Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-159

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Mary Lynn Brooks** **Mr. Paul Johnston**
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. Morley Hoffman.**
HEARING DATE:	**October 6, 2009**
ISSUE(S):	**Entitlement to funding for chiropractic treatment benefits beyond July 15, 2005**
RELEVANT SECTIONS:	**Sections 136(1)and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 and Section 10(1)(e) 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 injured in a motor vehicle accident on December 9, 2003. She began chiropractic treatment with [Appellant's chiropractor] on December 10, 2003. MPIC funded approximately 71 chiropractic treatments up to and including July 5, 2005.

On May 10, 2005, the Appellant attended for a third party examination with another chiropractor, [independent chiropractor]. He recommended that the Appellant should be

assessed by an oral surgeon and have a trial of myofascial therapy, with care continuing with her chiropractor, [Appellant's chiropractor] until such time as alternate therapeutic initiatives were in place, for a short transition period of approximately one month.

The Appellant also began a course of Active Release Technique therapy and tried treatment with [Appellant's doctor], which she did not continue.

The Appellant's case manager wrote to her on June 6, 2005 advising that she would receive chiropractic care at a frequency of one treatment per week for six weeks, until July 15, 2005 when a full and final discharge from chiropractic care would be expected.

Her case manager wrote to her again on November 23, 2005, confirming that Manitoba Public Insurance would not consider the cost of additional chiropractic treatment beyond July 15, 2005.

The Appellant sought Internal Review of this decision. On August 9, 2006, an Internal Review Officer for MPIC considered the Appellant's file, along with a report from [MPIC's chiropractor], chiropractic consultant with MPIC's Health Care Services team, dated July 6, 2006. [MPIC's chiropractor] noted that the Appellant's chiropractor did not provide subjective or objective evidence to support a reasonable expectation of ongoing improvements with the claimant's condition under further care and that there was no evidence on file to suggest that the claimant had had a therapeutic withdrawal from care such that she would qualify for supportive intervention.

The Internal Review Officer concluded that the Appellant had received extensive chiropractic treatments (76) as well as six physiotherapy treatments and eight Active Release Technique

treatments. She concluded that it was highly unlikely that further chiropractic treatment would result in a demonstrable improvement. The Appellant did not meet the criteria for supportive chiropractic care which required an objective demonstration that the proposed treatment has a palliative effect with respect to the claimant's signs and symptoms and an objective demonstration that lack of a proposed treatment results in a deterioration of the claimant's signs and symptoms.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

Counsel for the Appellant took the position that the Appellant met the criteria for supportive chiropractic care.

The Appellant testified at the hearing into the appeal. She described the motor vehicle accident and her position in the vehicle at the time of the accident. She described the development of her symptoms, such as headache and stiffness and her difficulties in continuing with her work and other responsibilities, while dealing with this pain. She described her attempts at alternate treatment modalities, as well as exercise and the use of heat, ice and stretching. The Appellant testified that when she attempted therapeutic withdrawals from chiropractic care, for periods between four and six weeks, she suffered from an inability to get out of bed, trouble breathing, a locked-up back, and headaches. In her view, she required a chiropractic treatment approximately every three weeks to "keep things at bay".

Counsel for the Appellant submitted that this description by the Appellant showed what periodic, episodic chiropractic care does for her. It assists with her rehabilitation by lessening her

disability and facilitating her return to as normal a life as possible so that she can fulfill her daily responsibilities both at home and at work.

The appellant has attempted other treatment modalities and not found them to be effective. She had tried to do without chiropractic care, but assessments prior to and after the trials showed increases in her symptoms. Only the combination of massage therapy and chiropractic care worked for her.

On May 29, 2009, [Appellant's chiropractor] noted:

> "Assessments were performed prior to and after periods of "therapeutic withdrawal from care". Invariably, symptoms and discomfort increased after these periods of withdrawal from care. These included increased frequency and severity of headaches, paraspinal muscular tenderness and hypertonicity, decreased cervical, cervicothoracic and thoracic spinal mobility in all planes of movement, also to a somewhat lesser degree, although still significant, the lumbar and lumbosacral sacroiliac spinal areas exhibited increased pain and discomfort after therapeutic withdrawal from care.
>
> The November 16, 2007 to January 17, 2008 period would, I believe, be representative of the periods of therapeutic withdrawal from care. Following the withdrawal from care, the patient's normal spinal range of movement decreased 20 to 30 percent, in my opinion."

On September 2, 2009, [Appellant's chiropractor] noted:

> "Regarding assessments prior to and after periods of therapeutic withdrawal of care. The patient related that there was an increase in symptoms and discomfort following withdrawal of care.
>
> Assessments following withdrawal of care showed increased cervicooccipital, cervical, cervicothoracic and thoracic pain, as well as decreased range of motion generally. The range of motion decrease was estimated."

Counsel for the Appellant submitted that greater weight should be placed by the Commission on the Appellant's own caregivers' reports. [Appellant's chiropractor] has known the Appellant for over 20 years and has vast knowledge of her signs, symptoms and functional abilities over time. Counsel asked the Commission to rescind the Internal Review Decision and reimburse the

Appellant for costs she had incurred for supportive chiropractic treatments between July 15, 2005 and June 2008, with interest.

Evidence and Submission for MPIC:

Counsel for MPIC submitted that the Appellant had not met the established criteria for supportive chiropractic care.

Counsel relied on a lengthy and detailed review prepared by [MPIC's chiropractor], MPIC's chiropractic consultant with Health Care Services, dated July 2, 2009. [MPIC's chiropractor] noted that the Appellant had had over 100 chiropractic treatments between the motor vehicle accident and June 2005, but that her signs and findings remained unchanged or worse over time. Therefore, he concluded that little or no improvement in her condition would occur with time and significant chiropractic intervention and that she had reached the maximum benefit she could achieve from chiropractic treatment.

[MPIC's chiropractor] addressed the issue of supportive care:

> "With respect to supportive care, although it is clear that the claimant continued, throughout the claim, to suffer from complaints of neck pain, thoracic pain, and temporomandibular joint pain, there is little in the way of subjective or objective information to describe a necessity for supportive care. Specifically, although [Appellant's chiropractor] describes periods of therapeutic withdrawals from care in both 2005 and 2007, it is unclear what effect on the claimant's objective presentation this withdrawal of care had. There are no status inventories, no numeric pain scales, or specific range of motion findings or orthopaedic findings, nor are there any functional measures to quantify what effect the withdrawal of care had."

Counsel referred to the Commission's decision in [text deleted] (AC-05-137), where the Commission rejected the Appellant's appeal noting a lack of "objective evidence of deterioration in the Appellant's status with discontinuation of chiropractic treatment".

Although counsel for MPIC noted that [Appellant's chiropractor's] report talked about withdrawing care and the patient relating her symptoms and discomfort to him following this, his assessment only provided estimates, without any objective measurement, of the subjective effect on the Appellant of the withdrawal.

Counsel submitted that if [Appellant's chiropractor] had provided objective criteria it could be a different case before the panel. The chiropractor had more than enough opportunity to provide this, particularly in his report of September 2, 2009, which followed [MPIC's chiropractor's] reports.

Counsel submitted that the Appellant had not met the onus upon her of showing, on a balance of probabilities that the criteria for continuing supportive chiropractic care had been met in this case.

Discussion:

The MPIC Act provides:

> **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;
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> (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.

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Manitoba Regulation 40/94 provides:

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;

Rehabilitation expenses
10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

(e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

The onus is on the Appellant to show, on a balance of probabilities, that further supportive chiropractic care is medically required.

The panel has reviewed the evidence of the Appellant, the documents on the indexed file and the submissions of counsel. We find that the Appellant has failed to establish on a balance of probabilities, that further chiropractic care was medically required, even on a supportive basis.

Although the Appellant's caregiver provided his opinion that the Appellant requires further supportive chiropractic care, the Commission may require more than just the opinion of the treating practitioner that further care is required.

For example, in the Commission's decision in [text deleted] (AC-05-11), the Commission relied on the evidence of various caregivers, including the physiotherapist and the Appellant's pain psychologist, to satisfy the onus upon the Appellant of showing, on a balance of probabilities, that further physiotherapy treatment was required.

While the Appellant has provided several opinions from her treating practitioner, [Appellant's chiropractor], that further chiropractic supportive care is required, no reports have been provided from other caregivers to confirm or corroborate this opinion. On the contrary, [independent chiropractor] was asked to provide a third party assessment and indicated, in his report dated May 12, 2005, that the Appellant had derived maximal therapeutic benefit from her present forms of care, and that other approaches would need to be explored. He indicated that [Appellant's chiropractor] should continue chiropractic treatment only until such time as alternate therapeutic initiatives were in place, and only for a short transition period of approximately one month.

Further, as noted in the [text deleted] (AC-05-137) decision of the Commission, the criteria for supportive care requires objective evidence of deterioration in the Appellant's status with discontinuation of treatment. The report of [Appellant's chiropractor], like the report of [text deleted] in [text deleted], did not provide adequate objective evidence of deterioration in the Appellant's condition following the discontinuation of chiropractic treatment. While [Appellant's chiropractor's] report did contain some anecdotal reports of subjective pain and

estimates of function, this does not meet the standard required to establish an objective need for supportive care.

This lack of objective measurement was pointed out by MPIC's chiropractic consultant, [MPIC's chiropractor], on two occasions, yet [Appellant's chiropractor's] response to these comments, on September 2, 2009, still provided an assessment based only on subjective complaints and estimates. No further details were provided.

As [MPIC's chiropractor] noted once again, on September 14, 2009:

> "From an objective standpoint, there is no additional information contained, either in [Appellant's chiropractor's] narrative report, or in his difficult to interpret chart notes, to suggest that the claimant would meet the criteria for supportive care. In short, the more recent information submitted to me dated September 2, 2009 and under the signature of [Appellant's chiropractor] does not provide information to change my previously rendered opinion."

Therefore, the Commission finds that the Appellant has failed to provide sufficient objective or corroborative evidence to satisfy the onus upon her of showing, on a balance of probabilities, that further supportive chiropractic care is medically required beyond July 2005. Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated August 9, 2006 is confirmed.

Dated at Winnipeg this 4th day of November, 2009.

LAURA DIAMOND

MARY LYNN BROOKS

PAUL JOHNSTON