Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-137

PANEL:	**Ms Yvonne Tavares, Chairperson** **Ms Lorna Turnbull** **Mr. Neil Margolis**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Darlene Hnatyshyn of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.**
HEARING DATE:	**April 16, 2009**
ISSUE(S):	**Whether the Appellant is entitled to reimbursement of expenses for chiropractic care beyond March 11, 2004.**
RELEVANT SECTIONS:	**Section 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, [text deleted], was involved in a motor vehicle accident on November 30, 2001. While the Appellant was stopped, waiting for a pedestrian to cross in front of her vehicle, she was rear-ended by another vehicle, which had reversed into her vehicle. As a result of the accident, the Appellant complained of chronic headaches, neck pain, right shoulder girdle pain and back pain. Due to the injuries which the Appellant sustained in the motor vehicle accident,

she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

At the time of the accident, the Appellant had had continuous, longstanding and widespread headache and pain complaints (neck, back, shoulders, arms, fingers, legs) arising from accidents going back to 1987. She had undergone extensive and ongoing therapies for her various complaints.

The Appellant attended for chiropractic care in order to treat the injuries she sustained in the motor vehicle accident of November 30, 2001. In a decision dated March 12, 2004, MPIC's case manager advised the Appellant that further chiropractic treatment could not be supported as medically required in the management of her complaints. Accordingly, the Appellant would no longer be entitled to funding for chiropractic treatments as of March 12, 2004.

The Appellant sought an Internal Review of that decision. In a decision dated July 12, 2005, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer relied upon the report dated January 26, 2004 of [independent chiropractor], which was based upon a third party chiropractic examination of the Appellant conducted on January 20, 2004. In his report, [independent chiropractor] concluded that the Appellant had reached maximum therapeutic benefit and maximum medical improvement related to the injuries incurred in the accident of November 30, 2001. [Independent chiropractor] went on to say that ongoing passive interventions would likely be of little benefit to the Appellant. The Internal Review Officer agreed with [independent chiropractor's] assessment and his opinion and found that the Appellant no longer required chiropractic treatment as a result of the accident of November 30, 2001.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to reimbursement of expenses for chiropractic care beyond March 11, 2004.

Relevant Legislation:

Section 136(1)(a) of the MPIC Act provides that:

> **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;

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

> **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:
>
> (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant's chiropractic expenses should be reimbursed by MPIC beyond March 11, 2004 and that MPIC should continue to fund her ongoing chiropractic treatments. The Claimant Adviser argues that the motor vehicle accident of November 30, 2001 exacerbated the Appellant's pre-existing injuries and created new injuries, which still require chiropractic treatment. The Claimant Adviser contends that the Appellant's functional ability decreases without chiropractic care and the disruption in

chiropractic care leads to a deterioration in the Appellant's condition. The Claimant Adviser maintains that the Appellant requires periodic chiropractic care in order to maintain her level of function and provide her with the most consistent modality for relief of her pain.

The Claimant Adviser submits that [independent chiropractor's] report of January 26, 2004 based upon his third party chiropractic examination of the Appellant was flawed and should not be relied upon. In support of that position, the Claimant Adviser relies upon the testimony of the Appellant, wherein the Appellant denied telling [independent chiropractor] that she felt as good at that time as she was prior to the motor vehicle accident of November 30, 2001. In her testimony before the Commission, the Appellant vehemently denied making any such statement to [independent chiropractor]. Additionally, the Claimant Adviser notes that the Appellant had unresolved issues with [independent chiropractor] arising from a previous independent assessment and the Appellant wanted a different assessor. However, the Appellant felt coerced by her case manager to attend the examination with [independent chiropractor] and she did not have a choice to change to a different assessor. The Appellant also testified that throughout the examination by [independent chiropractor] she was subjected to condescending remarks by [independent chiropractor], she felt belittled by [independent chiropractor] and she was brought to tears during the examination. Based upon these concerns, the Claimant Adviser urges the Commission to dismiss [independent chiropractor's] report of January 26, 2004.

In support of her position that the Appellant continues to require ongoing chiropractic care, the Claimant Adviser relies upon the report dated February 2, 2009 of [Appellant's chiropractor], the Appellant's treating chiropractor. In his report, [Appellant's chiropractor] advises that the Appellant was not at maximum medical improvement as of March 11, 2004. [Appellant's chiropractor] also opined that there was clearly a medical requirement for episodic supportive

care in order to help keep the Appellant's symptomology from deteriorating to disabling levels during acute flare-ups of her condition. He reports that as a result of the withdrawal of care which the Appellant experienced after March 2004, she was not able to live a quality of life that she would be able to were supportive care provided. [Appellant's chiropractor] recommended ongoing supportive care at a frequency of 3 visits per month, as a result of the November 2001 motor vehicle accident, for the Appellant.

Based upon the findings and opinion expressed by [Appellant's chiropractor], the Claimant Adviser submits that the evidence supports that the Appellant requires ongoing supportive care as her condition deteriorates without treatment. As a result, the Claimant Adviser maintains that the Appellant's appeal should be allowed and that she is entitled to funding for chiropractic treatments beyond March 12, 2004.

MPIC's Submission:

Counsel for MPIC submits that chiropractic care beyond March 12, 2004 is not medically required for the Appellant. Counsel for MPIC maintains that two conditions must be met before MPIC becomes obligated to reimburse a claimant for medical expenses:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 2004; and
2. the treatments must be "medically required".

Counsel for MPIC submits that one of the key considerations in determining whether treatment "recommended, or already incurred" is "medically required" is whether there is any real likelihood that it will lead to a demonstrable improvement in (and, hopefully, resolution of) the condition of the patient. Counsel for MPIC submits that the overwhelming weight of the

evidence does not support the notion that the treatment provided since March 2004 meets this test. Objectively and subjectively, the condition of the Appellant differs little today from what it was in November 2001, and for many years prior to that.

With respect to the issue of whether the Appellant's ongoing chiropractic treatment meets the requirement of supportive care, counsel for MPIC maintains that the accepted definition of "supportive care" includes the following elements:

1. It is for patients who have reached maximum therapeutic benefit but fail to maintain it and, in fact, progressively deteriorate, when treatment is periodically withdrawn.
2. It applies after a trial of active and passive modalities of treatment, including rehabilitation and lifestyle modifications.
3. It is appropriate after alternative care options (including, but not limited to, home-based self-care) have been considered and attempted.
4. It is inappropriate when it interferes with other primary care, or where its risks (such as dependence on the caregiver, somatization, illness behaviour, and secondary gain) outweigh its expected benefits.

Counsel for MPIC relies upon the Inter-departmental Memorandum of [MPIC's chiropractor], chiropractic consultant to MPIC Health Care Services team, dated March 12, 2009. In [MPIC's chiropractor's] opinion, at least two of the four accepted criteria (objective evidence of deterioration following a discontinuation of care, and attempts at alternative care) have not been met. [MPIC's chiropractor] found that there was no objective evidence of deterioration in the Appellant's status with discontinuation of chiropractic treatment. He also found that there was no evidence that the Appellant satisfied the criterion of attempting alternate care. Counsel for MPIC therefore submits that the Appellant has not satisfied the tests for medical expenses

covered under Section 136(1)(a) of the MPIC Act and Section 5(a) of the Regulation, and that she has not satisfied the requirements for periodic, supportive chiropractic care. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for chiropractic treatment beyond March 12, 2004.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for chiropractic care beyond March 12, 2004.

Reasons for Decision:

As stated by counsel for MPIC, two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident on or after March 1, 2004; and
2. the treatments must be "medically required".

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that chiropractic treatments beyond March 11, 2004 satisfy either of those two conditions. The Appellant had a long history of pre-accident musculoskeletal complaints. Her present condition is virtually the same as what it was prior to the motor vehicle accident of November 30, 2001, and differs little from what it was for many years prior to that. Based upon the evidence before us, we are unable to conclude that her ongoing complaints relate to the relatively minor accident of November 30, 2001.

Secondly, we find that the Appellant has not established, on a balance of probabilities, that ongoing chiropractic treatments are medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. The Appellant's condition has remained virtually unchanged since March 2004 despite ongoing chiropractic care. The evidence before the Commission does not establish that ongoing chiropractic care improves the Appellant's condition. Additionally, we find that the Appellant has not met the criteria for supportive care. In this regard, we agree with the opinion of [MPIC's chiropractor], that there is no objective evidence of deterioration in the Appellant's status with discontinuation of chiropractic treatment. The report of [Appellant's chiropractor] dated February 2, 2009 did not provide adequate evidence of deterioration in care following a discontinuation of chiropractic treatment. Accordingly, we find that the Appellant is not entitled to reimbursement of expenses for chiropractic care beyond March 12, 2004.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated July 12, 2005 is confirmed.

Dated at Winnipeg this 8th day of June, 2009.

YVONNE TAVARES

LORNA TURNBULL

NEIL MARGOLIS