

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-105**

PANEL: Mel Myers, Q.C., Chairperson
Mr. Neil Cohen
Mr. Neil Margolis

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Cynthia Lau.

HEARING DATE: December 10, 2008

ISSUE(S): Entitlement to funding for chiropractic treatment benefits

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] was involved in a motor vehicle accident on March 6, 2004. The Appellant's personal physician, [text deleted], on January 20, 2004, approximately five weeks before the motor vehicle accident, had arranged for the Appellant to have an x-ray of her lumbar spine. An x-ray report from the [hospital] dated January 26, 2004 indicated:

Report Result:

Lumbar Spine:

Severe degenerative narrowing is noted involving the disc spaces from L3-S1 inclusively. Multilevel lower lumbar facet joint osteoarthritis is noted as well. No destructive lesions are recognized.

Impression:

Multilevel lower lumbar disc degeneration and facet joint osteoarthritis.

The case manager in a note to file dated March 21, 2005 indicated a telephone conversation with the Appellant in which she informed him that she had visited her personal physician, [Appellant's doctor], the previous week. As a result of her attendance at [Appellant's doctor's] office he arranged for a new x-ray of the Appellant's lumbar spine. An x-ray report from the [hospital] dated April 5, 2005 indicated:

Report Result:**LUMBAR SPINE**

There is a gentle lumbar scoliosis convex left. Severe degenerative disc disease is present involving L3-S1. The AP diameter of the spinal canal is diminished consistent with spinal stenosis.

The Appellant's chiropractor, [text deleted], reported that initially the Appellant commenced chiropractic treatments on November 8, 2004 in respect of a complaint relating to the soreness of her lower back, but did not report this injury to MPIC until March 21, 2005, approximately one year after the motor vehicle accident. On May 16, 2005, 14 months after the motor vehicle accident, [Appellant's chiropractor] submitted an Initial Health Care Report to MPIC and noted the Appellant's symptoms to be pain, tenderness and loss of mobility to her lower back. In this initial health care report [Appellant's chiropractor] stated that the Appellant had not received any chiropractic treatment from him.

In a note to file dated December 23, 2005 the case manager reported that [Appellant's chiropractor] had advised that the Appellant did not inform him about her motor vehicle accident until the month of May 2005.

On July 12, 2005 the case manager wrote to [Appellant's chiropractor] requesting him to provide a detailed narrative report regarding his diagnosis and his opinion on the role the motor vehicle accident had on the injuries he was treating the Appellant for.

[Appellant's chiropractor] provided a treatment plan to MPIC dated August 22, 2005. In this report [Appellant's chiropractor] recommended treatment at a frequency rate of one to two treatments a week and indicated he would reassess the Appellant after three months.

On August 5, 2005 the case manager wrote to [Appellant's doctor] and stated that based on [Appellant's doctor's] medical examination of the Appellant on March 29, 2004 he provide a narrative report setting out the diagnosis of the Appellant's injuries sustained in the motor vehicle accident. [Appellant's doctor] was also asked to comment as to the role the motor vehicle accident had on the Appellant's pre-existing conditions, if applicable.

[Appellant's chiropractor] provided a narrative report dated September 21, 2005. In this report [Appellant's chiropractor] indicated that:

1. The Appellant presented herself at his office complaining of lower back pain and tenderness with a general loss of mobility.
2. The Appellant reported that the back pain she felt was as a result of a motor vehicle accident which occurred on March 2, 2004.
3. His diagnosis was that the Appellant suffered an injury to the lumbar spine resulting from an acceleration/deceleration type force.

[Appellant's chiropractor] in this report did not provide the date the Appellant attended at his office complaining of back pain resulting from the motor vehicle accident.

In a note to file dated September 27, 2005 the case manager reported that:

1. He had contacted [Appellant's chiropractor's] office to determine the date that [Appellant's chiropractor] saw the Appellant.
2. He spoke to an employee of [Appellant's chiropractor's] [text deleted], who advised that the Appellant first attended [Appellant's chiropractor's] office on January 26, 2004 (approximately six weeks prior to the motor vehicle accident).
3. [Text deleted] further advised him that the Appellant attended chiropractic treatments on a regular and frequent basis thereafter.
4. [Text deleted] further advised him that the Appellant's file didn't list visits to [Appellant's chiropractor] in respect of the Appellant's MPIC claim until November 8, 2004.

In an interdepartmental memorandum dated September 30, 2005 the case manager reported that he had:

1. Contacted the Appellant and advised that he was still waiting for a report from [Appellant's doctor].
2. Advised the Appellant that [Appellant's doctor's] telephone line had been busy for several days.
3. The Appellant had advised him that it was very hard to get through to the doctor and that she would try to get a hold of him as well.

The case manager provided [Appellant's chiropractor's] narrative report of December 21, 2005 to [MPIC's chiropractor], a chiropractic consultant with MPIC's Health Care Services. In a memorandum to MPIC dated November 1, 2005 [MPIC's chiropractor] stated the following:

There is insufficient information available to review to conclude that a causal relationship exists between the significant symptoms on presentation to [Appellant's chiropractor] and the effect of the motor vehicle accident. Low back pain is common in the general population. If further information becomes available please forward for further review.

Case Manager's Decision

The case manager issued a decision letter dated November 2, 2005 reflecting [MPIC's chiropractor's] opinion and stated:

As discussed, this confirms our decision regarding [Appellant's chiropractor's] request for further treatment as outlined in his report of August 22, 2004.

That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information reviewed indicates that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of March 2, 2004. Therefore, we are unable to approve funding of the requested treatment.

The case manager wrote to [Appellant's chiropractor] on November 2, 2005.

According to the billings you have presented to us, you had initiated treatment with this individual on November 8, 2004, but your billing was not received by office (sic) until June 3, 2005. Your office had been contacted on June 15, 2005, and you had been advised that treatment had **not been approved**, as we were waiting for additional information from [the Appellant] and the file would be reviewed to determine if treatment would be extended to her. [The Appellant] saw her medical practitioner on March 29, 2004, and approximately 7 ½ months later was in first contact with yourself.

The entire file has been reviewed by myself and our Health Care Services Department and Manitoba Public Insurance has not accepted [the Appellant's] claim for injuries relating to the November 2, 2004, motor vehicle accident. Therefore, Manitoba Public Insurance is not accepting the cost for treatment provided to [the Appellant].

In a note to file dated November 20, 2005 the case manager reported a telephone discussion with the Appellant wherein she inquired why MPIC was not approving her claim to be reimbursed for her chiropractic expenses. The case manager replied:

Explained that based on the information that we received we could not find a causal relationship between the signs and symptoms and the MVA. Also explained that she did not see chiro for 8 months after the accident.

She advised that both [Appellant's chiropractor] and [Appellant's doctor] told her that her injuries were definitely caused by the accident. She stated that they both took X-rays from her. She did not go for treatment right after the accident because she did not feel that anything was wrong but then started having pain after a while. (underlining added)

The case manager further reported to the Appellant that attempts to contact [Appellant's doctor] to obtain a narrative report were unsuccessful. The Appellant indicated that she intended to see [Appellant's doctor] the next day and discuss with him about a report being sent in to MPIC.

In a note to file dated December 5, 2005 the case manager reported a telephone discussion with the Appellant wherein:

1. The Appellant advised that she saw [Appellant's doctor] on Thursday or Friday of the previous week and that he should have sent in a report.
2. The case manager advised the Appellant that no report had been received from [Appellant's doctor].
3. The case manager further reported:

She inquired again why we are not covering her treatments. Explained that based on the information we had we could not relate the injury to the accident.

She stated that she had some pain after the accident but that she just kept taking Tylenol 3's and that after a few months the pain did not go away and she thought that something must be wrong, that is when she went to the chiro and started treatment. (underlining added)

In a note to file dated December 19, 2005 the case manager reported a telephone conversation with [Appellant's chiropractor] and reported that:

1. [Appellant's chiropractor] had contacted the case manager in respect of his concern that MPIC would not be paying him for the chiropractic treatments he had provided to the Appellant.
2. He had advised [Appellant's chiropractor]:

The Initial Report he provided was based upon an examination of November 8, 2004 yet not provided to us till May 16, 2005. He advised this was because the claimant did not advise him of the car accident till then. He was treating her however he advised it was difficult to communicate with her as English is her second language.

The accident was on March 2, 2004 the claimant did not open the claim until over one year later on March 17, 2005. On March 21, 2005 we verbally advised the claimant that we would only fund the initial assessment & would review with HCST once the initial report was received. [Appellant's chiropractor] took issue to this stating that the claimant did not understand English very well. (underlining added)

In a memo to file dated December 23, 2005 the case manager reported a telephone discussion with [Appellant's chiropractor] in respect of chiropractic funding and stated:

His major contention is that we never advised in writing that we would not be funding the chiropractic treatment he was providing until our letter of November 2005. Also the claimant he advised was not advised this till the decision letter of the same date.

I reviewed the file with him & provided him the following:

The Initial Report he provided was based upon an examination of November 8, 2004 yet not provided to us till May 16, 2005. He advised this was because the claimant did not advise him of the car accident till then. He was treating her however he advised it was difficult to communicate with her as English is her second language. (underlining added)

The accident was on March 2, 2004 the claimant did not open the claim until over one year later on March 17, 2005. On March 21, 2005 we verbally advised the claimant that we would only fund the initial assessment & would review with HCST once the initial report was received. [Appellant's chiropractor] took issue to this stating that the claimant did not understand English very well. (underlining added)

The Appellant's application for review was filed on December 30, 2005.

Internal Review Officer's Decision

On April 10, 2006 the Internal Review Officer issued her decision rejecting the Appellant's application for review and confirming the case manager's decision.

The Internal Review Officer in her decision stated:

DISCUSSION AND RATIONALE FOR DECISION

There are two conditions which must be met before Manitoba Public Insurance becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:

1. The expenses must have been incurred because of the accident (i.e. the treatments must have been directed towards an injury sustained in the accident) in accordance with Section 136(1)(a) of the *Manitoba Public Insurance Corporation Act* (copy enclosed);
2. The treatments must have been "medically required" in accordance with Section 5 of Manitoba Regulation 40/94 (copy enclosed).

The medical information on your file lacks objective evidence supporting your current symptoms as related to the motor vehicle accident, and I am also not convinced that the proposed chiropractic treatment is "medically required" within the meaning of the PIPP legislation. In your circumstances, not only does your file lack objective evidence supporting your current symptoms as related to the motor vehicle accident, but I am also not convinced that the proposed chiropractic treatment is medically required eight months post-accident.

Since the medical information on your file (including the x-ray report completed in January of 2004 indicating severe degenerative narrowing involving the disc spaces from L3 to S1 inclusively) supports that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of March 2, 2004, I must confirm your case manager's decision.

In my opinion, Manitoba Public Insurance does not have an obligation to fund chiropractic treatment as outlined in [Appellant's chiropractor's] report.

Appeal

The Appellant filed a Notice of Appeal dated June 23, 2006. The relevant provisions of the MPIC Act and Regulations are:

1. Sec. 136(1) of the MPIC Act which states:

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

2. Section 5 of 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:

- (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...

The appeal hearing took place on December 10, 2008. Cynthia Lau represented MPIC and the Appellant appeared on her own behalf.

The Appellant testified at the hearing that the motor vehicle accident which occurred on March 6, 2004 caused soreness and stiffness to her back. She further testified that:

- 1. She treated her back pain by taking Tylenol 3's, but after a period of time the back pain continued and she therefore attended [Appellant's chiropractor's] office for chiropractic treatment.

2. For this reason there was a delay of eight months in seeing [Appellant's chiropractor] for chiropractic treatments to her lower back until November 8, 2004.
3. The delay in making an application to MPIC for reimbursement of chiropractic treatments approximately one year after the motor vehicle accident in March 2005 was because it wasn't until she drove by the location where the motor vehicle accident had occurred that she then realized that her back pain was caused by the motor vehicle accident.
4. As a result, at that time she made a claim for reimbursement of the cost of chiropractic treatments to MPIC.

She further testified that:

1. The Commission should rely on the report of [Appellant's chiropractor], who diagnosed that she had suffered a motor vehicle accident injury to her lumbar spine resulting from an acceleration/deceleration type force.
2. She requested that the Commission allow her appeal and order MPIC to reimburse [Appellant's chiropractor] for the chiropractic costs in respect of treating her back pain.

MPIC's Legal Submission

MPIC's legal counsel submitted that:

1. X-ray reports in respect of the Appellant's lower back were taken both shortly before and after the motor vehicle accident and both indicated severe degenerative narrowing involving the disc spaces in her lower back.
2. This pre-existing condition was the cause of the Appellant's back pain and not the motor vehicle accident.

3. The Appellant had not attended chiropractic treatments in respect of her back pain until November 8, 2004, approximately eight months after the motor vehicle accident, and did not report her injury to MPIC until March 21, 2005, approximately one year after the motor vehicle accident.
4. The Commission should accept the chiropractic opinion of [MPIC's chiropractor], who after reviewing [Appellant's chiropractor's] report, concluded that there was insufficient information available to conclude a causal relationship between the complaints of lower back pain reported by [Appellant's chiropractor] and the effect of the motor vehicle accident.
5. The proposed chiropractic treatments were not medically required within the meaning of Section 5 of Manitoba Regulation 40/94.
6. The Appellant had failed to establish on a balance of probabilities that pursuant to Section 136(1)(a) of the MPIC Act there was a causal relationship between the Appellant's complaints of lower back pain and the motor vehicle accident.
7. As well, the Appellant had failed to establish on a balance of probabilities pursuant to Section 5 of Manitoba Regulation 40/94 that the proposed chiropractic treatments suggested by [Appellant's chiropractor] in his treatment plan were medically required within the meaning of this Regulation.
8. The Commission should therefore confirm the decision of the Internal Review Officer dated April 10, 2006 and dismiss the Appellant's appeal.

Discussion

The Appellant testified that she first saw [Appellant's chiropractor] on November 8, 2004, approximately eight months after the motor vehicle accident, for chiropractic treatments with

respect to her motor vehicle accident. However, in a note to file dated September 27, 2005 the case manager reported that:

1. He had contacted [Appellant's chiropractor's] office to determine the date that [Appellant's chiropractor] first saw the Appellant.
2. He spoke with an employee of [Appellant's chiropractor's] [text deleted], who advised that the Appellant first attended [Appellant's chiropractor's] office on January 26, 2004 for chiropractic treatments and thereafter attended on a regular and frequent basis to receive chiropractic treatments from [Appellant's chiropractor].
3. [Text deleted] further advised him that the Appellant's file did not list the existence of an MPIC file until November 8, 2004.

The Commission notes that the information contained in the case manager's report contradicts the Appellant's testimony that she attended [Appellant's chiropractor's] office to obtain chiropractic treatments in respect of her back pain relating to the accident on November 8, 2004, approximately eight months after the motor vehicle accident. The Commission accepts the report of [Appellant's chiropractor's] employee, [text deleted], that the Appellant first attended [Appellant's chiropractor's] office on January 26, 2004, approximately seven or eight weeks before the motor vehicle accident, complaining about pain to her lower back. The Commission further finds she received chiropractic treatments from [Appellant's chiropractor] not only before the motor vehicle accident but also after the motor vehicle accident and well before November 8, 2004, as testified to by the Appellant.

The Commission notes the case manager attempted to obtain medical reports from [Appellant's doctor], the Appellant's personal physician. [Appellant's doctor] unfortunately did not respond to provide these reports. The Commission, however, finds that there was evidence which

established that the Appellant did see [Appellant's doctor] in respect of her lower back pain prior to seeing [Appellant's chiropractor] on January 26, 2004. In a note to file dated November 30, 2005 the case manager reported that in a telephone conversation with the Appellant, she advised him that [Appellant's doctor] had obtained x-rays relating to her lower back. A copy of this x-ray report was obtained by MPIC and indicated that the x-ray was taken on January 20, 2004 at the [hospital] at the request of [Appellant's doctor]. This x-ray report indicated that the Appellant suffered a severe degenerative narrowing to the disc spaces L-3 to S-1 which is the area of the Appellant's lower back. The Commission concludes that prior to January 20, 2004 she attended at [Appellant's doctor's] office complaining about pain to her lower back, and as a result [Appellant's doctor] ordered the January 20, 2004 x-ray. The Commission finds that the existence of a severe degenerative narrowing of her disc spaces from L-3 to S-1 would have caused her back pain.

The Commission concludes that subsequent to seeing [Appellant's doctor] she attended at [Appellant's chiropractor's] office on January 26, 2004 for chiropractic treatments to her lower back and these treatments continued prior to and after the motor vehicle accident. The Commission therefore rejects the Appellant's testimony that she first saw [Appellant's chiropractor] to obtain chiropractic treatments with respect of her lower back pain complaints on November 8, 2004.

The Appellant testified that the reason for her delay in filing a claim with MPIC until one year after the motor vehicle accident was caused by self-medication with Tylenol 3's to control her lower back pain. She further testified that the back pain did not abate and as a result she saw [Appellant's chiropractor] on November 8, 2004. This testimony is contradicted by the

Appellant's discussion with the case manager. In a note to the file dated November 20, 2005 the case manager reported a telephone discussion with the Appellant wherein she indicated that:

1. She did not go for treatment right after the accident because she did not feel that anything was wrong.
2. When she started having back pain, it was at that time she commenced to see [Appellant's chiropractor].

The Commission finds that these two explanations for the delay are contradictory and the Commission rejects both explanations as to why the Appellant didn't file a claim with MPIC until one year after the motor vehicle accident.

The Commission finds that there were a number of serious contradictions in the testimony of the Appellant and the Commission is unable to accept her submission that she was entitled to be reimbursed in respect of her chiropractic treatments on the grounds that her back pain was caused by the motor vehicle accident.

[Appellant's chiropractor], in his initial health care report to MPIC dated May 21, 2005, indicated that the Appellant did not receive any chiropractic treatments prior to November 8, the date of his examination. The Commission finds that this statement contradicts the information that [Appellant's chiropractor's] employee, [text deleted], provided to the case manager. In a note to the case manager's file dated September 27, 2005, [text deleted] advised the case manager that the chiropractic treatments had commenced on January 26, 2004, which was approximately seven or eight weeks prior to the motor vehicle accident, and that these chiropractic treatments continued after the motor vehicle accident.

The Commission further notes that filed in evidence were chiropractic billing reports provided by [Appellant's chiropractor] to MPIC for the period between November 2004 to November 2005. This evidence corroborates the statements of [Appellant's chiropractor's] employee, [text deleted], who advised the case manager in his note to file September 27, 2005 that although the Appellant first attended [Appellant's chiropractor's] office on January 26, 2004, the Appellant's file did not list visits to [Appellant's chiropractor] with respect to the Appellant's claim until November 8, 2004.

It is significant to the Commission that [Appellant's chiropractor], in providing his narrative report to MPIC in a letter dated September 21, 2005, did not indicate the date when he first saw the Appellant in respect of her receipt of chiropractic treatments for her lower back pain.

For these reasons the Commission rejects [Appellant's chiropractor's] position that he first treated the Appellant in respect of her lower back pain on November 8, 2004.

In notes to file dated December 19 and December 23, 2005 the case manager reported two telephone discussions with [Appellant's chiropractor] relating to the non-payment by MPIC of his chiropractic treatments. The case manager reported that [Appellant's chiropractor] advised him that the delay in providing a Primary Health Care Report to MPIC until May 16, 2004 was because the Appellant did not advise him of the car accident until that time. He further advised the case manager that it was difficult to communicate with the Appellant in English because that was her second language, and that the Appellant did not understand English very well.

The Commission finds that the Appellant testified at the hearing in English and communicated very effectively in the English language. She was able to express herself clearly, understood

questions put to her by the Commission and MPIC's legal counsel and responded in a clear and rational fashion to these questions. The Commission, therefore, disagrees with [Appellant's chiropractor] that the Appellant would have difficulty communicating in the English language.

It is interesting to note that the Commission did ask the Appellant what her native language was and she indicated that it was the [text deleted] language. In response to a further question by the Commission she advised that she had always communicated with [Appellant's chiropractor] in the [text deleted] language and not in the English language.

The Commission is also troubled by the failure of [Appellant's chiropractor] to report that he had treated the Appellant in respect of her back pain approximately seven or eight weeks before the motor vehicle accident and continued the treatments after the motor vehicle accident. The Commission rejects [Appellant's chiropractor's] statement that he first treated the Appellant in respect of her lower back pain on November 8, 2004, approximately eight months after the motor vehicle accident had occurred.

Having regard to the contradictions in the reports provided by [Appellant's chiropractor] to MPIC and in his discussions with the case manager, the Commission gives greater weight to the chiropractic opinion of [text deleted], MPIC's chiropractor consultant, than it does to the chiropractic opinion of [Appellant's chiropractor] as to the causal relationship between the Appellant's lower back pain and the motor vehicle accident. The Commission also agrees with the opinion of [MPIC's chiropractor] that there was insufficient information provided by [Appellant's chiropractor] in his narrative report to conclude that there was a causal relationship between the Appellant's complaints of her back pain and the effects of the motor vehicle accident.

[MPIC's chiropractor] in his report to MPIC dated September 21, 2005 states that low back pain is common to the general population. The Commission finds that the low back pain that the Appellant complained of was not due to the motor vehicle accident but due to a pre-existing condition.

Decision

Upon a consideration of the documentary evidence filed at the appeal hearing and the testimony of the Appellant, the Commission determines that the Appellant has not established on a balance of probabilities that there was a causal relationship between her lower back pain and the motor vehicle accident. The Commission also finds that the proposed chiropractic treatments recommended by [Appellant's chiropractor] approximately eight months after the motor vehicle accident were not medically required pursuant to Section 5 of Manitoba Regulation 40/94. The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated April 10, 2006.

Dated at Winnipeg this 19th day of January, 2009.

MEL MYERS, Q.C.

NEIL COHEN

NEIL MARGOLIS