# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]**
**AICAC File No.: AC-99-01**

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| **PANEL:** | **Mr. J. F. Reeh Taylor, Q.C., Chairman**<br>**Mr. Charles T. Birt, Q.C.**<br>**Mrs. Lila Goodspeed** |
| **APPEARANCES:** | **Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;**<br>**the Appellant, [text deleted], appeared on his own behalf** |
| **HEARING DATE:** | **October 21st, 1999** |
| **ISSUE:** | **Whether Appellant entitled to further chiropractic care at the expense of insurer.** |
| **RELEVANT SECTIONS:** | **Section 136(1)(a) 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

Prior to the hearing of [the Appellant's] appeal on October 21st, 1999, the Commissioners who heard the appeal had studied all of the documentary evidence made available to us. After hearing [the Appellant's] oral testimony and the submissions made by [the Appellant] and by counsel for MPIC, the Commission expressed the view, informally, that while it was entirely possible that the Appellant was entitled to continuing, supportive, chiropractic care at the

expense of the insurer, there was insufficient evidence available to us upon which we could base such a decision.

We suggested to both parties, and both concurred with the suggestion, that we would advise the Appellant of the names of two independent chiropractors, of whom he would then select one. We would then write to the selected practitioner, asking him to arrange for an independent examination of the Appellant and to prepare a report giving us his or her opinions on the following points:

(a) whether continuing, supportive care from [the Appellant's] then current, treating practitioner was medically required; and

(b) whether he/she had any recommendations which, if followed, might be calculated to diminish [the Appellant's] need for supportive care over a reasonable period of time.

We wrote to [the Appellant] on October 25th, 1999, giving him the names of [independent chiropractor #1] and [independent chiropractor #2], and asking him to select the one by whom he wished to be examined.

In the course of subsequent correspondence between this Commission and [the Appellant], it became apparent that [the Appellant] was not about to attend upon any chiropractor who was not of his own choosing. The Appellant seems unwilling to accept the assurance of this Commission that we have never, hitherto, retained the services of [independent chiropractor #1] to perform examinations although, as we told the Appellant, we have from time to time seen reports that [independent chiropractor #1] has prepared. The Appellant's objection to [independent

chiropractor #2] remains obscure, other than his apparent belief that, by naming [independent chiropractor #1] who, we should apparently have known, would be unacceptable to him, we were somehow forcing him into the arms of [independent chiropractor #2] who, it followed, must of necessity be equally biased. We might mention, in passing, that at the outset of the hearing of his appeal [the Appellant] demanded to know by whom the Commissioners were paid and where our loyalties lay. Upon being advised that the Commissioners were paid by the taxpayers of Manitoba and that we were disinterested in the outcome of his appeal, [the Appellant] implied that the members of the Commission were biased against him from the beginning. That irrational belief permeates his subsequent correspondence.

Since [the Appellant] refuses to attend upon a chiropractor that is not of his choosing, we are left to make our decision upon the basis of the evidence already before us.

**SUMMARY OF EVIDENCE:**

On December 20th, 1996, [the Appellant] was the victim of a rear-end motor vehicle collision when, as the driver of his vehicle, he was apparently looking towards his right. His vehicle was apparently pushed forward into the car ahead of him. He consulted his family practitioner, [text deleted], who diagnosed a Grade 2 Whiplash Associated Disorder (WAD2) and noted a decreased range of motion and tenderness of the cervical spine and right trapezius muscle.

At the time of the accident, [the Appellant] was [text deleted] years of age and had retired from the workforce.

On January 14th, 1997, the Appellant consulted [text deleted], chiropractor. After referring [the Appellant] for X-rays of his cervical and lumbar spine, [Appellant's chiropractor] diagnosed "severe cervical sprain/strain reaction due to a hyperextension/hyperflexion injury followed by a second impact. Severe brachial radiculopathy and sensory deficit. Severe cervicogenic headaches". [Appellant's chiropractor] classified these conditions as a Grade 3 Whiplash Associated Disorder, mainly due a severe limitation of the Appellant's range of motion in his right arm. He recommended the use of a cervical pillow, the limitation of all activities, and chiropractic adjustments three times weekly for twelve to eighteen weeks, to be followed by twice weekly adjustments for a further eight to twelve weeks as necessary. In mid-April of 1997 [the Appellant's] adjuster at MPIC noticed an increase in frequency of treatments, emergency visits to [Appellant's chiropractor] and some new cervical X-rays. In response to the adjuster's enquiry, the Appellant explained that he had slipped and fallen, having had what he described as "balance problems" since his motor vehicle accident. He was unsure if his condition was attributable to his motor vehicle accident. [Appellant's chiropractor], in a report to MPIC of May 23rd, 1997, makes no mention of the Appellant's 'slip and fall' accident, but says that because [the Appellant's] complaints of constant and severe radiating pain down his right arm and right scapular had not apparently improved nor changed with regular chiropractic care, [Appellant's chiropractor] had increased the frequency of treatments in order to stabilize the problem. He had also arranged for additional X-rays to determine whether any intervertebral encroachment was causing those symptoms. His examination of the Appellant had disclosed "postural deviations, visible spasms and areas of taught fibres in the cervical and dorsal spine, severe muscle hypertonicity of the cervical upper and middle dorsal spine with restricted motion

and pain upon breathing". He had also discovered tenderness and/or masses in the region of the occiput and, bilaterally, in the sternocleidomastoid, rhomboid, pectoralis, scalene and trapezius areas. All positive findings, said [Appellant's chiropractor], were more severe on the right side. He found localized point tenderness at a number of spinal levels and decreased cervical ranges of motion. The X-ray results revealed osteoarthritic changes at C5, C6 and C7, altered cervical lordosis with minor vertebral rotation, the Luschka joints were blunted and sclerosed and there was intervertebral foraminal encroachment.

[Appellant's chiropractor's] diagnosis as a result of his March examinations of [the Appellant] were as follows:

1. cervical sprain/strain reaction due to a hyperextension/hyperflexion injury;
2. severe brachial radiculopathy;
3. right arm paresthesia;
4. intervertebral foraminal encroachment resulting in nerve root compression;
5. cervical myositis (*i.e. in this case, inflammation of the neck muscle*); and
6. traumatic vertebral subluxation complex.

[Appellant's chiropractor] felt that [the Appellant's] age, pre-existing degenerative changes, impact of head with headrest (indicating force of impact) and lack of preparedness immediately prior to the accident were all factors that might retard the rate of [the Appellant's] recovery. He had treated [the Appellant] on a daily basis for two weeks, reducing the frequency to three times a week for twelve to eighteen weeks and, by the date of this report, had reduced frequency again to twice weekly which, he felt, should continue for six to eight weeks, to be followed by weekly

treatments.

On August 5th, 1997 [Appellant's chiropractor] again reported to MPIC, listing similar findings as in his May 23rd letter and recommending 8 to 10 treatments per month for the following 90 days, plus 5 to 7 treatments per month for a further 90 days, plus 1 to 3 visits monthly for 30 days thereafter. He anticipated a discharge date 14 months post-accident, or approximately the end of February 1998.

On November 6th, 1997, [the Appellant] was examined by [text deleted], an independent chiropractor, at the request of MPIC. [Independent chiropractor #3] diagnosed a cervical thoracic and lumbosacral musculoligamentous strain/sprain type of injury, to which he also attributed [the Appellant's] headaches, and all of which he believed were caused by the motor vehicle accident. He noted mild objective findings……in the cervical spine with a mild reduction of normal motion and, in the lumbosacral spine, subjective complaints of discomfort. His report says, in part:

> [The Appellant] does have pre-existing conditions noted in his cervical spine which include narrowing of the disc spaces at C5-C6 and C7. There is minor osteophytic lipping noted above and below C4, 5 and 6. The impression noted in the X-rays is multiple discopathies and osteoarthritic changes. The lumbar spine is noted with an impression of discopathy of L5. There are also arthritic changes noted at L3 and L4 and L2-L3. These above pre-existing findings may be responsible for a delay in recovery. It is my opinion that the accident dated above, on a balance of probability, has not aggravated this pre-existing condition.
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> Currently, [the Appellant] has stated that he has not had any change in his overall symptomatology in the last eight weeks of therapy. In my opinion there should be an increase in his home based exercise routine. Currently, he is only doing two activities that are directed towards the lumbosacral spine and he is doing no activity directed towards the cervical thoracic musculature……..Given a further six to eight weeks of ongoing therapy with his current chiropractor and a home based exercise routine, if this has not resolved his ongoing cervicothoracic and lumbosacral discomfort it is my opinion

> he would be at a maximum therapeutic benefit……and a different therapeutic approach should be considered.

[Independent chiropractor #3] expressed the opinion that [the Appellant] was not disabled and would suffer no permanent impairment as a result of the injuries described.

It will be noted that [independent chiropractor #3], in recommending a further six to eight weeks of chiropractic adjustments from [Appellant's chiropractor], anticipated a discharge date not far removed from [Appellant's chiropractor's] own forecast, toward the end of February, 1998. However, on January 18th, 1998, [Appellant's chiropractor's] further report recommends the continuance of treatments at a frequency of once per week until the end of February, to be followed by one adjustment every two weeks through March and April, followed by supportive care for the rest of [the Appellant's] life. He added that, in his opinion, maximum medical improvement would probably have occurred by April of 1998. However, MPIC decided, upon the basis of [independent chiropractor #3's] report and the advice of its inhouse consultant, [text deleted], that it would not fund chiropractic treatment beyond the end of February, 1998.

[The Appellant] appealed from that decision to MPIC's Internal Review Officer who, after receiving a further, detailed report from [Appellant's chiropractor] dated March 25th, 1998, referred the matter to [text deleted], another of MPIC's chiropractic consultants. [MPIC's chiropractor #2] agreed that [the Appellant's] suffered a cervical sprain/strain injury as a result of his accident, but pointed out that there was no evidence that the injury involved the Appellant's lumbar lumbosacral spine, since the documentation in the medical and chiropractic reports does not mention lumbar or lumbosacral spine findings until the treatment plan report of August 5th,

1997, almost nine months after the accident. There is consistent documentation throughout [Appellant's chiropractor's] reports indicating neurologic deficits at multiple levels; [MPIC's chiropractor #2] points out that "on third party examination, no neurologic deficits are noted. It is difficult to reconcile these two different pictures presented by different practitioners". [MPIC's chiropractor #2] goes on to indicate the key signs that would have confirmed cervical radiculopathy and then comments that:

> To make a clinical diagnosis of cervical radiculopathy, all of the above findings must correspond to a single nerve root. It is not likely that a radiculopathy would exist at the multiple levels and different sides reported by the attending practitioner, and that these findings would not be found on examinations by the claimant's own physician in his first report, or later on third party examination.
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> The attending chiropractor ([Appellant's chiropractor]) indicates that X-ray findings show evidence of severe trauma that he relates to the effects of the motor vehicle accident. The findings described are degenerative in nature. It is difficult to understand the relationship between such findings and the effects of trauma only three weeks prior to the date of the X-ray examination. Cervical oblique views taken two months later report a similar picture.

It is an unfortunate fact, as [MPIC's chiropractor #2] points out in his report, that many victims of motor vehicle accidents do not achieve recovery to full, pre-accident status. The reality is that on many occasions maximal therapeutic benefit does not equate to the restoration of that pre-accident status.

[MPIC's chiropractor #2] refers to the The Clinical Guidelines for Chiropractic Practice in Canada which suggest that, even in complicated cases, "continued failure to show……improvement over a period of six weeks of treatment should result in patient discharge or appropriate referral, or the patient will be deemed as having maximum therapeutic benefit (MTB). If MTB has been reached, maintenance or supportive care may be considered".

We share the views of [MPIC's chiropractor #2] in this context, when he says:

> He has had a course of treatment that would far exceed my expectations for an injury of the type described, and there is no evidence provided by the attending chiropractor that indicates ongoing improvement. In fact, the diagnosis given in all reports by the attending chiropractor is virtually identical, suggesting that the claimant did not improve significantly from the date of initial presentation.

We come, now, to the question of supportive care. We refer, again, to [MPIC's chiropractor #2's] report, in which he says that "If it can be demonstrated that [the Appellant's] condition deteriorates with cessation of care, then a case may be made for ongoing supportive care". We would add that, had the need for, and potential benefits of, supportive care been established, that would only relate to the cervicothoracic area of [the Appellant's] spine since, on a strong balance of probabilities, we find that the Appellant's lower back discomfort stems from pre-existing, degenerative conditions and that any aggravation of those conditions caused by his motor vehicle accident were resolved by November of 1997.

Subsequent to the decision of the Internal Review Officer, two further, confirmatory opinions were obtained by counsel for the insurer. The one, from [MPIC's chiropractor #2], says in part:

> …….in order to categorize care as supportive in nature, it must be demonstrated that the claimant's condition deteriorates without care…… By utilizing instruments such as the Revised Oswestry and Neck Disability Indices such deterioration could be demonstrated, as would progression of clinical findings such as range of movement, degree of muscle guarding, et cetera. A withdrawal of care for a therapeutically relevant period of time must occur before the need for supportive care can be assessed……[Appellant's chiropractor] does not provide information that is of use in assessing care as supportive.

The other, recent report is from [independent chiropractor #3], who reiterates his earlier view

that the Appellant has reached maximum therapeutic benefit with respect to chiropractic therapy. [The Appellant] had stated that there had been no change in his symptoms for the eight weeks prior to [independent chiropractor #3's] examination and that only during the two weeks prior to that examination had [Appellant's chiropractor] suggested any exercise activity. He felt that six to eight weeks of exercise therapy would have been in [the Appellant's] best interests. Considering the Appellant's pre-existing conditions noted in his cervical and lumbar spine, [independent chiropractor #3] did not find it unreasonable that the Appellant reported lower back discomfort prior to his accident. The degenerative changes in the lumbar spine would be the etiology for ongoing lower back discomfort. [Independent chiropractor #3] was "not convinced ongoing supportive therapy is warranted.

**DISPOSITION:**

Having given careful consideration to all of the evidence presented to us including, of course, the oral testimony of [the Appellant], we are unable to find, on any reasonable balance of probabilities, that the Appellant is entitled to continued chiropractic care past February 28th, 1998. Had it been possible to establish the need for such care it would have been of a supportive nature only, and no persuasive evidence has been adduced that would enable us to make such an order.

[The Appellant's] appeal is therefore dismissed.

Dated at Winnipeg this 4th day of February, 2000.

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

**CHARLES T. BIRT, Q.C.**

**LILA GOODSPEED**