



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-81**

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Bill Joyce
Mr. Wilson MacLennan

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

HEARING DATE: May 4, 2004

ISSUE(S): 1. Entitlement to dental treatment benefits
2. Entitlement to reimbursement for travel expenses to pick up medication

RELEVANT SECTIONS: Section 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) of Manitoba Regulation 40/94 and Section 19 of Manitoba Regulation P215-40/94

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

On January 6, 2001, [the Appellant] was involved in a motor vehicle accident while she was a passenger in the front seat of an automobile. The Appellant was injured in the accident and was taken to the hospital].

The Appellant did not complain initially about any dental problems arising out of the motor vehicle accident.

1. In reports from the [text deleted] Fire Paramedic Service and [hospital] Emergency Department, on January 6, 2001, both the ambulance attendant's and hospital emergency doctor's reports indicate that the Appellant's initial injuries were facial lacerations, bruising, left lower rib pain and right arm pain.
2. [text deleted], her physician, provided a report on January 12, 2001 which again did not indicate any dental problems but rather complaints to her neck, back, left rib area, right shoulder, facial lacerations and bruising.
3. The Appellant was seen by [text deleted], a chiropractor, who provided two reports to MPIC dated January 19, 2001 and February 19, 2001 in which [Appellant's chiropractor] does not indicate that the Appellant complained about dental problems.
4. The case manager interviewed the Appellant at her residence on January 12, 2001 and was advised that the Appellant suffered cuts to her face, sore ribs and complained about problems with mobility to her right arm and right leg at the time of the interview. The Appellant did not complain initially about any dental problems arising out of the motor vehicle accident.
5. [text deleted], a orthopaedic surgeon, provided a report to MPIC in respect of an examination of the Appellant on September 13, 2001. [Appellant's orthopaedic surgeon]

reported that he had examined the Appellant and noted her chief complaint involved the right shoulder and right side of the base and neck. [Appellant's orthopaedic surgeon] was of the opinion that the Appellant had sustained a partial or incomplete brachial plexus injury arising out of the motor vehicle accident. It should be noted that [Appellant's orthopaedic surgeon] did not indicate that the Appellant complained of any dental problems.

6. The Appellant, while a resident in [text deleted], was treated by [Appellant's doctor #2]. In response to a request from MPIC's case manager [Appellant's doctor #2] wrote a letter to MPIC dated February 4, 2001 (sic) where he indicated that he saw the Appellant twice, on October 31, 2001 and November 20, 2001 and reported that the Appellant was complaining of persistent daily neck pain and upper back pain, numbness to her right arm. [Appellant's doctor #2] was of the opinion that the Appellant had suffered a neurological injury to the arm. There was no indication in [Appellant's doctor #2's] report that the Appellant suffered any dental problems arising out of the motor vehicle accident when she saw [Appellant's doctor #2].

The first report of the Appellant's dental problems was provided by [text deleted], a dentist in the [text deleted]. in a letter to MPIC's case manager, dated March 23, 2002. In this report [Appellant's dentist] indicates that the Appellant was involved in a motor vehicle accident on January 6, 2001 and she struck the passenger window with her head. [Appellant's dentist] further states that the Appellant presented herself for examination at [Appellant's dentist's] clinic for consultation regarding a broken tooth/lost restoration of her last tooth in her upper right dentition. [Appellant's dentist] indicated:

DIAGNOSIS

Due to limited diagnostic information, the only conclusion which I am able to support that there is may be some probability that her motor vehicle accident may have contributed damage, in part or whole, to tooth 1.6. [The Appellant] did sustain considerable force to the right side of her face and 3 scars have been noted. However, it is unclear whether dental decay was present prior to the motor vehicle accident or developed afterwards (it is speculated that the missing tooth structure or restoration most likely accelerated the rate of decay on tooth 1.6). (underlining added)

PROPOSED TREATMENT (based on the specific examination only, may include, but not limited to)

1. 1.6 DO restoration (amalgam or composite)
2. Possible root canal therapy on tooth 1.6 (depending on tooth vitality testing and extent of dental decay).

MPIC provided its dental consultant, [text deleted], with a copy of [Appellant's dentist's] report of March 23, 2002 and requested [MPIC's dentist's] comments in respect of said report. On April 22, 2002 [MPIC's dentist] replied to MPIC and stated:

There are no signs that would indicate the current problem is MVA related.

There was no previous mention of any dental damage and the interval between MVA and broken filling is sufficient in length that symptoms should have presented.

The presence of existing decay is not MVA related and is the probable cause for failure of the pre-existing restoration.

In my opinion this problem is not MVA related but due to pre-existing dental disease, therefore not eligible for coverage.

On April 25, 2002 the case manager wrote to the Appellant and advised the Appellant that based on [MPIC's dentist's] report of April 18, 2002 MPIC would not fund payment of any dental treatment proposed by [Appellant's dentist].

The Appellant made Application for Review of the case manager's decision on June 29, 2002.

[Appellant's dentist] provided a further report to MPIC dated July 12, 2002 and essentially repeated the same diagnosis provided to MPIC in his report dated March 23, 2002. MPIC requested [MPIC's dentist] to comment on [Appellant's dentist's] report of July 12, 2002. In an Inter-Departmental Memorandum dated September 30, 2002 [MPIC's dentist] stated:

There is no appreciable difference in the two letters concerning this matter. Most importantly the existence of decay on the tooth #16 is the most likely cause for loss of tooth structure, similarly the late detection of the problem with #46 is also indicative that no obvious damage occurred due to the MVA – that was detected.

Given the time frame and the existence of decay which is not MVA related my opinion still stands that the current dental problems can not be substantiated as MVA related and reasonable causation is related to prior dental disease.

Internal Review Officer's Decision – Dental Treatment Expenses

The Internal Review Officer wrote to the Appellant by letter dated October 2, 2002 confirming the decision of the case manager dated April 25, 2002 indicating that there was no entitlement to the dental treatment proposed by [Appellant's dentist]. The case manager, in arriving at his conclusion, rejected the dental reports of [Appellant's dentist], dated March 23, 2002 and July 12, 2002, and accepted the dental opinions of [MPIC's dentist] in his reports dated April 22, 2002 and September 30, 2002. In arriving at his decision, the Internal Review Officer stated:

You may be aware, that the Personal Injury Protection Plan ("PIPP") which came into effect March 1, 1994, is a creation of statute, in that the terms, conditions, and provisions are set out in The Manitoba Public Insurance Corporation Act and Regulations thereunder. In particular, Section 136(1) of the Act provides for the reimbursement of various expenses as provided for in the Regulations. Section 5(a) of Manitoba Regulation 40/94 states:

“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”.

On the basis of the above evidence which I have outlined I am in agreement with [MPIC’s dentist’s] opinion that your current dental problems and the resulting dental treatment plan are not the responsibility of Manitoba Public Insurance as there is no causal connection between same and the motor vehicle accident in question. Accordingly, I am upholding Mr. Buchanan’s decision of April 25, 2002 and dismissing your Application for Review on this issue.

Appeal – Entitlement to Dental Treatment Benefits

The Appellant appealed the decision of the Internal Review Officer dated October 2, 2002 rejecting the Appellant’s entitlement to dental treatment expenses. The relevant provisions governing this appeal are Section 136(1) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94.

The appeal hearing took place on May 4, 2004 and the Appellant, who resides in [text deleted], participated in the appeal hearing by teleconference. MPIC was represented by their legal counsel, Mr. Mark O’Neill.

Discussion

The Appellant submitted that there were no problems with her teeth until after the motor vehicle accident. Relying on [Appellant’s dentist’s] comment that there is some probability that the motor vehicle accident may have contributed to or damaged, in whole or part, her teeth 1.6 and 4.6, the Appellant submitted that MPIC should pay for this treatment.

The Appellant argued that she sustained a considerable force to the right side of her face and three scars as a result of the motor vehicle accident. She referred to [Appellant’s dentist’s] report

of July 12, 2002 where he indicated that a fracture-like damage to opposing teeth 1.6 and 4.6 may be due to impact causing the lower jaw to collide with the maxilla. He further stated in this case, the forces involved may have resulted in damage to both of the opposing teeth.

In response, MPIC's legal counsel indicated that there was no complaint by the Appellant initially after the accident on January 6, 2001 until MPIC received [Appellant's dentist's] first report dated March 23, 2002, a period of approximately 14 ½ months. MPIC's legal counsel argued that the Appellant never complained about dental damage as a result of the motor vehicle accident to the ambulance attendants and hospital emergency doctors on January 6, 2001. The Appellant also did not complain about dental damage to her physician, [text deleted], her chiropractor, [text deleted], to the orthopedic surgeon, [text deleted] or to the Appellant's case manager. Her first complaint was to [Appellant's dentist], many months after the motor vehicle accident. Relying on [MPIC's dentist's] medical opinion, MPIC's legal counsel argued that the time length between the date of the motor vehicle accident and the Appellant's attendance before [Appellant's dentist] was of sufficient length that the symptoms should have been present much earlier in time if the motor vehicle accident had caused the Appellant's dental problems.

MPIC's legal counsel further noted that [MPIC's dentist] had determined that the presence of existing tooth decay was not motor vehicle accident related and was a probable cause of failure with the pre-existing restoration.

MPIC's legal counsel also referred to [MPIC's dentist's] second dental report wherein [MPIC's dentist] indicated that the late detection of the problem to tooth 4.6 supported the fact that there was no obvious damage that it was motor vehicle accident related.

Having regard to the time frame and the existence of decay, MPIC's legal counsel submitted that the Commission should accept [MPIC's dentist's] opinion that the Appellant's current dental problems were not motor vehicle accident related.

MPIC's legal counsel further argued that [Appellant's dentist] did not find that there was a probable connection between the motor vehicle accident and the Appellant's current problems, but only that there may be some probability of such a connection. MPIC's legal counsel therefore submitted that the Appellant has not established, on the balance of probabilities, that there was a causal connection between the motor vehicle accident and the current dental problems that the Appellant suffers from and, as a result, MPIC was not required to fund treatment as proposed by [Appellant's dentist].

Decision

The Commission, after examining the medical reports on file, and in particular the dental reports of [Appellant's dentist] and [MPIC's dentist], and after considering the submissions of both parties accepts the submission of MPIC's legal counsel and finds that the Appellant has not satisfied, on the balance of probabilities, a causal connection between the motor vehicle accident and the Appellant's current dental problems. The Commission agrees with the dental opinions of [MPIC's dentist] that the current dental problems were not related to the motor vehicle accident, but were due to a pre-existing dental disease. As a result, the Appellant was not entitled to receive funding for the dental treatment as proposed by [Appellant's dentist].

The Commission concludes that MPIC has correctly applied Section 136(1) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94 when determining that the Appellant was not entitled to funding of the dental treatment as proposed by [Appellant's dentist]. As a result, the Commission confirms the decision of the Internal Review Officer dated October 2, 2002 and dismisses the Appellant's appeal herein.

Entitlement to Reimbursement for Travel Expenses to Pickup Medication

In a letter dated June 28, 2002 the case manager wrote to the Appellant and indicated as follows:

Further to our telephone conversation of June 27, 2002, I have reviewed the Record of Travel Expenses that you submitted covering the time period of January 26, 2002 to June 6, 2002.

You have claimed for travel to [text deleted] to pickup up (sic) medication on January 26, 2002 and April 20, 2002. As these trips were not for medical appointments, I cannot reimburse you for these two dates. I have attached Section 19 of the Manitoba Public Insurance Corporation Regulations for your reference.

Internal Review Decision

The Appellant made application to have an Internal Review Officer review this decision and in a letter dated October 2, 2002 the Internal Review Officer wrote to the Appellant and stated:

Internal Review Application [text deleted] (Travel Expenses to pick up medication)

In your decision letter of June 28, 2002 [text deleted] indicated that you are not eligible for reimbursement of travel expenses to travel to Safeway to pick up medication. In support of her decision, [text deleted] referred you to Section 19 of Manitoba Regulation P215-40/94 which states:

“Travel and accommodation

19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.”

There is no requirement of the Corporation to provide Travel Expenses in the circumstances you have requested. Accordingly, I am upholding [text deleted's] decision and dismissing your Application for Review on this issue.

The Appellant filed a Notice of Appeal.

Appeal – Travel Expenses

The Commission heard this appeal on May 4, 2004 at the same time that it heard the Appellant's appeal in respect of dental treatment expenses.

The appeal is governed by Section 19 of Manitoba Regulation P215-40/94.

Discussion

At the appeal hearing the Appellant submitted that MPIC had, subsequent to the motor vehicle accident and prior to the case manager's decision letter of June 28, 2002, reimbursed the Appellant for all travel expenses to her pharmacist to pickup the medication and therefore MPIC was required to continue to reimburse the Appellant for these travel expenses.

In response MPIC's legal counsel submitted that these payments would have been gratuitous on the part of MPIC and there was no obligation under Section 19 of Manitoba Regulations P215-40/94 to continue to pay for such travel expenses to pickup medication. MPIC's legal counsel submitted that, pursuant to this Regulation, MPIC was required to pay for travel expenses incurred by an Appellant for the purposes of receiving care, for example attending at a doctor's office or the offices of a physiotherapist or chiropractor. MPIC's legal counsel therefore

submitted that Section 19 of the regulation had no application for travel expenses to pickup medication.

Decision

After a review of Section 19 of Manitoba Regulation P215-40/94, and after considering the submissions of both the Appellant and MPIC's legal counsel, the Commission finds that the Appellant has not established, on a balance of probabilities, any entitlement to reimbursement of travel expenses in order to travel to Safeway to pick up medication. The Commission finds that MPIC may gratuitously pay for such travel expenses and has the right subsequently to discontinue this practice without any obligation to continue the payment of such expenses.

The Commission determines that MPIC correctly applied the provisions of Section 19 of Manitoba Regulation P215-40/94 when terminating the funding of travel expenses for travelling to Safeway to pick up medication. As a result, the Commission confirms the decision of the Internal Review Officer dated October 2, 2002 and dismisses the Appellant's appeal.

Dated at Winnipeg this 20th day of May, 2004.

MEL MYERS, Q.C.

BILL JOYCE

WILSON MACLENNAN