

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-002**

PANEL: Ms Jacqueline Freedman, Chairperson
Ms Janet Frohlich
Dr. Sharon Macdonald

APPEARANCES: The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson;

HEARING DATE: April 22, 2014

ISSUE(S): Whether the Appellant is entitled to funding for further chiropractic treatment.

RELEVANT SECTIONS: Subsections 70(1) and 136(1) and section 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 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

Background:

The Appellant, [text deleted], was involved in a motor vehicle accident on July 12, 2008, in which she suffered various injuries. Following the accident, she consulted with several health care practitioners and underwent a variety of treatments, including chiropractic treatment. By an Internal Review decision dated October 31, 2011, MPIC advised the Appellant that additional

chiropractic treatments would not be funded. The Appellant disagreed with this Internal Review decision and filed this appeal with the Commission.

The issue which requires determination on this appeal is whether the Appellant is entitled to funding for further chiropractic treatment.

Decision:

For the reasons set out below, the panel finds that the Appellant is not entitled to funding for further chiropractic treatment at this time.

Opening Statements:

Counsel for each party made an opening statement at the outset of the hearing. Those statements will not be summarized here, as their content was reflected in the submissions of the parties, which will be dealt with below.

Evidence of the Appellant:

The Appellant testified at the hearing into her appeal. She stated that she is [text deleted]. She is self-employed and operates [text deleted] business, [text deleted]. She has no employees. She has been running this business for 26 years. She works six to eight hours a day and the work involves doing a lot of sewing, lifting and pulling with her hands.

The Appellant described herself as a healthy person prior to the accident with no symptoms. However, she did acknowledge that she had two prior motor vehicle accidents in 1989, for which she sought chiropractic care. She said that the last time she had chiropractic treatment was in

2006. She felt strong and healthy since 2007. She described herself as a workaholic and she was working and healthy prior to the accident in 2008.

Subsequent to the motor vehicle accident she was not able to continue to work to the same extent as prior to the accident. She had a lot of pain in her hands and also her back and neck. She believes that the accident affected her income. It now takes longer to do her work; she has had to turn down some jobs. She cannot use her hands as much, as she lost some strength. Her back and shoulder are in pain, especially her mid-back because she is bending over the table quite a bit.

After the motor vehicle accident in 2008 she went to her family doctor, who referred her to [text deleted] Physiotherapy. MPIC funded 40 physiotherapy visits and after that she went for athletic therapy. The physiotherapist referred her to [Appellant's Chiropractor #1]. She described an incident with an associate of [Appellant's Chiropractor #1], [Appellant's Chiropractor #2]. During a treatment session with [Appellant's Chiropractor #2] she believes he did a manipulation which caused her to have blurred vision.

She described the kinds of activities that would bring on all of her pain and other symptoms, including bending over the sink, shovelling, twisting, and cutting the grass. All of these activities give her pain and extreme headaches. When describing her sleeping habits, she indicated that she hardly sleeps, as her neck is very sore and she is always tossing and turning. There is a lot of pressure on her neck and although her neck feels better during the day, when she lays down this puts pressure on it so she tosses and turns a lot.

She suffers with pain every day although it is milder these days because she is now going to physiotherapy and yoga and receiving chiropractic treatment. She just started yoga in the summer and it seems to be helping. She is now seeing [Appellant's Chiropractor #3] for chiropractic treatments rather than [Appellant's Chiropractor #1]. The physiotherapy she is receiving is a new scapular stabilization program which she started in January, 2014. It is very helpful. It was difficult in the beginning, as she would get headaches, but she is doing a lot better. She is going to chiropractic treatments every two weeks. She said that athletic therapy stabilized some of her symptoms.

She noted that [Appellant's Chiropractor #3] was next door to [text deleted] Physiotherapy and was recommended by her athletic therapist. She started seeing him in January, 2011 and has continued to the present day. She said that [Appellant's Chiropractor #3] is much gentler than [Appellant's Chiropractor #1]. He does something called "NUCCA" adjustments to the neck to align the spine. This puts a very slight pressure on the neck and gets rid of really bad headaches. She said that her headaches had not resolved, although they are less frequent and milder in intensity than they used to be.

MPIC did not call any witnesses at the hearing; however, counsel did cross-examine the Appellant. Counsel for MPIC questioned the Appellant on how many chiropractic treatments she had received in total. The Appellant knew that MPIC paid for 40 treatments, although she didn't know in total how many she had paid for. Similarly, she was aware that MPIC had paid for 26 or 30 athletic therapy treatments and 26 or 30 physiotherapy treatments. She wasn't sure whether she had paid for any physiotherapy treatments on her own. She indicated that currently she is in the scapular stabilization physiotherapy program recommended by her doctor. This consists of 16 to 20 visits and is currently being paid for by the government.

MPIC questioned the Appellant on whether she had any broken bones as a consequence of the motor vehicle accident and she said not as far as she was aware, although she did say that she thought she had muscle injuries.

With respect to chiropractic treatments, the Appellant indicated that her last chiropractic treatment was the day before the hearing. She indicated that she didn't have specific appointments; rather, she said she went to chiropractic treatments when she had a bad night because of her neck or a bad headache. Counsel for MPIC asked the Appellant how many nights a week she is unable to sleep and she indicated every night. When asked why, she said due to neck pain and because her ribs are "popping out"; they are not in the proper place. She indicated that [Appellant's Chiropractor #3] did not give her a treatment plan as to how often he needs to see her, but rather he leaves it up to his patients to come in when they want to. In January, 2011 he did have such a plan for her but at this point he lets the Appellant schedule her own appointments. She comes in when she wants or when she absolutely has to. Counsel for the Appellant asked the Appellant to clarify her answer regarding whether or not she was able to sleep every night of the week. The Appellant indicated that she can't ever get a full night's sleep, as she tosses and turns all the time. When asked whether she does sleep, the Appellant said she guessed she must, but it didn't feel like it. She acknowledged that some nights are better than others. When asked on average how many good nights there are, the Appellant said none, she does sleep but she keeps waking up.

Submissions of the Parties:

The Internal Review decision of October 31, 2011 dealt with whether the Appellant was entitled to further chiropractic treatment. It specifically considered the issue of Track II funding and

denied such funding on the basis that the Appellant had sufficiently recovered in December, 2009 and stated that the “apparent worsening of [the Appellant’s] signs and symptoms are inconsistent with a trauma induced injury occurring one and a half years earlier”. However, developments on the file led the parties to slightly change their positions regarding the nature of the request for further chiropractic treatment and the nature of the denial for the funding of such treatment. Specifically, the Appellant requested funding for further chiropractic treatment of a supportive nature. At the hearing, counsel for MPIC indicated that MPIC does not dispute that the Appellant’s current injuries and symptoms were caused by the accident; rather, MPIC disputes that chiropractic treatment is medically required. The parties discussed these matters with the panel during the course of submissions and although the parties did address some portion of their submissions directly to matters covered in the Internal Review decision, we will summarize below only those matters directly related to the issues in dispute.

Submission of the Appellant:

The Appellant submits that she is entitled to funding for chiropractic treatment on a supportive basis. Counsel for the Appellant referred the panel to various medical and paramedical reports and other documents in the indexed file which support the Appellant’s position, some of which are highlighted below.

Counsel pointed to the chart notes of the [Appellant’s Doctor #1], from an appointment of September 13, 2011, in which [Appellant’s Doctor #1] wrote:

“Now attending chiropractor weekly to treat the muscle spasms in her neck. Also has upper back pain and rib pain which seems to be successfully treated with the chiropractic manipulations. If she goes without her manipulations develops pain such that she is unable to manage her work in reupholstery.”

[Appellant's Chiropractor #3] commented on the need for supportive chiropractic treatment in his report dated October 31, 2012:

"It is my opinion that [the Appellant] has reached maximum therapeutic benefit...

In my opinion, supportive chiropractic care would contribute to [the Appellant's] rehabilitation. As is seen in my clinic notes, her condition can deteriorate in as little as 1-2 weeks between treatments. Supportive care would also facilitate her return to a normal life by allowing her to function as a parent, and do her job as an upholsterer, with less pain and disability. In order for this to happen, I recommend 1 chiropractic treatment every 2 weeks."

[Appellant's Doctor #1], in making a referral for further physiotherapy treatment on November 20, 2012, stated:

"Excellent response to physiotherapy until now. Deteriorates if therapy stopped. This is a chronic condition, which will continue to need ongoing treatments long term."

A formal withdrawal from chiropractic treatment was undertaken for several weeks in the spring of 2013. [Appellant's Chiropractor #3], in his report regarding that withdrawal dated April 26, 2013 provided objective measurements of the Appellant's range of motion and palpatory findings before and after the withdrawal. He concluded:

"I believe you will find that during this period of withdrawal of treatment (Mar. 22, 2013 – April 14, 2013) [the Appellant's] condition did, in fact, deteriorate."

Counsel for the Appellant referred the panel to two cases from the Commission which looked at the issue of supportive chiropractic treatment, AC-08-115 and AC-05-054/12-075. Counsel submitted that the Appellant has met all the elements of the test required for supportive care: the Appellant has reached maximum medical benefit; her condition deteriorates over time in the absence of treatment; alternative approaches have been attempted without success (the physiotherapy that she is currently undergoing, counsel argued, is for her mid-back, while the chiropractic treatment is for her neck area and her ribs, and to help her sleep); and a home-based program of yoga is in place.

Counsel submitted that the evidence shows that the Appellant's complaints are consistent throughout the indexed file, and that she has complained of cervical strain and sprain, thoracic and lumbar strain and sprain, blurred vision and headaches. She has been compliant with all the treatment, which includes physiotherapy and athletic therapy as well as chiropractic treatments. She has been treated by two different doctors and two different physiotherapists but has not received any lasting relief with any of these treatments.

She has been paying for chiropractic treatment on her own since January 6, 2011. The Appellant is still in pain and requires chiropractic treatment in order to remain at work and to continue with her activities of daily living. For these reasons, it is submitted that the Internal Review decision of October 31, 2011 is wrong and should be overturned. The Appellant is not asking for Income Replacement Indemnity, just supportive chiropractic treatments every two weeks to allow her to work. She is also asking to be reimbursed for the chiropractic treatments she has already paid for and to be reimbursed for her travel expenses to and from those chiropractic appointments since January 2011.

Submission of MPIC:

Counsel for MPIC noted that the motor vehicle accident was July 12, 2008, being several years ago, at which time the Appellant was initially diagnosed with mild whiplash. By December 29, 2009, [Appellant's Doctor #1], noted that the Appellant "has good range of motion of the neck", although there was also "some tenderness at the base of the neck". By January 21, 2010, [Appellant's Doctor #1] noted in her chart:

"Full range of motion of the neck with no abnormalities but definitely tender at the insertion of the paracervical muscles, particularly on the right. Slight tension in the supraspinatous on both sides."

Counsel argued that the Appellant's condition had improved to the point where additional chiropractic treatment was of no benefit. He pointed to the report of [Appellant's Doctor #2] from the [text deleted] Clinic dated October 3, 2012, which states: "The duration of benefit with medication, chiropractic work and physiotherapy is short term."

The Appellant was sent for an independent chiropractic examination to [Independent Chiropractor], who provided his report on July 11, 2013. In his Evaluation Summary, [Independent Chiropractor] stated:

"...The benefits conferred by ongoing extensive treatment with [Appellant's Chiropractor #3] since 2011 and [Appellant's Chiropractor #1] before that have been partial, unsustainable beyond 48 hours, of no progressive or cumulative benefit, and devoid of curative value. For these reasons, chiropractic treatment is not established as a therapeutic or medical necessity going forward from the September 2011 date that is referenced. ...

In my opinion, [the Appellant] has not yet attained maximum medical improvement with her neck and headache symptoms. There is no established necessity for supportive chiropractic treatment and the criteria [for] such care are not fulfilled..."

Counsel submitted that as of July 11, 2013, the Appellant had received 140 chiropractic treatments, which he considered to be significant. Counsel argued that the treatment must prevent a worsening in the Appellant's condition, which does not seem to be the case here. He referred to the opinion from MPIC's Health Care Services team dated August 27, 2013:

"... improvement with treatment is short-lived, lasting 48 hours or less. Headache Disability Index score worsened between January 31 2011 and June 12 2013 from 40% to 60%. Neck Disability Index score worsened between October 19 2011 and June 12 2013 from 48% to 58%. This encompasses the period during which the claimant has attended her current chiropractor, with recent attendance approximating weekly."

MPIC relies on the report of its Health Care Services team and the report of the independent chiropractic examiner; [Independent Chiropractor] found that chiropractic treatments are not

medically required, and the test for supportive care is not met. Therefore, MPIC submits that the Internal Review decision should be upheld.

Reasons for Decision:

In order to qualify for entitlement to Personal Injury Protection Plan (“PIPP”) benefits, the onus is on the Appellant to establish, on a balance of probabilities, that she has suffered an injury caused by an accident within the meaning of subsection 70(1) of the MPIC Act. The Appellant must further establish that the treatments that she has received or wishes to receive are medically required. Counsel for MPIC has acknowledged that causation is not disputed in this case. Therefore, the only item in dispute is whether supportive chiropractic treatments are medically required.

Is Supportive Chiropractic Care Medically Required?

The relevant sections of the MPIC Act provide in part as follows:

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 ...

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.

The relevant provision of Manitoba Regulation 40/94 provides in part as follows:

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 onus is on the Appellant to show, on a balance of probabilities, that chiropractic treatment is medically required. As noted in the Commission's decision in AC-08-115 (referred to above), an accepted test for determining supportive care sufficient to establish a "medical requirement" for chiropractic treatment includes the following elements:

1. the initial treatment must provide a benefit and the claimant must be at a maximal medical benefit;
2. the condition deteriorates in the absence of a therapeutically relevant time frame;
3. the condition improves with the resumption of treatment;
4. alternative approaches have been attempted without success;
5. an appropriate home based program is in place; and
6. risks (especially reliance upon a passive treatment) are out-weighed by the benefits.

The Appellant argues that she has reached maximal medical benefit, as required by the first element of the test. The panel disagrees. [Independent Chiropractor] stated, as noted above, that the Appellant "has not yet attained maximum medical improvement with her neck and headache symptoms". [Independent Chiropractor] had an opportunity to review the Appellant's entire medical file; as well, he conducted two days of personal examinations and assessments of the Appellant. The panel prefers his evidence to that of [Appellant's Chiropractor #3], who did not have an opportunity to review all of the documentary evidence on the Appellant's file. The panel

accepts the conclusion of [Independent Chiropractor] on this point, that the Appellant had not reached maximal medical benefit and finds that the Appellant did not meet the first requirement of the above test.

[Independent Chiropractor] also recommended in his report of July 11, 2013, that “[the Appellant] can still potentially benefit from enrollment in a dedicated scapular stabilization rehabilitative exercise program followed by independent follow through and self-management”. In fact, [the Appellant] testified that she is currently enrolled in such a program and that she is continuing to achieve benefits from such treatment. Although counsel for the Appellant argued that the chiropractic treatments were aimed at something different than the physiotherapy treatments, we note that [Independent Chiropractor] recommended the scapular stabilization program to treat all of the Appellant’s current symptoms. Accordingly, the panel finds that the Appellant does not currently meet the required first element of the test for supportive chiropractic treatment; therefore, such care is not currently medically required.

However, the panel notes that MPIC acknowledges that the Appellant’s current symptoms and condition were caused by the accident. Therefore, at such time as the Appellant does reach maximal medical benefit, she is free to bring evidence of such improvement before her case manager. It is possible that the test for supportive chiropractic treatment may be met at that time.

Disposition:

Accordingly, based on the foregoing, the decision of the Internal Review Officer dated October 31, 2011 is upheld and the Appellant’s appeal is dismissed.

Dated at Winnipeg this 30th day of July, 2014.

JACQUELINE FREEDMAN

JANET FROHLICH

DR. SHARON MACDONALD