at Winnipeg this 17th day of February, 1999.

J. F. REEH TAYLOR

CHARLES T. BIRT

COLON C. SETTLE