

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]  
AICAC File No.: AC-99-52**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman  
Mrs. Lila Goodspeed  
Mr. Colon Settle, Q.C.

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

**HEARING DATE:** October 7<sup>th</sup>, 1999

**ISSUE(S):** Whether Appellant entitled to further chiropractic  
treatments.

**RELEVANT SECTIONS:** Section 136(1) of the MPIC Act and Section 5(a) 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**

[Text deleted], the Appellant, was injured in a motor vehicle accident on the 18<sup>th</sup> of August, 1995 when the front of the truck being driven by her father collided with the side of another vehicle that was improperly crossing its path. [The Appellant's] mother, when signing the application for compensation on her behalf, noted only "Passenger injured in MVA. Sore back, right knee, broken toe left foot".

A report from [the Appellant's] chiropractor, [text deleted], dated August 23<sup>rd</sup>, 1995, diagnoses "acute cervical thoracic sprain/strain and mid-dorsal strain". She prescribed spinal manipulative therapy three times a week for three to four weeks, but indicated that [the Appellant] was capable of resuming her main occupation as a student.

On December 6<sup>th</sup>, [Appellant's chiropractor] reported

Cervical cephalgia due to whiplash; patient has good days and bad days; 50% improvement; no mid-dorsal discomfort.

She prescribed spinal manipulative therapy, soft tissue therapy and neck strengthening exercises to stabilize the area. She felt that treatments were indicated at three times per week for an indefinite period.

A memorandum from the adjuster on MPIC's file, dated April 3<sup>rd</sup>, 1996, indicates that [the Appellant's] father said "Since [the Appellant] saw the chiropractor in B.C. she has been much better. She doesn't even feel the need to see a chiropractor here so, hopefully, that will continue."

However, on September 4<sup>th</sup>, 1996, [Appellant's chiropractor] was reporting

Patient still gets frequent headaches and neck discomfort. Right cervical rotation and left lateral flexion are restricted due to myofascial and joint restriction. Resisted cervical ranges are full and painful and strength improves with physiotherapy and home exercises.

[Appellant's chiropractor] diagnosed "vertebral subluxation complex with associated cervical cephalgia, and a Grade 2 Whiplash Associated Disorder". She prescribed two spinal adjustments per week, to be reduced to one weekly as soon as possible. Meanwhile, [the Appellant] was to maintain her usual activities and work full duties in her capacity as a student.

A further report from [Appellant's chiropractor] of February 5<sup>th</sup>, 1997 reflects much the same clinical status as before, although [the Appellant's] headaches had apparently decreased from daily to once or twice per week "usually brought on by physical activity such as gym....". In addition to regular spinal manipulations, [Appellant's chiropractor] recommended continuing with strengthening exercises from physiotherapist and "regular sports activities to strengthen".

On May 30<sup>th</sup>, 1997, [the Appellant's] adjuster at MPIC wrote to [Appellant's chiropractor], approving a treatment plan of three treatments per week for three weeks, two per week for two weeks and one per week for six weeks thereafter, with a discharge date of August 4<sup>th</sup>, 1997. The plan itself had been developed by [Appellant's chiropractor]. However, both [the Appellant] and her mother wrote to MPIC on July 8<sup>th</sup>, 1997 in support of an application for an internal review of the foregoing decision. [The Appellant's] adjuster had discussions with [Appellant's chiropractor] and with [the Appellant's] mother during the ensuing weeks, from which it seemed apparent that [Appellant's chiropractor] believed that [the Appellant's] headaches were primarily of a migraine type and the adjuster felt that, if migraines were [the Appellant's] primary problem, they appeared to be a medical problem rather than one that would succumb to chiropractic manipulation.

In response to an inquiry from [the Appellant's] adjuster at MPIC, [text deleted], her family physician, assessed [the Appellant] on October 10<sup>th</sup>, 1997 and his report of that date says, in part:

.....Approximately three days after the (motor vehicle accident).....she consulted a chiropractor with some relief, however she had almost daily headaches at this time which appeared to be more tension-type muscular headaches than migraine headaches which she had suffered from in the past. She distinguishes between the two headaches in that

her migraines were associated with nausea and were apparently more unilateral than these headaches, which are bilateral starting in the low neck and work their way over to the front of the head.

.....She sees a chiropractor three times a week and a physiotherapist twice a week, both of which give her approximately 24 hours relief of symptoms prior to having to undergo the same treatments again. She also uses a considerable amount of Advil, which her mother has been trying to reduce. I certainly concur with this, in that these medications can lead to medication-induced headaches on a prolonged basis.

In summary, I do not think she suffers from migraines at this time and feel that her headaches likely are related to the motor vehicle accident. There may be a significant amount of myofascial pain and in this regard I suspect that a physiatrist's intervention might be fruitful. I thus have taken the opportunity in (sic) referring her to [Appellant's physiatrist] who, incidentally, is also treating her father.....

A report from [Appellant's physiatrist] to MPIC's internal review officer, dated October 8<sup>th</sup>, 1998, tells us that he has seen [the Appellant] first on March 12<sup>th</sup>, 1998 when he had performed a spray and stretch treatment for her cervical muscles. He reviewed her on April 15<sup>th</sup> when she had told him she had been headache-free for four days - the longest time that she had gone without a headache since her accident. He had carried out another spray and stretch treatment for her cervical muscles on April 15<sup>th</sup> and then referred her to [rehab clinic] for more frequent and regular spray and stretch treatments, as well as education in her own, passive, self-stretching exercise to be carried out at home. The intent, said [Appellant's physiatrist], was to instigate treatment that would lead to self-management without the need for frequent treatments to any health care provider, including chiropractor. Previous chiropractic treatments had given her very transient relief.

[Appellant's physiatrist] went on to report that [the Appellant] had been assessed at [rehab clinic] in mid-July and had begun treatment there on July 29<sup>th</sup> with a spray and stretch treatment for

cervical muscles and education in self-stretching exercises.

On August 5<sup>th</sup>, 1998 she had not attended; on August 11<sup>th</sup> she had cancelled her appointment; on August 19<sup>th</sup> she had further treatment including instruction in using light weights to strengthen trapezius muscles; on August 26<sup>th</sup>, 1998 she had cancelled and rescheduled for August 27<sup>th</sup>, but had cancelled that as well. On October 6<sup>th</sup>, 1998 she had an appointment with [Appellant's physiatrist] and a physiotherapist for re-evaluation and decisions for the future, which she had failed to attend.

[Appellant's physiatrist] said that effective treatment had not been provided since [the Appellant] had only attended a couple of sessions. Her parents obviously had no faith in the treatments he prescribed. Trigger point needling and stretch procedures were not arranged since [the Appellant] was apparently fearful of that type of treatment and did not want to consider it. Since previous chiropractic treatment had not led to any major, lasting improvement, [Appellant's physiatrist] advised that the best treatment would seem to be self-stretching exercise and the use of Advil which relieved her headaches within one-half hour.

Meanwhile, [the Appellant] had been referred by MPIC to [independent chiropractor] for an independent chiropractic examination. He met with her on April 21<sup>st</sup>, 1998. His report outlines a thorough assessment, culminating in a finding that "her present problems relate to ongoing soft tissue neck pain extending into the upper dorsal muscles with cervicogenic headache phenomena". Her ranges of motion were not impeded and no nerve root nor other neurological signs were detected. [Independent chiropractor] recommended:

1. more in the way of therapeutic spinal exercise, twice daily, on a preventative basis. Aside from the passive, assisted neck stretches, cervico isodynamic resisted neck exercises along with scapular extension stretches would be beneficial;
2. [the Appellant] should be more cognizant of her posture, as she had a tendency to slouch forward;
3. after about 255 chiropractic treatments, [the Appellant] had indicated that her neck was not any better and her headaches had not improved significantly. [Independent chiropractor] felt that [the Appellant] had reached maximum therapeutic benefit and that further treatment of the same modalities would not alter her residual symptom expressions.

[Appellant's mother] was apparently undecided about proceeding with spray and stretch for [the Appellant] although this, in [independent chiropractor's] opinion, would certainly have been "a viable option especially if it is associated with cervical stabilization exercises". Failing that, [independent chiropractor] recommended consultation with a neurologist having an interest in headache phenomena.

We had been provided with a series of excellent, complete reports by [Appellant's chiropractor]. There is no doubt at all that, under [Appellant's chiropractor's] care, [the Appellant] achieved substantial improvement (50%, she says) during the first six months of her treatments and, by [the Appellant's] own reports, a further 30% by February of 1998. From that point on, however, and despite [the Appellant's] reports to [Appellant's chiropractor] that she could see a further 60% improvement on October 29<sup>th</sup>, 1998 and a further 70% improvement on January 11<sup>th</sup>, 1999, those self-assessments seem to be clearly at odds with what [the Appellant] reported to

[independent chiropractor] in April of 1998.

[The Appellant] was still, at that time of the hearing of her appeal, receiving two adjustments per week from [Appellant's chiropractor] - or so she testified. [Appellant's chiropractor] herself, in a report to this Commission of August 10<sup>th</sup>, 1999, says that [the Appellant] was attending for care on average once per week, depending on her level of activity and headache frequency which she reports to be "one to three times per week". [Appellant's chiropractor] was recommending "continued benefits of two times per month to be reassessed every six months".

While we respect [Appellant's chiropractor's] dedication to the care of her patient, we are not convinced that, on a balance of probabilities, further chiropractic care will have any therapeutic benefit for [the Appellant]; the number and frequency of whose passive, spinal adjustments has already far exceeded anything approaching the norm.

We find that, on a reasonable balance of probabilities, the program suggested by [Appellant's physiatrist] (with such modifications, if any as may be called for as a result of the delay in the application of that program) is more likely to produce lasting benefits if adhered to faithfully by [the Appellant]. Psychological intervention may well be an integral part of any such revised program. However, we refrain from embodying those comments in any formal order of this Commission, since the only issue before us is whether MPIC was justified in terminating its payments for further chiropractic care. We find that the insurer was so justified.

We are therefore obliged to dismiss [the Appellant's] appeal.

Dated at Winnipeg this 22nd day of November, 1999.

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**J. F. REEH TAYLOR, Q.C.**

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**LILA GOODSPEED.**

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**COLON SETTLE, Q.C.**