

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]  
AICAC File No.: AC-97-09**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C.  
Mrs. Lila Goodspeed

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC') represented  
by Mr. Keith Addison;  
[Text deleted], the Appellant, appeared in person  
represented by her father, [text deleted]  
[Appellant's mother], was also in attendance

**HEARING DATE:** April 17th, 1997

**ISSUE(S):** Appellant's entitlement to orthodontics - appropriateness and  
cost of treatment.

**RELEVANT SECTIONS:** Section 136 of the MPIC Act

**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 FACTS:**

[the Appellant] was [text deleted] years of age when, on January 23rd, 1995,  
travelling as a passenger she was involved in an automobile accident. As a result of that accident,  
she sustained a strained neck and back for which she received chiropractic treatment and injury to

her temporomandibular joints ('TMJ'). It is the appropriateness and cost of the proposed treatment for the TMJ damage that are at issue in this appeal.

There are three important factors that are matters of common ground between MPIC and the Appellant:

- (a) even prior to the accident, certain of [the Appellant's] teeth were either missing or misaligned. More specifically, her upper teeth on the right-hand side were too far forward, there was a slight over-eruption of her lower front teeth, four of her wisdom teeth and two of her lower side permanent teeth had been missing since birth and, partly if not completely as a result of the absence of those teeth, several of her posterior teeth behind the vacant spots were tilted out of normal alignment;
- (b) despite those malocclusions and vacancies, [the Appellant] had managed perfectly well prior to her accident, suffering neither pain nor discomfort nor any other noticeable ill-effects from those sources. Orthodontistry to correct those factors - most of which were congenital - might well have been desirable, but was not necessary;
- (c) her motor vehicle accident caused damage to her TMJ.

Very shortly after her motor vehicle accident, [the Appellant] consulted [Appellant's dentist], a dental practitioner in [text deleted]. [Appellant's dentist] prescribed and applied a form of splint therapy but, although he was able to achieve some sporadic reduction of [the Appellant's] pain, she was still experiencing periods of extreme discomfort, with loud clicking noises on opening and closing her jaw, and [Appellant's dentist] therefore referred her to [text deleted], a [text deleted] specialist in orthodontistry.

[Appellant's orthodontist's] diagnosis as it related to the motor vehicle accident was of a temporomandibular disorder involving an anteriorly displaced disc with reduction on the right and an unknown position of the left disc, a condition that he ascribed to [the Appellant's] motor vehicle accident of January 23rd, 1995. There was, he added, evidence of bruxism (that is to say, an involuntary grinding together of the upper and lower teeth) which he regarded as a complicating factor.

[Appellant's orthodontist] first arranged for a new and specially designed splint and this, for some while, appeared to produce reasonable success: use of that new splint commenced on October 11th of 1995 and, by December 20th, [the Appellant] reported that her pain and the clicking had disappeared and that she was not wearing the splint at all. [Appellant's orthodontist] attributes that success, at least in part, to the fact that the new splint provided a temporary increase in the vertical dimension of [the Appellant's] bite and that this, in turn, gave relief to the TMJs, especially the discs. [Appellant's orthodontist] remained of the view, however, that [the Appellant's] motor vehicle accident had caused some damage to the TMJ structures or had decreased the adaptability of the TMJs, or both. He felt that the resultant damage made orthodontic treatment advisable in order to correct the angle of the [the Appellant's] molars, to increase the vertical dimension and decrease the anterior overbite.

By mid-August of 1996 [the Appellant's] symptoms had returned. She had apparently been involved in a second motor vehicle accident on June 20th of 1996, but we have assumed that this played no material part in the return of her symptoms, no evidence having been

adduced to that effect. In any event, she recommenced wearing her splint and, by the end of October of 1996, appears to have regained the condition that she had achieved by December of 1995.

[Appellant's orthodontist] has recommended orthodontic correction of [the Appellant's] teeth, involving:

- (a) upper and lower braces for two years, in which context he notes that "[the Appellant's] cooperation in caring for her braces, in keeping appointments as scheduled, and wearing her elastics as instructed can modify the treatment time and success of her treatment";
- (b) upper and lower retainers for a minimum of two years following the removal of the braces. The retainers are designed to hold the teeth in their new positions and to minimize the persistent tendency of some teeth to move toward their original position;
- (c) following permanent removal of the retainers, the probable wisdom of replacing the two missing lower side permanent teeth.

[Appellant's orthodontist] confirmed the earlier advice that he had given to the [Appellant's] family, that appointments would occur every six weeks during active treatment and about every three months during the use of the retainers. He quoted a total fee for the orthodontistry of \$3,200.00, which would be all-inclusive unless it became necessary to replace lost or broken removable appliances.

[Appellant's orthodontist] expresses his opinion that, without the orthodontistry described above, [the Appellant] will need to use a splint for an indefinite period - perhaps, even, for the rest of her life, and so far as we could determine that view seemed to be shared by [text

deleted], the provincial dental consultant retained by MPIC. (We should, perhaps, add that both [Appellant's orthodontist] and [MPIC's dentist] are highly regarded members of [text deleted]. [Appellant's orthodontist] specializing in orthodontics and [MPIC's dentist] in prosthodontics.) These two experts appear to differ, for the most part, in the degree of optimism that each brings to the question whether the orthodontistry proposed by [Appellant's orthodontist] is or is not likely to effect a permanent cure of [the Appellant's] condition. [Appellant's orthodontist] says, in effect, that the orthodontistry will certainly correct the congenital defects described earlier in these reasons, that he cannot guarantee that the orthodontic treatment will necessarily correct [the Appellant's] temporomandibular disorder, but that the overall effect will be certainly beneficial in the context of that disorder and stands a very good chance of correcting the problem permanently.

[MPIC's dentist], for his part, expresses the view that a more conservative, non-invasive and reversible therapy should be tried first. By this, he means the continued use of the splint which appeared to produce at least temporary relief when applied by [Appellant's orthodontist] on the first and second occasions. [MPIC's dentist] feels that orthodontics for TMJ disorders is not an appropriate approach to the problem, and says that he can find no support for [Appellant's orthodontist's] position in the professional literature. As [MPIC's dentist] puts it "There is no significant difference between the results obtained from orthodontistry and those obtained from the use of other, less invasive and much less expensive procedures". He agrees that the motor vehicle accident undoubtedly caused the TMJ disorder, but merely takes issue with the proposed treatment. He agrees that the orthodontistry is certainly called for by reason of the dental problems, but not for the temporomandibular disorder.

[Appellant's orthodontist] agrees that the orthodontistry's purpose is, primarily, to fix [the Appellant's] teeth, but re-emphasizes that this work was only made necessary as a result of the TMJ disorder which, in turn, by common accord stems directly from the motor vehicle accident.

We have carefully considered not only all of the evidence presented to us but, as well, a paper on orthodontic treatment and temporomandibular disorders, prepared by Professor J. A. McNamara, Jr., of the University of Michigan, and a National Institutes of Health Technology Assessment Conference Statement on the management of temporomandibular disorders, to each of which we were referred by [MPIC's dentist]. The conclusion summarized in the National Institutes of Health paper is worth reproducing here. It reads as follows:

*"Consensus has not been developed across the practicing community regarding which TMD (temporomandibular disorder) problems should be treated. The preponderance of the data do not support the superiority of any method of initial management of most TMD problems. The efficacy of most treatment approaches is unknown because most have not been adequately evaluated in long-term studies and virtually none have been adequately evaluated in randomized controlled trials. Although noninvasive therapies are clearly preferred for the vast majority of TMD problems, surgical intervention may be considered for a small percentage of patients who have (sic) persistent and significant pain and dysfunction and for whom more conservative treatment has failed."*

We are not able find, in either of the papers referred to above, anything specifically advising against the use of orthodontistry under circumstances such as those that we face in [the

Appellant's] appeal. None of the literature to which we have been referred addresses the unusual and complex situation in which TMJ disorders co-exist along with congenital or, at the very least, pre-existing and fairly substantial, malocclusions and other dental disorders. With deference to the views of [MPIC's dentist], whose competence is beyond question, we are persuaded that the therapy recommended by [Appellant's orthodontist], despite the absence of a gilt-edged guarantee of ultimate success, is to be preferred over what might well be a very lengthy use of a series of specially designed splints, accompanied by fluctuations in levels of discomfort for the patient. We find that the TMJ disorder was indeed caused by the motor vehicle accident and that its consequences should, therefore, be paid for by MPIC.

That brings us to the question whether MPIC should pay the entire cost of the orthodontistry or, since a large part of the work will be directed towards curing pre-existing conditions, that cost should be apportioned in some fashion between MPIC and the [Appellant's] family.

It might well be argued that, since the orthodontics only became necessary as a result of the motor vehicle accident, the entire cost should be borne by the insurer. However, we do not believe that this would be an equitable solution. [Appellant's father], himself, expressed the eminently fair-minded view that he did not expect MPIC to pay for the correction of all of [the Appellant's] pre-existing problems. Since it is, for all practical purposes, impossible for us to arrive at an apportionment of the cost with any semblance of accuracy, our decision must, simply, reflect a result that we believe to be fair under the circumstances.

**DISPOSITION:**

Of the \$3,200.00 total costs of the orthodontic correction of [the Appellant's] teeth, we direct MPIC to pay the first \$1,100.00, as follows:

- (a) an initial payment of \$200.00 for diagnostic records and treatment planning;
- (b) \$600.00 on the initial appliance placement, and the first quarterly payment of \$300.00.

The remaining seven quarterly payments of \$300.00 each will, of course, be the responsibility of the [Appellant's] family.

Dated at Winnipeg this 2nd day of May 1997.

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**J. F. REEH TAYLOR, Q.C.**

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**CHARLES T. BIRT, Q.C.**

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**LILA GOODSPEED**