

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-99-161**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman  
Ms. Yvonne Tavares  
Ms. Laura Diamond

**APPEARANCES:** The Appellant, assisted by [text deleted], attended by telephone conference call;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison.

**HEARING DATE:** June 29<sup>th</sup>, 2000

**ISSUES:** (1) Causation—whether patellofemoral problems due to MVA;  
(2) Whether Appellant entitled to IRI or physiotherapy.

**RELEVANT SECTIONS:** Sections 70(1), 85(1), 86(1) and 136(1) 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 Appellant] has suffered from chondromalacia patellae, or patellofemoral joint syndrome, for some 11 years - at least since June of 1989 when her doctor's clinical notes indicate she was having pain in her right knee. In August of 1991 another clinical note indicates that she was experiencing bilateral patellofemoral syndrome with the right side being more problematic than the left. Several further notations over the following few years were to similar effect.

On September 3<sup>rd</sup>, 1994, [the Appellant] sustained an injury in a motor vehicle accident which exacerbated those problems, particularly at the right knee; she was referred for physiotherapy which seems to have helped matters. A further motor vehicle accident on July 5<sup>th</sup>, 1995, again produced an exacerbation of her right patellofemoral syndrome as well as causing some problems with her back.

She appears to have been involved in yet another motor vehicle accident in November, 1995, for which she saw her doctor in January of 1996 and, again, in October 1996, complaining of significant worsening of her patellofemoral syndrome. She was given a prescription for a knee brace in November 1995 but declined a referral to an orthopedic surgeon for an assessment of her symptoms in January 1996. In October of 1997 she again complained to her physician of increased pain, this time in the left knee.

That brief history brings us up to July 10<sup>th</sup>, 1998, when, at about 3:45 in the afternoon, the vehicle she was driving was struck on the driver's side. [The Appellant's] vehicle was rendered a total loss. She attended upon [Appellant's doctor #1], who first saw her on July 15<sup>th</sup>, 1998, complaining of pain in her left knee and her back. [The Appellant] told [Appellant's doctor #1] that she had hit her left kneecap on the driver's side door of her car, resulting in a contusion noted by [Appellant's doctor #1]. He diagnosed a lumbar sprain and an aggravation of her chondromalacia patellae, as well as a contusion of the lateral patella. He recommended the use of ice and exercises. He ordered an X-ray to be taken of her knee.

At the time of her 1998 accident, [the Appellant] was in receipt of Social Assistance and going through an upgrading and job search program provided by the Social Assistance department.

Her family home was in [text deleted], Ontario, but she had been living in [Manitoba] for six or seven months.

Since [the Appellant] was a “non-earner”, within the meaning of the MPIC Act, at the time of her accident, she had no entitlement to Income Replacement Indemnity (‘IRI’) for the first 180 days immediately following the accident. [The Appellant’s] case manager at MPIC referred her for an Independent Medical Examination by [text deleted], a physiatrist, who examined her on December 4<sup>th</sup>, 1998. [Independent physiatrist’s] 18-page, detailed report contains a diagnosis of mild musculoskeletal deconditioning and “left knee pain complaints - most likely related to pre-existing chondromalacia patellae. This is noted to be worse in the left patella than the right patella currently.” Under the heading “Causation”, [independent physiatrist] offers the view that, based upon the available information, to a reasonable degree of medical certainty, there was no causal relationship between [the Appellant’s] current complaints and her reported motor vehicle injury. He felt that the acute injuries that might have resulted from the accident were healed by the time of his examination and that [the Appellant’s] present symptoms appeared to be related to her pre-existing bilateral chondromalacia of the patella. He felt that, while [the Appellant’s] prognosis for complete resolution of pain complaints was poor, the prognosis for restoration of function was good. [Independent physiatrist] also notes that

The claimant perceives significant disability, however, based on the physical examination and functional testing, there does not appear to be any significant disability.

[Independent physiatrist] added his opinion that [the Appellant] had at least a light work capacity and should be capable of working eight hours per day, five days per week, lifting no more than 20 pounds, lifting 10- to 15-pound objects repeatedly but limiting her squatting, kneeling and stair climbing. He did not feel that any further therapeutic intervention was called for, but he did suggest an orthopedic evaluation of [the Appellant’s] pre-existing bilateral chondromalacia.

[The Appellant] was then referred by [Appellant's doctor #1] to [text deleted], an orthopedic specialist at [text deleted], specifically with regard to her left knee. [Appellant's orthopedic specialist #1], in a report to [Appellant's doctor #1] of March 18<sup>th</sup>, 1999, finds that [the Appellant] had a stable knee and full range, with good patellar mobility although some tenderness on the left and right sides. There was no evidence of meniscal tearing and X-rays were normal. [Appellant's orthopedic specialist #1] noted that [the Appellant] had had a contusion to the lateral aspect of her knee with pre-existing anterior knee pain, but no mechanical evidence of any ongoing problems. He suggested that she would benefit from ongoing physiotherapy, and suggested a referral to the [hospital] for that purpose [text deleted]. [Appellant's orthopedic specialist #1] did not believe that [the Appellant's] condition would prevent her from working at a desk job, which he encouraged her to do. He advised no surgical intervention and makes no causal connection between the motor vehicle accident and [the Appellant's] ongoing discomfort.

[The Appellant's] case manager at MPIC, by a letter of February 9<sup>th</sup>, 1999, had denied payment of Income Replacement Indemnity benefits and any further medical expenses or treatments. [The Appellant] appealed that decision to MPIC's Internal Review Officer who, on July 20<sup>th</sup>, 1999, after reviewing the opinions of [independent physiatrist] and [Appellant's orthopedic specialist #1], confirmed that decision. [The Appellant] now appeals from the Internal Review Officer's decision to this Commission.

We have had the benefit of further reports from [Appellant's doctor #1], [text deleted] ([the Appellant's] general practitioner in [Ontario]) and, in particular, from [text deleted], an orthopedic specialist at [text deleted] to whom [Appellant's doctor #2] referred [the Appellant].

[Appellant's orthopedic specialist #2], in his first report to [Appellant's doctor #2] of February 10<sup>th</sup>, 2000, notes that [the Appellant] had a full, pain-free range of motion to both knees. The right knee did not show any abnormality except her patella which disclosed signs consistent with chondromalacia patellae. In the left knee, there was no increased heat or effusion. Mediolateral joint lines were normal, as were collateral ligaments, ACL and PCL. [The Appellant] was quite tender over the lateral aspect of her patella in the patellofemoral joint area with her knee in extension and ballottement of the patella did cause her some discomfort. X-ray examination showed no abnormalities. [Appellant's orthopedic specialist #2] concluded, at that point, that it was possible [the Appellant's] accident might have aggravated a pre-existing condition, but there was evidence of problems with her knee prior to the accident. In a more recent report, requisitioned by this Commission on July 6<sup>th</sup>, 2000, but not received here until November 21<sup>st</sup>, [Appellant's orthopedic specialist #2] says, in part,

I think in order to fairly state that this ongoing problem is probably related to the motor vehicle accident, there should be some evidence of damage to the patellofemoral joint. The only evidence that we can depend upon at this time is that of...X-ray examinations (which) show no specific abnormalities.

....it is probable that she may have aggravated the patellofemoral joint. Anything that she would have done would probably have healed, as opposed to being an enhancement of her chondromalacia patellae.

With this reasoning in mind, and no further evidence radiographically of any deterioration, I would have to state that the ongoing symptoms are probably part of the natural history of her chondromalacia patellae. I think any physical insult of a minor degree could have caused her to have some transient pain. I think under normal circumstances this would not have caused her any ongoing problems. It is possible that cartilage may have been damaged during the motor vehicle accident and these at times can be picked up on MRI or during arthroscopy. These are not very common and therefore improbable in this lady.

Given the fact that none of [the Appellant's] care-givers is prepared to attribute her ongoing problems to her 1998 motor vehicle accident, and given the opinion of [Appellant's orthopedic

specialist #2] and [independent physiatrist] that any injury sustained by [the Appellant] in that accident has almost undoubtedly healed long ago, we are unable to find a reasonable, causal connection between her accident and her continuing symptoms.

It follows, therefore, that we are unable to award her any Income Replacement Indemnity and, equally, are unable to find MPIC responsible for any further therapies for her.

[The Appellant's] appeal is, therefore, dismissed.

Dated at Winnipeg this 5<sup>th</sup> day of December, 2000.

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

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**YVONNE TAVARES**

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**LAURA DIAMOND**