

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-00-58

PANEL: Yvonne Tavares, Chairperson
Jeffrey Palamar
Colon Settle, Q.C.

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

HEARING DATE: March 8th, 2001

ISSUE(S): Claim for cost of chiropractic care.

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

The Appellant, [text deleted], was involved in a motor vehicle accident (MVA) on March 11th, 1999, when his vehicle was rear-ended while stopped at an intersection.

Following the accident, [the Appellant] consulted his chiropractor, [text deleted], with respect to pain and stiffness in his neck, upper and lower back pain. He also presented with complaints of headaches and difficulty sleeping. [Appellant's chiropractor] classified the injury as a Whiplash Associated Disorder II injury and diagnosed the Appellant with acute cervicothoracic sprain strain injury. [Appellant's chiropractor]

estimated a six month duration of in-clinic care and recommended treatments three times a week for six months.

On September 20th, 1999, [Appellant's chiropractor] submitted a further Treatment Plan Report to MPIC wherein he noted that the Appellant was continuing to experience symptomatic exacerbations of upper back pain and recommended a further twelve to sixteen weeks of chiropractic care, initially at two times a week for eight weeks then decreasing to once per week for a further eight weeks.

This Treatment Plan Report was reviewed by [text deleted], a chiropractic consultant to MPIC. [MPIC's chiropractor] was not convinced that further chiropractic care was going to change this claimant's symptom expression. Nevertheless he suggested that, "An additional one month of chiropractic care may be of value to the claimant in stabilizing his most recent September exacerbation".

Based on that review, [text deleted] wrote to the Appellant on October 12th, 1999, to advise that MPIC would fund further treatment at the rate of one time per week until the end of October 31st, 1999, at which time funding for chiropractic care would cease.

[The Appellant] sought an internal review from that decision. The Internal Review Decision of February 11th, 2000, upheld the Claim's decision on the basis that [the Appellant's] condition had plateaued and further chiropractic treatment would have been of no benefit to him. Any further chiropractic treatment would most likely have been due to the Appellant's degenerative changes or the condition that required treatment prior to his motor vehicle accident. It is from this decision that [the Appellant] now appeals.

At the hearing of his appeal, the Appellant sought reimbursement for chiropractic treatments to date and continuing coverage for further chiropractic care. He argued that, his treating chiropractor was in the best position to evaluate his injury and his rate of recovery. He further submitted that his recovery was prolonged due to his Myasthenia Gravis, a condition which causes him to fatigue quickly.

Counsel for MPIC argued that chiropractic treatment for the Appellant had exceeded the recommended treatment parameters set out in the Clinical Guidelines for Chiropractic Practice in Canada. Further, she argued that the Appellant's failure to show additional improvement over a period of six weeks of treatment should result in patient discharge or referral, as the patient will have been deemed as having achieved maximum therapeutic benefit from chiropractic care.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident and must be medically required. In a report dated November 22nd, 2000, [Appellant's chiropractor] provided his opinion that, "During the period from October 31st, 1999, until July 21st, 2000, [the Appellant's] condition was not permanent and stationary". As of July 21st, 2000, it was [Appellant's chiropractor's] opinion that [the Appellant's] condition had plateaued. In his report of July 21st, 2000, [Appellant's chiropractor] notes that, "Further regular scheduled chiropractic care would not necessarily enhance further subjective or objective improvements. Therefore, it is my opinion, that his residual symptomatology and my residual objective findings are

permanent affects of the healing sequel to the injuries [the Appellant] sustained in the accident of March 11th, 1999".

This Commission accepts the opinion of the Appellant's treating chiropractor that continued improvement was noted and attributed to the chiropractic care that [the Appellant] received beyond October 31st, 1999. Therefore, this Commission finds that on a balance of probabilities [the Appellant's] condition had not plateaued and he had not reached maximum therapeutic benefit from chiropractic care as of October 31st, 1999. Accordingly, [the Appellant] shall be reimbursed for the costs of the chiropractic treatments from November 1st, 1999 to July 21st, 2000. Chiropractic care beyond that date would not be medically required as a result of the MVA of March 11th, 1999.

During his submission to the Commission, the Appellant raised a concern that he was not provided with copies of medical reports prior to asking for them or filing his appeal. In a situation such as this one where the Claim's decision was based on a specific medical report or opinion, that medical report or opinion should be provided to the claimant with the Claim's decision. Although we note that this is often the case with decisions sent out by the Internal Review Office, this practice is not necessarily followed at the Claim's level. Providing those medical reports and opinions at that stage would be helpful to claimants as they would have the basis for MPIC Claim's decision.

Dated at Winnipeg this 22 day of March 2001.

YVONNE TAVARES

JEFFREY PALAMAR

COLON SETTLE, Q.C.