Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-103

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Mary Lynn Brooks** **Dr. Patrick Doyle**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.**
HEARING DATE:	**January 21, 2005**
ISSUE(S):	**Entitlement to Income Replacement Indemnity Benefits and funding for further chiropractic care**
RELEVANT SECTIONS:	**Sections 81(1)(a), 83(1)(a), 110(1)(a), 136(1)(a) of the Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) of Manitoba 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 Appellant] was involved in a motor vehicle accident on October 5, 2002 and, as a result, suffered soft tissues injuries to her back. At the time of the accident the Appellant was employed at the [text deleted] in [text deleted] as a [text deleted]. The Appellant was unable to work as a result of this motor vehicle accident and received Income Replacement Indemnity ('IRI') benefits

Funding for Chiropractic Care

On February 6, 2003 the case manager wrote to the Appellant and advised her that she was no longer entitled to IRI benefits or reimbursement for chiropractic treatments relating to the accident of October 5, 2002 for the following reasons:

> Further to our conversation of December 30, 2002, the following will clarify your entitlement to Income Replacement Indemnity under the Personal Injury Protection Plan.
>
> During our discussion, you indicated that you had resigned your position at the [text deleted] and intended to travel to [text deleted] effective January 5, 2003. I indicated to you that your entitlement to Income Replacement Indemnity had ended because you had reached a stage in your rehabilitation where you were able to work the hours that would have been available to you, as well as because you were not longer available for regular treatment for the injury you had sustained.
>
> A letter received from the [text deleted] on November 29, 2002 provided confirmation that you were a part-time employee with no guarantee of the number of hours that would be available for you in a two-week period.
>
> Your employer also indicated that you would likely be scheduled for a maximum of six shifts biweekly. According to information provided by [Appellant's chiropractor #1], you were physically capable of working three shifts per week.
>
> Section 110(1) of insurance regulations indicates that an individual ceases to be entitled to an Income Replacement Indemnity when he or she is able to hold the employment that they held at the time of the accident. Since you were able to hold the employment you held at the time of the accident, there is no further entitlement to Income Replacement Indemnity as of **January 5, 2003.** A copy of Section 110(1)(a) is attached.
>
> It should also be noted that the insurance regulations permit that the Corporation may refuse to pay compensation to a person or may reduce an indemnity or suspend or terminate the indemnity where a person refuses to return to their former employment or leaves an employment that he or she could continue to hold. The Regulations also indicate that where an individual is not available for medical treatment recommended by a medical practitioner, entitlement also ends. A copy of Section 160 (c), (e) and (g) are attached.

On December 10, 2003 the case manager received a letter from [text deleted], chiropractor, who carries on a chiropractic practice in [text deleted], Ontario. [Appellant's chiropractor #2] advised

the case manager that the Appellant had sought chiropractic care at her office on Monday, November 24, 2003 for acute and severe thoracolumbar pain. [Appellant's chiropractor #2] diagnosed the Appellant's complaint as an acute T9/T10 facet locking due to adverse mechanical cord tension. [Appellant's chiropractor #2] recommended a care program over a twelve month period with an estimated number of 80-90 chiropractic visits combined with a rehabilitation program. [Appellant's chiropractor #2] further stated that the Appellant informed her that she would be moving to [text deleted] at the end of the week and requested a referral to a chiropractor in that city.

In a telephone discussion with the case manager on December 15, 2003 the Appellant advised the case manager that she was taking a leave of absence from her employer, [text deleted], where she had worked in the customer service department answering phones etc. She further advised the case manager that she took this leave of absence due to her current back problems.

The case manager referred the Appellant's file to [MPIC's chiropractor], MPIC Health Care Services. [MPIC's chiropractor] provided an Inter-departmental Memorandum to the case manager dated December 19, 2003 and stated:

> I have reviewed this file and discussed it with [text deleted] regarding the relationship of [the Appellant's] current attendance for chiropractic care with [Appellant's chiropractor #2] of [text deleted], Ontario and the effects of the motor vehicle accident. I have compared the claimant's condition and results reported on physical examination initially to those reported by [Appellant's chiropractor #2]. Initially, [the Appellant] experienced multilevel spinal pain. On examination, the findings were restricted to cervical and lumbar spine, the only notation regarding the thoracic spine being fixations at T2, and T4 to T8. It is noted that fixations are a common problem in the general population and not necessarily related to pain or trauma.
>
> [Appellant's chiropractor #2], in her narrative dated December 10, 2003, reports that [the Appellant] presented on November 24, 2003 for acute severe thoracolumbar pain. She gave a probable diagnosis of acute T9-10 facet locking with muscle spasm.

> In my opinion, the condition as reported by [Appellant's chiropractor #2] is, in the balance of probabilities, not related to the effects of the motor vehicle accident. It appears to be a different area. It appears to be of recent onset. There is no mechanism by which sprain/strain injuries can move to other anatomic regions. Her current condition is, in the balance of probabilities, unrelated to the effects of the motor vehicle accident in question.

As a result of discussions between the case manager and the Appellant, the case manager referred the entire MPIC file to [MPIC's chiropractor], which included the medical information that MPIC had on file relating to the Appellant's prior claims in respect to motor vehicle accidents on August 8, 1999 and February 22, 2002. [MPIC's chiropractor] provided an Inter-departmental Memorandum to the case manager dated December 31, 2003 which stated:

> I have reviewed this file before, providing a memo dated December 19, 2003. In that memo, I was of the opinion that the current problem as described by [Appellant's chiropractor #2] was unrelated to the effect of the motor vehicle accident because it was in a different anatomic location. At that time, I did not have access to, nor did I review, information related to the previous accidents. I have now had an opportunity to review medical information relative to prior claims number [text deleted], date of loss August 8, 1999, and [text deleted], date of loss February 22, 2002. The information reviewed does not change my opinion. At no time in the prior injury claims were persistent problems in the lower thoracic spine centered around T9, as described by [Appellant's chiropractor #2]. The new information does not change my opinion as expressed December 19, 2003.

As a result of receiving this Inter-departmental Memorandum, the case manager wrote to the Appellant on January 6, 2004 and again advised her that MPIC would not provide her with any further IRI benefits or reimburse the Appellant for further chiropractic care after December 12, 2003. In this letter the case manager stated:

> The report from [Appellant's chiropractor #2] dated December 10, 2003 as well as your entire medical package from the above noted claim along with prior claims ([text deleted date of loss August 8, 1999 and [text deleted] date of loss February 22, 2002) have been reviewed with our chiropractic consultant. As a result of this review, the medical evidence [Appellant's chiropractor #2] submitted indicates that you presented to her on November 24, 2003 for acute severe thoracolumbar pain. [Appellant's chiropractor #2] gave a probable diagnosis of acute T9-10 facet blocking with muscle spasm.
>
> It is our consultant's opinion that the condition as reported by [Appellant's chiropractor

> #2] is, in the balance of probabilities, not related to the effects of the motor vehicle accident. He further indicates that your condition appears to be in a different area and it appears to be of recent onset. Our consultant also advises that there is no mechanism by which sprain/strain injuries can move to other anatomic regions.
>
> On December 23, 2003 you requested that our consultant review your prior claims [text deleted]. After reviewing the medical information from your prior claims, our consultant advises that this information does not change his opinion. He further advises that at no time in the prior injury claims were persistent problems in the lower thoracic spine centered around T9, as described by [Appellant's chiropractor #2].

On February 16, 2004 the Appellant made an Application for Review of the decision of the case manager dated January 6, 2004. Attached to this Application was a submission of the Appellant, together with a letter from [Appellant's chiropractor #2] to the Appellant dated February 15, 2004. [Appellant's chiropractor #2] in her letter reviewed [MPIC's chiropractor's] letter of December 22, 2003 and disagreed with his opinion. [MPIC's chiropractor] was provided with a copy of [Appellant's chiropractor #2's] letter dated February 15, 2004 by the Internal Review Officer. On March 22, 2004 [MPIC's chiropractor] wrote to the Internal Review Officer and stated:

> I have reviewed the new information on file. In her narrative, [text deleted], [the Appellant's] chiropractor, argues that adverse meningeal tension from previously injured areas has, through altered joint, muscle, and meningeal interactions, resulted in pain eruption at a previously asymptomatic area. I find this argument speculative and unconvincing. The new information reviewed does not change my opinion.

On April 8 2004, the Internal Review Officer provided an Inter-departmental Memorandum to [MPIC's chiropractor] as follows:

> Thank you for your previous memo dated March 22, 2004. Since that date, the claimant has contacted me and requested a telephone hearing which took place on April 7, 2004. At that time she advised that she always had pain in her lower back since the accident, but it only became acute at the times that she went to [Appellant's chiropractor #2] because she was then currently working in an office which was the situation that she had never found herself in before.
>
> She also advises that she still requires chiropractic treatment for her cervical spine which she states was indicated in [Appellant's chiropractor #2's] last report. Would it be your opinion that the claimant requires chiropractic treatment for her neck but not for her

> lower back, or would you say that she does not require any chiropractic treatment for any parts of her spine as a result of the motor vehicle accident?
>
> She advises that the year after she moved to [text deleted], that she did not seek any treatment because she felt that MPIC would not pay for any treatment out of the province. Once she found out from [Appellant's chiropractor #1] that MPIC would likely pay, she contacted her case manager, and she immediately sought treatment.

In reply [MPIC's chiropractor] in an Inter-departmental Memorandum to the Internal Review Officer dated May 10, 2004, stated:

> This dictation will respond to [text deleted] interdepartmental memorandum of April 8, 2004. This requests an opinion as to [the Appellant's] need for chiropractic care as related to the motor vehicle accident.
>
> I previously reviewed this file, most recently providing a memorandum dated March 22, 2004, and previously, a memorandum dated December 19, 2003. I had been of the opinion that [the Appellant's] condition as presented to [Appellant's chiropractor #2] was not related to the effects of the motor vehicle accident. The rationale for this opinion is more completely delineated in the Decmber (sic) memo.
>
> As part of the present review, I reviewed [Appellant's chiropractor #2's] clinic notes as forwarded to Manitoba Public Insurance. On initial examination [the Appellant's] chief complaint is, unfortunately, not legible in the faxed copy. However, that onset of her presenting problem is described as with lifting and occurring over the previous two to three months. It is noted that [the Appellant] first attended [Appellant's chiropractor #2] on November 24, 2003. This would stage the buildup of her presenting discomfort to September 2003. She last attended for chiropractic care with [the Appellant's chiropractor #1] in March 2003.
>
> The medical evidence reviewed does not convince me that the condition that [Appellant's chiropractor #2] is treating is related to the motor vehicle accident. [Appellant's chiropractor #2's] description is of pain building from September 2003 culminating in attendance for care in November 2003. The period of time between her last attendance with [Appellant's chiropractor #1] and attendance with [Appellant's chiropractor #2] has no medical documentation to substantiate the claimant's ongoing problems. Based on the medical documents reviewed, my opinion has not changed. In summary, my opinion is that [the Appellant's] attendance for chiropractic is, at this time, unrelated to the effects of the motor vehicle accident.

Internal Review Decision

The Appellant did not wish to attend a hearing in the presence of the Internal Review Officer and as a result, the hearing was conducted by telephone on April 7, 2004. The Internal Review

Officer issued a decision on May 19, 2004, and relying on the opinions of [MPIC's chiropractor], confirmed the case manager's decision and dismissed the Appellant's Application's for Review. In her decision the Internal Review Officer stated:

> As you will recall, [MPIC's chiropractor] reviewed your file previously and provided his opinion dated December 19, 2003. In that opinion [MPIC's chiropractor] advises that the acute severe thoracolumbar pain that you reported to [Appellant's chiropractor #2] December 10, 2003, is not related to your accident of October 5, 2002. [MPIC's chiropractor] advises that it appears to be in a different area and a recent onset. Because there is no mechanism by which sprain/strain injuries can move to other anatomic regions, your current condition is unrelated to the effects of the motor vehicle accident.
>
> You then attached a new report from [Appellant's chiropractor #2] dated February 15, 2004 which has been reviewed. [MPIC's chiropractor] advises that [Appellant's chiropractor #2] argues that "adverse meningeal tension from previously injured areas has, through altered joint, muscle, and meningeal interactions, resulted in pain eruption at a previously asymptomatic area." [MPIC's chiropractor] is unconvinced by this argument and therefore states that this new information does not change his previous opinion.
>
> After your telephone hearing, I referred the file back to [MPIC's chiropractor] who reviewed [Appellant's chiropractor #2's] clinical notes. He advises that the notes show that your current pain reportedly began September 2003. Your last attendance with [Appellant's chiropractor #1] was March 2003 and there is no medical evidence showing that you had ongoing problems between these two appointments.
>
> I trust in [MPIC's chiropractor's] opinion that there is an implausibility of pain moving to a previously asymptomatic area and I have not seen any medical evidence to the contrary.
>
> During your review hearing, you told me that you did not seek treatment in [text deleted] because you thought that MPI would not pay out of province expenses. When you found out that treatment related to the accident would be funded, you sought treatment right away. This, however, does not substantiate that you had any ongoing problems until the reported problems in September 2003. Therefore, I am confirming your case manager's decision and dismissing your Application for Review.

Appeal

The Appellant filed a Notice of Appeal. The appeal Hearing took place on January 21, 2005 and the Appellant appeared on her own behalf and Mr. Mark O'Neill represented MPIC.

The relevant provisions of the MPIC Act are Sections 81(1)(a), 83(1)(a), 110(1)(a), 136(1)(a)

and Section 5(a) of Manitoba Regulation 40/94:

> **Full-Time Earners**
> **Entitlement to I.R.I**.
>
> 81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:
> (a) he or she is unable to continue the full-time employment;
>
> **Temporary Earners and Part-Time Earners**
> **Entitlement to I.R.I. for first 180 days**
> 83(1) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:
> (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred;
>
> **Events that end entitlement to I.R.I.**
> 110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:
> (a) the victim is able to hold the employment that he or she held at the time of the accident;
>
> **Reimbursement of victim for various expenses**
> 136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
>
> **Manitoba Regulation 40/94**
> **Medical or paramedical care**
> **5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
> . . .
>
> (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The Appellant, in her submission to the Commission, submitted that as a result of the motor vehicle accident she had suffered injuries to her back which required her, on a regular basis, to

receive massage therapy. She further submitted that this therapy was essential in order to reduce her back pain and to maintain her quality of life.

MPIC's legal counsel submitted that the Appellant had not established, on a balance of probability, that there was a connection between her current medical complaints and the injuries she sustained from the motor vehicle accident. MPIC's legal counsel reviewed [Appellant's chiropractor #1's] chiropractic report to MPIC dated November 6, 2002 which indicated that [Appellant's chiropractor #1] had treated the Appellant with respect to her soft tissue injuries which arose from the motor vehicle accident of October 5, 2002 and that in his view she was capable of returning to work for three hour shifts over the next two weeks.

The MPIC's legal counsel further submitted that:

1) On February 6, 2003 the case manager informed the Appellant that since she had left her employment she was no longer entitled to IRI and that MPIC would no longer be reimbursing her for chiropractic treatments at that time.
2) MPIC did not hear from the Appellant until they received [Appellant's chiropractor #2] report of December 10, 2003 when [Appellant's chiropractor #2] made a diagnosis of an acute and severe thoracolumbar pain.
3) The Appellant's complaints to [Appellant's chiropractor #2] were very different from the complaints that the Appellant had made to [Appellant's chiropractor #1] who had initially examined her after the motor vehicle accident.
4) There was a significant lapse of time, approximately twelve months, between the injuries the Appellant sustained in the motor vehicle accident on October 5, 2002 and her complaints to [Appellant's chiropractor #2].

5) [Appellant's chiropractor #2], in his reports, indicated that the area of injury that the Appellant complained about to [Appellant's chiropractor #1] on November 6, 2002, approximately 1 month after the motor vehicle accident, was a very different area of injury she complained about to [Appellant's chiropractor #2] on November 24, 2003, approximately twelve months later.

Discussion

The Commission agrees with MPIC's submission that:

1) the area of injury the Appellant complained about to [Appellant's chiropractor #2] on November 24, 2003 (a period of twelve months after the motor vehicle accident) is very different from the area of the injury that she complained about to [Appellant's chiropractor #1] on November 6, 2002 approximately one month after the motor vehicle accident.
2) this complaint is not causally connected to the motor vehicle accident.

The Commission agrees with [MPIC's chiropractor's] comments as set out in his memorandum dated May 10, 2004 wherein he stated:

> The medical evidence reviewed does not convince me that the condition that [Appellant's chiropractor #2] is treating is related to the motor vehicle accident. [Appellant's chiropractor #2's] description is of pain building from September 2003 culminating in attendance for care in November 2003. The period of time between her last attendance with [Appellant's chiropractor #1] and attendance with [Appellant's chiropractor #2] has no medical documentation to substantiate the claimant's ongoing problems. Based on the medical documents reviewed, my opinion has not changed. In summary, my opinion is that [the Appellant's] attendance for chiropractic is, at this time, unrelated to the effects of the motor vehicle accident.

It is for these reasons the Commission rejects the medical opinion of [Appellant's chiropractor #2] and prefers the medical opinion of [MPIC's chiropractor] on the issue of causation.

Decision

The Commission therefore finds that the Appellant has failed to establish, on a balance of probabilities, that the medical condition diagnosed by [Appellant's chiropractor #2] on November 24, 2003 is connected to the motor vehicle accident which occurred on October 5, 2002. As a result, the Commission rejects the Appellant's request for reinstatement of IRI benefits and reimbursement for chiropractic care after December 12, 2003. The Commission therefore confirms the decision of the Internal Review Officer, dated May 19, 2004, and dismisses the Appellant's appeal.

Dated at Winnipeg this 27th day of January, 2005.

MR. MEL MYERS, Q.C

MARY LYNN BROOKS

DR. PATRICK DOYLE