

## **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-01-34**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Yvonne Tavares  
The Honourable Mr. Armand Dureault

**APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Terry Kumka.

**HEARING DATE:** March 6, 2003

**ISSUE(S):** Whether Appellant's neck, back and shoulder complaints are  
causally connected to motor vehicle accident of November 11,  
1998

**RELEVANT SECTIONS:** Section 70(1) of The Manitoba Public Insurance Corporation  
Act ("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] sustained injuries in a motor vehicle accident on November 11, 1998. At the time of the accident the Appellant was unemployed.

In a statement to MPIC, dated January 12, 2000, the Appellant stated "*After the accident my neck got sore. It was sore for a couple of weeks and then it went away.*" The Appellant further stated in his statement to MPIC that "*At the end of January 1999 my neck started to get worse. By the end of June 1999 I could not stand it any longer and I went to see [Appellant's Doctor #1].*" The

Appellant states he saw [Appellant's Doctor #1] on three occasions and he was informed by [Appellant's Doctor #1] that he had arthritis.

In a report submitted by [Appellant's Doctor #1] to MPIC, dated February 17, 2000, [Appellant's Doctor #1] states that the Appellant attended at his office on July 29, 1999 complaining of neck and back-aches, on and off for 2 months, with pain radiating down left arm and upper half of the thoracic spine. [Appellant's Doctor #1], in his report, stated that the Appellant "*had been attending 2 chiropractors for same and that all he wanted was x-rays of his spine.*"

In a letter dated January 26, 2000 to the Case Manager at MPIC, [Appellant's Doctor #2], who is associated with the [text deleted], states:

“[The Appellant] presented to my clinic on August 5, 1999. He is a [text deleted] year old left hand dominant [text deleted] who complained of onset of neck, back and left arm problems in December of 1998 while working a punching bag. He stated he initially improved with chiropractic care and had attended a chiropractor locally in [text deleted]. He had a substantial relapse in July of 1999 after a chiropractic treatment and subsequently developed increased arm pain on the left side.

Physical examination revealed muscular spasm with diminished range of motion of the neck. He had reduced sensation to the forearm and mildly diminished left tricep reflex.

History and examination were consistent with cervical radiculopathy affecting the left arm. Subsequent examinations and CAT scanning confirmed a posterolateral disc herniation on the left side at C6,7 compromising the left C7 nerve root. He has subsequently been treated and has improved with conservative therapy but reached an end point or plateau. There has been a referral made to an orthopaedic surgeon to consider a decompressive procedure and discectomy in view of the ongoing arm pain and the size of the disc herniation.

At no time has the patient mentioned any relationship to a motor vehicle accident. Your letter is the first I have heard about a motor vehicle accident as the initiating event about this condition. It is not consistent with the history that the patient presented to me.”

[MPIC's Doctor], Medical Consultant for MPIC Health Care Services, conducted a paper review of all of the medical reports received by MPIC in respect to the Appellant. In relation to [Appellant's Doctor #2's] and [Appellant's Doctor #1's] medical reports [MPIC's Doctor] states:

“Comments

The medical evidence obtained from these documents identified [the Appellant] as having clinical features in keeping with a cervical radiculopathy that appears to have developed after a chiropractic treatment in July 1999. The radiological investigations identified structural changes to the cervical spine that would account for the radiculopathy. The health care professionals that assessed [the Appellant] in 1999 did not provide documentation identifying his symptoms as arising from the November 11, 1998 motor vehicle collision. [Appellant's Doctor #2] documented that [the Appellant] had symptoms involving his neck, back and left arm in December 1998 that improved with chiropractic care.”

The Appellant was referred by his personal physician to [Appellant's Orthopedic Surgeon #1], an experienced orthopedic surgeon, who examined the Appellant on March 6 and August 15, 2000 and provided several reports to MPIC including a report dated October 11, 2000. In this report [Appellant's Orthopedic Surgeon #1] states:

“The injuries sustained to [the Appellant] in the motor vehicle accident on the 11<sup>th</sup> of November 1998 appeared to have been neck pain which he states persisted for two weeks and resolved spontaneously. His present complaints are that of improving mechanical neck pain and shoulder pain which may be secondary to a rotator cuff problem. I do not believe that these are directly related to the motor vehicle accident of November 11<sup>th</sup>, 1998 but are likely cumulative.”

[MPIC's Doctor], in his report to MPIC, dated December 7, 2000, reviews [Appellant's Orthopedic Surgeon #1's] report dated October 11, 2000 and states:

“In [Appellant's Orthopedic Surgeon #1's] October 11, 2000 report, it is documented that [the Appellant] was examined on March 6, 2000. It is noted that [the Appellant] stated that he was involved in a rear-end collision in November 1998 for which he suffered a stiff neck for a period of two weeks that spontaneously resolved. It is documented that he had a recurrence of his stiffness in April 1999. In June 1999 [the Appellant] was noted as suffering an acute increase in pain in his lower neck with radiation to his left shoulder blade and arm following a chiropractic manipulation of the neck. It is documented that [Appellant's Orthopedic Surgeon #1's] examination did not identify a neurologic

abnormality and [the Appellant] was referred for a course of physiotherapy treatments. It is noted that a follow-up examination identified an improvement in his condition. [Appellant's Orthopedic Surgeon #1] identified a mildly positive impingement sign involving the left shoulder during a follow-up examination. It was his recommendation that [the Appellant] should be referred to [Appellant's Orthopedic Surgeon #2] or [Appellant's Orthopedic Surgeon #3] for an evaluation of his shoulder. [Appellant's Orthopedic Surgeon #1] was of the opinion that [the Appellant's] present complaints are that of improving mechanical neck pain and shoulder pain which are not directly related to the November 11, 1998 motor vehicle collision.

#### CONCLUSION

The medical evidence obtained from the documents reviewed indicates that [the Appellant] might have sustained a musculotendinous strain to the cervical spine, which resolved spontaneously. There is no documentation of [the Appellant] being assessed following the collision in question for symptoms he might have been experiencing. The medical evidence indicates that he was not having any problems until April 1999 when he developed some symptoms involving his cervical spine and again in June or July 1999 when he developed an acute onset of neck pain and left arm pain following a chiropractic manipulation.”

[Appellant's Doctor #3], the personal physician of the Appellant, provided a report to MPIC dated August 10, 2000. In this report [Appellant's Doctor #3] states that he saw the Appellant with respect to the Appellant's complaints on August 10, 1999, approximately 9 months after the motor vehicle accident on November 11, 1998. [Appellant's Doctor #3] subsequently saw the Appellant in respect to this matter on August 18 and 23, 1999, as well as April 4, April 25 and November 7, 2000. [Appellant's Doctor #3] states that the Appellant continued to have pain and swelling to his left shoulder and neck, had difficulty lifting or pushing any weight and it was “likely related to his whiplash injury.”

[MPIC's Doctor] reviewed [Appellant's Doctor #3's] report and advised MPIC in a letter dated November 29, 2000:

“[Appellant's Doctor #3] did not assess [the Appellant] until nine months after the motor vehicle collision in question. There is no documentation that indicates [the Appellant's]

symptoms and/or clinical findings identified by [Appellant's Doctor #3] are causally related to the collision in question.”

“In the Manitoba Health Summary of patient purges, it is noted that [the Appellant] received chiropractic care from [Appellant's Chiropractor] between 1996 and February 27, 1998.”

The Commission subsequently received [Appellant's Chiropractor's] notes relating to the Appellant's attendances to [Appellant's Chiropractor's] office in respect of chiropractic examination/treatment. The Appellant received numerous treatments on a consistent basis between July 1993 and February 1998. The Internal Review Officer, in his decision dated February 21, 2001, notes that between January 3, 1996 and February 27, 1998, being the last pre-accident visit referred to in the records, the Appellant attended at [Appellant's Chiropractor's] office for treatment on 31 separate occasions.

The Appellant applied to MPIC for compensation pursuant to the Personal Injury Protection Plan (“PIPP”). On December 11, 2000, MPIC wrote to the Appellant apprising him that the Health Care Services team, after reviewing all of the medical information on the file, provided an opinion that the Appellant's current complaints/symptoms were not related to the motor vehicle accident of November 11, 1998 and, as a result, rejected the Appellant's claim for compensation.

### **INTERNAL REVIEW**

The Appellant, in a written application to MPIC, requested a review of the Case Manager's decision denying the Appellant's request for compensation. A hearing before the Internal Review Office took place on February 12, 2001 and the Internal Review Officer, in a written

decision dated February 21, 2001, rejected the Appellant's Application for Review and confirmed the Case Manager's decision.

The Internal Review Officer, after reviewing the medical reports of [Appellant's Doctor #2], [Appellant's Doctor #1], [Appellant's Doctor #3], [Appellant's Orthopedic Surgeon #1] and [MPIC's Doctor], stated:

“You dispute the conclusion of [Appellant's Orthopedic Surgeon #1] (whose involvement in your case you were otherwise pleased with) to the effect that your current neck and shoulder problems are not directly related to the accident. The only contrary opinion is the one line in the report from another general practitioner in [text deleted] (Appellant's Doctor #3) which states your continuing difficulties are “likely related to this whiplash injury”. It was noted by [MPIC's Doctor], and you did agree, that your first post-accident visit to [Appellant's Doctor #3] was on August 10, 1999, approximately nine months after the accident.”

The Internal Review Officer accepted the medical opinion of [Appellant's Orthopedic Surgeon #1], who unequivocally stated that in his view the Appellant's current neck and shoulder problems were not directly related to the accident, and rejected [Appellant's Doctor #3's] opinion that the Appellant's continuing medical difficulties were “likely related to this whiplash injury.”

The Internal Review Officer therefore concluded that, based on a review of all of the medical reports on MPIC's file, he was unable to conclude that the Appellant has established an entitlement to PIPP benefits and, as a result, dismissed the Appellant's claim for compensation.

As a result the Appellant filed a Notice of Appeal in respect of the Internal Review Officer's decision dated April 17, 2001.

## APPEAL

The issue under appeal was whether the current problems with respect to the Appellant's neck, back and shoulders are the result of an injury due to the motor vehicle accident.

In respect of this issue, the relevant sections of the MPIC Act are as follows:

### **Definitions**

**70(1)** In this Part,

**"accident"** means any event in which bodily injury is caused by an automobile; (« accident »)

**"bodily injury"** means any physical or mental injury, including permanent physical or mental impairment and death; (« dommage corporel »)

**"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile; (« dommage corporel causé par une automobile »)

The Commission notes that the initial complaints that the Appellant had in respect of injuries sustained in the automobile accident of November 11, 1998 spontaneously resolved themselves within two weeks of the accident. The Appellant did not indicate any further complaints in respect of his current difficulties until approximately nine months after the accident took place.

The Commission, after a careful review of all of the material filed, including the written legal submission filed by Mr. Kumka and the reply filed by the Appellant, finds that the Internal Review Officer committed no error in preferring the medical opinion of [Appellant's Orthopedic Surgeon #1] to the medical opinion of [Appellant's Doctor #3] on the issue of causation. The Commission also accepts the medical opinion of [Appellant's Orthopedic Surgeon #1] that the current complaints that the Appellant is suffering from are not causally connected to the accident and that the Appellant has not suffered any permanent impairment as a result of the accident.

[Appellant's Orthopedic Surgeon #1] is very clear in his opinion that the present complaints that the Appellant has are that of an improving mechanical neck pain and shoulder pain which may be secondary to a rotator cuff problem and are not directly related to the motor vehicle accident of November 11, 1998 but are likely cumulative. [MPIC's Doctor], MPIC's medical consultant, agrees with [Appellant's Orthopedic Surgeon #1's] opinion and rejects [Appellant's Doctor #3's] opinion who stated that the Appellant's continuing difficulties were "likely related to the whiplash injury."

[Appellant's Doctor #3] in his medical report does not provide any objective evidence to support his medical opinion. The motor vehicle accident occurred on November 11, 1998. [Appellant's Doctor #3] did not see the Appellant until August 10, 1999, approximately 9 months after the motor vehicle accident. It appears to the Commission that [Appellant's Doctor #3] assumed that the Appellant was suffering from a whiplash injury connected to the motor vehicle accident.

On the other hand, [Appellant's Orthopedic Surgeon #1], who is an experienced orthopedic surgeon, has set out his reasons for his conclusion that there is no causal connection between the motor vehicle accident and the Appellant's current medical difficulties. It is for these reasons that the Commission prefers the medical opinion of [Appellant's Orthopedic Surgeon #1] to that of [Appellant's Doctor #3].

The Commission therefore concludes that the Appellant has not established on the balance of probabilities that the current medical difficulties that he is suffering to his neck, back and shoulder were causally connected to the motor vehicle accident.



As a result, the Appellant is not entitled to compensation from MPIC in respect of PIPP benefits. Accordingly, and for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date February 21, 2001.

Dated at Winnipeg this 27<sup>th</sup> day of March, 2003.

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**MEL MYERS, Q.C.**

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**YVONNE TAVARES**

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**HONOURABLE ARMAND DUREAULT**