Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-002

PANEL:	**Ms Yvonne Tavares, Chairperson** **Ms Linda Newton** **Ms Bobbi Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by Mr. Dan Joanisse of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.**
HEARING DATE:	**September 30, 2014**
ISSUE(S):	**Entitlement to reimbursement of chiropractic treatment expenses from May 5, 2008 to September 9, 2009.**
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 HEALLTH 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 August 1, 2007, when her vehicle was rear-ended. As a result of this accident, the Appellant sustained a soft tissue injury to her neck, back and shoulders, along with headaches. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, she 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 December 11, 2008, with respect to her entitlement to reimbursement of chiropractic treatment expenses from May 5, 2008 until September 9, 2009. Following the motor vehicle accident, the Appellant began chiropractic treatment with [Appellant's Chiropractor #1] on August 13, 2007. [Appellant's Chiropractor #1] noted in the Initial Chiropractic Report that there was no indication that Track II care may be necessary. On March 26, 2008, [Appellant's Chiropractor #1] submitted a Chiropractic Track II Report requesting ongoing chiropractic treatment for the Appellant.

The Appellant's file was reviewed by MPIC's chiropractic consultant. In his memorandum dated May 14, 2008, the chiropractic consultant noted the following:

> [The Appellant] has received over 40 chiropractic treatments since the date of loss, a period of time exceeding 9 months. Despite this she continues to report high pain levels and high self reports of disability. In my opinion this does not represent a positive response to chiropractic treatment. Because of this poor progress with a substantial trial of chiropractic treatment, in my opinion it is improbable that further chiropractic treatment will result in sustained or progressive improvement. For this reason she would be considered at maximal therapeutic benefit with respect to chiropractic treatment. Therefore further chiropractic treatment would be considered elective rather than medically required. Perhaps an alternate approach would provide more benefit.

On May 20, 2008, MPIC's case manager issued a decision letter advising that there was insufficient evidence to establish that the Appellant required treatment at a higher level than Track I, primary care treatment. The Appellant was therefore entitled to Track I chiropractic care only.

The Appellant sought an Internal Review of that decision. In an Internal Review decision dated December 11, 2008, 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 chiropractic treatment which the Appellant continued to receive was no longer a medical

necessity within the meaning of the PIPP legislation and that MPIC had no further obligation to provide funding for those treatments.

The Appellant appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of her outstanding expenses for chiropractic treatment from May 5, 2008 until September 9, 2009.

Relevant Legislation:

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

> 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 did sustain significant soft tissue injuries to her neck, shoulders and back as a result of the motor vehicle accident of August 1, 2007. The Claimant Adviser contends that ongoing chiropractic care was

necessary for the Appellant in order for her to manage her headaches and carry on with her studies. He maintains that the Appellant had not reached maximum therapeutic benefit as of May 5, 2008, when MPIC terminated reimbursement of her chiropractic expenses.

The Claimant Adviser argues that [Appellant's Chiropractor #1] felt that the Appellant required additional treatment and he submitted reports in support of that required care. The Claimant Adviser argues that the Appellant's condition steadily improved until September 2009 with the ongoing chiropractic care which she received from [Appellant's Chiropractor #1]. The Claimant Adviser maintains that the Appellant's recovery was not a result of the natural history of her condition, but rather a result of the chiropractic treatment that she received from [Appellant's Chiropractor #1].

The Claimant Adviser submits that MPIC's chiropractic consultant failed to properly consider all of the objective and subjective measures in the Appellant's case. He argues that the opinion of [text deleted] MPIC's chiropractic consultant, should be given little weight because he did not give adequate consideration to the Appellant's frequency of treatment. He submits that the evidence demonstrates a significant improvement in the Appellant's condition over time, although not as quickly as one would have liked.

In conclusion, the Claimant Adviser submits that the Appellant's ongoing chiropractic treatment was medically required and should be reimbursed by MPIC. As a result the Appellant's appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's injuries did not meet the guidelines for Track II chiropractic treatment. Track II chiropractic care generally requires that the Appellant be experiencing other specific conditions that may be delaying or complicating patient recovery. Counsel for MPIC submits that in this case, the Appellant had no other complicating conditions which would have delayed her recovery. Counsel for MPIC submits that the Appellant presented within the guidelines of Track I chiropractic care, which includes all common musculoskeletal disorders. She maintains that the majority of chiropractic care cases receive care under this track. Counsel for MPIC argues that the Appellant's case fell strictly within the guidelines for Track I chiropractic care and therefore 40 chiropractic visits was sufficient to treat her accident-related condition.

Counsel for MPIC also relies upon the opinion of MPIC's chiropractic consultant set out in his inter-departmental memorandum dated July 9, 2014, wherein he noted that:

> In summary, after the extensive treatment with [Appellant's Chiropractor #1], following termination of MPI benefits, there was no evidence of improvement in the claimant's condition. Specifically, when she presented to [Appellant's Chiropractor #2] in September 2009, her condition appeared to be very similar to her condition in the immediate post accident period. This supports the earlier conclusion that chiropractic treatment was not instrumental in improving the claimant's condition.

Counsel for MPIC submits that the Appellant has not discharged the onus of proof in the circumstances. She maintains that there is no medical evidence that Track II chiropractic care was required for this Appellant. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated December 11, 2008 should be confirmed.

Decision:

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 outstanding expenses for chiropractic treatment from May 5, 2008 until September 9, 2009.

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; and
2. the treatments must be "medically required".

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that ongoing chiropractic treatment was medically required. The Commission accepts the opinion expressed by MPIC's chiropractic consultant in his interdepartmental memorandum dated November 27, 2008 responding to a report of [Appellant's Chiropractor #1] based on an examination of the Appellant on November 3, 2008. In that memo, the chiropractic consultant notes that:

> The claimant appears to have improved. It is unclear the volume of chiropractic treatment that she has received in this interval. It is the natural history of soft-tissue injury to improve with the passage of time, although full resolution may or may not occur in specific cases of soft-tissue injury. The measuring stick for improvement with chiropractic treatment is a reduction in pain symptoms by at least 2/10 during a therapeutically relevant period, in most cases considered to be six to eight weeks. Regarding status inventories, a reduction of approximately five raw points or 10% is expected over a similar time frame. In both cases, because the time frame between measurement intervals was far greater than six to eight weeks, a greater improvement would be expected. The improvement reflected in the subsequent report submitted by [Appellant's Chiropractor #1] does not reflect significant improvement given the length

> of time between assessment and re-assessment. The improvement may reflect the natural history of the condition. There is no indication that chiropractic treatment was successful in helping to resolve these problems. Had chiropractic treatment been effective for her, one would have expected improvement in a far shorter time frame. Indeed, it may be that an alternate approach to care might have provided a far speedier recovery course.

The Commission is unable to conclude that the Appellant's recovery was as a result of ongoing chiropractic treatment, rather than the natural history of her soft tissue injury. We find that the Appellant has not met the onus of proof in the circumstances to establish that chiropractic treatment was medically required beyond May 5, 2008.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of ongoing expenses for chiropractic care from May 5, 2008 until September 9, 2009. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated December 11, 2008 is confirmed.

Dated at Winnipeg this 21st day of October, 2014.

YVONNE TAVARES

LINDA NEWTON

BOBBI TAILLEFER