Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-33

PANEL:	**Ms Yvonne Tavares**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Darlene Hnatyshyn of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.**
HEARING DATE:	**May 27, 2010**
ISSUE(S):	**Entitlement to Reimbursement of Chiropractic Treatments from October 3, 2006 to February 1, 2008.**
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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted] was involved in a motor vehicle accident on May 26, 2005. As a result of that accident, the Appellant sustained multiple soft tissue injuries and bruising. Due to those injuries, the Appellant became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review Decision dated January 17, 2007, with respect to her entitlement to reimbursement of chiropractic treatments from October 3, 2006 to February 1, 2008.

On October 3, 2006, MPIC's case manager issued a decision which advised as follows:

> As discussed, [Appellant's Chiropractor #1's] report along with your entire medical file was reviewed with our Health Care Services Team and has indicated that you have reached your maximum therapeutic benefit and continued chiropractic care is not a "medical necessity". Therefore, Manitoba Public Insurance will not consider additional chiropractic treatment effective October 3, 2006. I am enclosing an appeal form at your request.

The Appellant sought an Internal Review of that decision. In a decision dated January 17, 2007, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical documentation on the file did not support further chiropractic treatment as a "medical necessity" or a medical requirement as a result of the motor vehicle accident of May 26, 2005.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of ongoing chiropractic treatments from October 3, 2006 to February 1, 2008.

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 submits that the Appellant's ongoing chiropractic treatment is medically required within the meaning of the PIPP legislation. She argues that the Appellant was diligent in her efforts to regain her health and function. However, the Claimant Adviser contends that the Appellant returned to her job too quickly after the motor vehicle accident. The Appellant's job duties were repetitive and continued to aggravate the injuries she sustained in the motor vehicle accident. The Appellant relied on chiropractic care in order to maintain her level of function as chiropractic care was the only treatment that allowed the Appellant to remain at work and maintain her level of overall functioning.

The Claimant Adviser also relies upon [Appellant's Chiropractor #2's] opinion, set out in his report of March 10, 2009, as follows:

> It is my opinion that [the Appellant] did not have appropriate time to heal initially following the accident (26 May 2005) due to a misdiagnosis of the severity and nature of the injuries she sustained. While it appeared that her symptoms had significantly decreased after receiving progressive and thorough treatment, her underlying problems remained latent. This should have been taken into account when assessing her case originally because of the special nature of her work, as it requires continual repetitive motion to the areas of injury.
>
> By the time [the Appellant] presented to our office, her diagnosis had become complicated due to the chronic nature of her injury. The episodic recurrence of her chronic injury is indicated as a medical requirement for supportive care. I felt that we couldn't stop treatments due to the chronic nature of her problems. During care, I feel she had reached maximum therapeutic benefit, yet needed supportive care to maintain those therapeutic benefits.

The Claimant Adviser submits that the Appellant's functional ability decreased without chiropractic care. She submits that the Appellant's own evidence that her function would deteriorate without chiropractic care meets the requirements for supportive care. Accordingly, the Claimant Adviser maintains that the Appellant required periodic chiropractic care in order to maintain her level of function and provide her with the most consistent modality for relief of her pain. As a result, the Claimant Adviser submits that the Appellant's appeal should be allowed and that she is entitled to funding for chiropractic treatments from October 3, 2006 to February 1, 2008.

MPIC Submission:

Counsel for MPIC submits that ongoing chiropractic care was not medically required for the Appellant beyond October 3, 2006. Counsel for MPIC argues that in order to determine the medical necessity of chiropractic treatment, it is necessary to demonstrate that an individual continues to enjoy sustained or progressive improvement that is ongoing and significant, or that the Appellant's condition deteriorates significantly in the absence of treatment. Counsel for MPIC notes that the Appellant's own testimony was that chiropractic care only provided temporary relief. As such, counsel for MPIC maintains that chiropractic care cannot be deemed medically required as there was no ongoing improvement in the Appellant's condition.

With respect to the issue of whether the Appellant's chiropractic treatment meets the requirement of supportive care, counsel for MPIC maintains that it must be demonstrated objectively that the lack of chiropractic treatment results in a deterioration of the claimant's signs and symptoms. Counsel for MPIC submits that the Appellant has not satisfied the criteria for supportive care as there is no objective evidence of deterioration in the Appellant's condition with a withdrawal of treatment and, in fact, there has been no withdrawal of treatment. As a result, counsel for MPIC

submits that the Appellant is not entitled to funding for chiropractic treatment from October 3, 2006 to February 1, 2008.

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 and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for chiropractic treatment from October 3, 2006 to February 1, 2008.

Reasons for Decision:

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, 1994; 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 treatment from October 3, 2006 to February 1, 2008 was 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 remained virtually unchanged during the relevant period, despite ongoing chiropractic care. In addition, the Appellant's own testimony was that chiropractic care provided only temporary relief. As a result, the evidence before the

Commission does not establish that ongoing chiropractic care improved the Appellant's condition.

Additionally, the Commission finds that the Appellant has not met the criteria for supportive care. There is no objective evidence of deterioration in the Appellant's status with a discontinuation of chiropractic treatment. There was no withdrawal of care for this Appellant. As a result, the Appellant has not established that there was deterioration in her symptoms without chiropractic treatment. Therefore, the Commission finds that the Appellant has not established that supportive care was medically required. Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of expenses for chiropractic care from October 3, 2006 to February 1, 2008.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated January 17, 2007 is confirmed.

Dated at Winnipeg this 16th day of June, 2010.

YVONNE TAVARES