

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-135**

PANEL: Ms. Yvonne Tavares, Chairperson
The Honourable Mr. Armand Dureault
Dr. Patrick Doyle

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

HEARING DATE: May 6, 2003

ISSUE(S): Entitlement to Reimbursement of Dental Expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Section 5(a) 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

The Appellant, [text deleted], was involved in a motor vehicle accident on August 12, 1995, wherein he sustained multiple injuries including fractured ribs, a collapsed lung, a pelvic injury, splenic rupture and a head injury. As a result of the injuries which he sustained in that accident, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing the decision of the Internal Review Officer dated September 18, 2002, which denied him reimbursement of dental expenses. The Internal Review decision had confirmed the case manager's decision and dismissed the Appellant's Application for Review,

on the basis that a causal connection between the Appellant's dental injury and the motor vehicle accident had not been established. In his decision, the Internal Review Officer stated that:

The core issue is whether the problem with tooth #36 was due to the motor vehicle accident or to other causes. [MPIC's dentist] has taken into account all of the dental information available. He provides the following opinion on the core issue:

“Given the length of time since the MVA and the current problem it is my opinion that the causal relationship is not established. Teeth with existing restorations (36) will have restoration failure unrelated to trauma, due to material fatigue/failure. Similarly the presence of a crack or craze line (35) is not an indication of trauma, as from the MVA. Both signs are consistent with wear from function and at this late date they should not be attributed to the MVA.”

Obviously, this is a technical matter on which there appears to be some difference of professional opinion. I accept the assessment of our dental consultant, as did your case manager. It follows that there (is) no reason to interfere with the decision denying you coverage for these dental treatments.

At the hearing of this matter, the Appellant submitted that it was more likely than not that his dental injury to tooth #36 was related to the motor vehicle accident of August 12, 1995, and accordingly he should be reimbursed for the expenses he has incurred for dental treatment to that tooth.

In support of his position, the Appellant cited the following factors as establishing a causal connection to the motor vehicle accident:

- The fact that it was a very serious motor vehicle accident and he sustained a significant impact which left him unconscious at the scene of the accident;
- The fact that he sustained a serious head injury in the accident, including a slight hearing loss on the left side and a hairline fracture to his skull;
- The fact that all of the injuries which he sustained in the motor vehicle accident were to the left side of his body, including the dental injury to tooth #36 which is located on the left side of his mouth;
- The fact that he has no problems with the teeth on the right side of his mouth;

The Appellant also relies on the opinions of his treating dentists, who support his position that his dental injury is related to the motor vehicle accident. Specifically, the Appellant refers to the following reports from his caregivers:

- [Appellant's dentist #1's] report dated September 17, 1996, wherein he states that:

When I saw [the Appellant] on July 23, 1996 everything looked o.k. During my examination, I discovered no dental pathology. However, when one is involved in an accident, the teeth are often banged together which can cause hairline cracks to develop in some teeth. Such cracks can sometimes be very difficult to discover and often manifest themselves later. In the meantime, the patient complains of discomfort with no apparent cause. I should point out perhaps that hairline cracks are not normally visible on x-rays, and therefore their absence on x-rays does not necessarily mean they do not exist. Should [the Appellant] present himself at some future date with a fractured tooth, with the benefit of hindsight, we may be able to trace it back to his auto accident. The likelihood of this occurring in [the Appellant's] case is pretty slim in my opinion but the possibility remains.

- [Appellant's dentist #2's] report dated May 25, 2002, where he comments that:

In summation: Severe trauma was sustained by the claimant. The initial examining dentist warned MPIC of the possible need for further treatment. To my knowledge, no time limit was given as to liability for problems that may have resulted from such an injury. I believe that the patient's request is reasonable, considering that it covers only roughly a third of the cost of the endodontic treatment I provided for him.

- [Appellant's dentist #3's] report dated February 19, 2003, wherein he notes that:

As per [Appellant's dentist #1's] report, he had implied the possibility of a hair line crack. [The Appellant's] accident did involve the left side of his jaw, where we are currently having an area of concern. The rest of his dentition appears to be stable.

When teeth develop cracks, they flex, and can weaken the natural support of the old restoration which may explain why a piece of the old amalgam restoration was missing in 1999. Quite often when cracks develop they will propagate slowly, but as they grow, and involve nerve tissue, the patient will eventually become aware of the problem. In our July assessment, we also noted cracks on the buccal surface of tooth number 35, but again, it was asymptomatic at that time.

It is often noted how humans can adapt to various traumas, often in a compensatory mechanism. It is quite possible that due to [the Appellant's] trauma on the left side, since his motor vehicle accident, that he has developed a slight compensatory mechanism where he chews less on his left side or with less pressure, which could result in the slow development of cracks that were possibly due to the original motor vehicle accident. In [the Appellant's] case, two attempts were made to repair the

cracks with a resin restoration, however we were unsuccessful at this, and in the end decided that he required full coverage of the tooth in order to resolve the cracking issue.

The Appellant concludes that, given the opinions of his treating dentists, the significant trauma which he sustained in the motor vehicle accident and the impact to the left side of his body, the evidence establishes that his dental injury was probably related to the motor vehicle accident of August 12, 1995. Therefore, he submits that he is entitled to be reimbursed for the dental expenses which he has incurred.

Counsel for MPIC submits that the Appellant has not met the onus of establishing, on a balance of probabilities, that his dental injury is related to the accident of August 12, 1995. He contends that the Appellant has merely raised a possibility that the damage to the tooth was caused by the accident. He notes that many other factors can cause cracks in teeth, similar to the problem encountered by the Appellant. Accordingly, counsel for MPIC submits that the Appellant has not met the onus of proof required in the circumstances, and accordingly the decision of the Internal Review Officer, dated September 18, 2002, should be upheld.

After a careful review of all of the evidence, both oral and documentary, we find that the Appellant has established, on a balance of probabilities, that the damage to his tooth was likely caused by the motor vehicle accident of August 12, 1995. The accident involved a significant impact to the Appellant's car and caused severe injuries to the left side of the Appellant's body. Given the fact that the Appellant did sustain serious trauma to the left side of his head, including his jaw, and that he did complain of sensitivity and discomfort on the left side of his mouth within a year of the accident, we find that it is probable that damage occurred to his tooth as a result of the motor vehicle accident of August 12, 1995. Therefore, we conclude that the

Appellant is entitled to be reimbursed for his dental expenses incurred in connection with tooth #36, together with interest, in accordance with Section 163 of the MPIC Act.

Dated at Winnipeg this 22nd day of May, 2003.

YVONNE TAVARES

HONOURABLE ARMAND DUREAULT

DR. PATRICK DOYLE