



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-05

PANEL: Ms. Laura Diamond, Chairperson
Ms. Deborah Stewart
The Honourable Mr. Armand Dureault

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.

HEARING DATE: January 25, 2005

ISSUE(S):

1. Entitlement to coverage for expenses related to ankle fracture.
2. Whether the Appellant was involved in a hit and run accident on July 27, 2002.
3. Entitlement to Income Replacement Indemnity benefits.
4. Entitlement to funding for an electric bed, body massager and therapeutic cream.
5. Entitlement to coverage for further chiropractic treatment benefits.
6. Entitlement to reimbursement for flight from [text deleted] to [text deleted].
7. Entitlement to reimbursement for taxi fare to the airport.
8. Entitlement to homecare related expenses.

RELEVANT SECTIONS: Sections 71(1), 71(1), 81(1), 131 and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 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 March 28, 2002, when a taxi hit her shopping cart in a parking lot, pushing her into a parked car. As a result of the accident, she sustained a soft tissue injury to her upper and lower back. The Appellant also claims that she was injured in a hit and run accident on July 27, 2002.

Internal Review Decisions

The Appellant's claims for Income Replacement Indemnity ('IRI') benefits, continued chiropractic treatment, an electric bed, body massager, therapeutic cream, reimbursement for expenses connected to a flight home from [text deleted] to [text deleted], and home care assistance, all arising out of the accident of March 28, 2002, were considered by MPIC's Internal Review Officer on June 13, 2003. At that time, the Internal Review Officer also considered the Appellant's claim for benefits arising out of the alleged hit and run accident of July 27, 2002.

The Internal Review Officer concluded that the overwhelming medical evidence stated that the Appellant was physically fit to continue working, and was not entitled to IRI benefits.

There was no evidence, the Internal Review Officer found, to support coverage for an electric bed, body massager and therapeutic cream, and the medical evidence suggested that no further chiropractic care was warranted.

The Internal Review Officer also concluded that the medical opinions on file indicated that the flight from [text deleted] was not a medical necessity and that there was no medical evidence to support the Appellant's claims for homecare related expenses.

As well, the Internal Review Officer concluded that the Appellant had not been involved in a motor vehicle accident on July 27, 2002.

On May 17, 2004, an Internal Review Officer for MPIC considered the Appellant's claim for Personal Injury Protection Plan ('PIPP') benefits arising out of injuries sustained when the Appellant fractured her ankle on January 28, 2003. Although the Appellant believed that she fell, fracturing her ankle, because of severe spasming of her lower back muscles, resulting from the motor vehicle accident of March 28, 2002, the Internal Review Officer found that there was no causal relationship between her ankle fracture and the motor vehicle accident in question.

It is from these decisions of MPIC's Internal Review officers that the Appellant now appeals.

Submission of the Appellant

At the hearing into her appeal, the Appellant described her accident of March 28, 2002, which occurred in [text deleted], and the difficulties she had with walking and pain in the period following. She described her return to her home in [text deleted], Manitoba, and her treatment by chiropractors in [text deleted] and in [text deleted].

The Appellant submitted that, following the motor vehicle accident of March 28, 2002, due to her injuries, she was unable to withstand the long drive from [text deleted] to her home in [text deleted]. Accordingly, she felt it was a medical necessity for her to fly from [text deleted] and

felt that MPIC should reimburse her both for the cost of her flight and for the taxi drive to the airport.

The Appellant testified that on July 27, 2002, she was involved in another motor vehicle accident while walking her dog. A car came very close to her, although it did not hit her, and she fell on the road. She was rendered unconscious and taken to hospital by an ambulance.

She also testified that in January of 2003, while walking in her driveway, she suffered a muscle spasm in her back and fell, fracturing her ankle.

The Appellant submitted that she required further chiropractic treatment, as well as a bed, massager, and therapeutic cream to help her recover from the injuries suffered in these accidents.

Finally, the Appellant testified that as a result of her injuries, and her husband suffering an aneurism, she required homecare assistance in her house to help with cooking, cleaning and to take care of her and her husband.

Submission of MPIC

Counsel for MPIC submitted that there is no medical evidence to show that the Appellant's ankle fracture was in any way related to the motor vehicle accident with the taxi. Counsel referred to the evidence on the file of the Appellant's heavy use of alcohol, which could be related both to the fall in which she broke her ankle, and the alleged hit and run incident of July 2002. Many of the medical and hospital reports from both incidents indicated that the Appellant was intoxicated or smelled of alcohol at the time.

Therefore, counsel for MPIC submitted that the Appellant's ankle fracture was not connected to the motor vehicle accident of March 28, 2002.

As for the alleged hit and run of July 27, 2002, counsel for MPIC submitted that having regard to the Appellant's condition at the time of the incident, and her fuzzy recollection of the incident, as well as the conclusions of the RCMP investigation that the vehicle which the Appellant alleged struck her was not driving in the vicinity during that time, counsel submits that the most probable explanation is that there was no motor vehicle accident, but rather that the Appellant simply fell down due to intoxication.

Counsel for MPIC also submitted that the Appellant did not suffer injuries in the motor vehicle accident of March 28, 2002, which would disable her from working, or require that she receive further chiropractic treatment, an electric bed, body massager and therapeutic cream, or homecare related expenses.

There was no indication from any of the medical information on the Appellant's file, she submitted, that the Appellant could not work as a result of the motor vehicle accident. MPIC received an independent chiropractic report from a third party examiner, [text deleted], dated June 18, 2002. He concluded that there was nothing significantly wrong with the Appellant, and [text deleted], of MPIC's Health Care Services Team agreed.

As well, no prescription from any health care provider indicated that the Appellant required the bed, massager and cream, and as a result, MPIC's Health Care Services Team determined that there was no medical necessity for these items.

In regard to homecare assistance, counsel for MPIC submitted that a homecare assessment completed on May 6, 2002 indicated that the Appellant was not in need of homecare assistance, as she scored 1.5 on the appropriate grid, while a score of 5 was required in order to be entitled to assistance.

Counsel for MPIC also submitted that even the Appellant's chiropractor, [text deleted], was of the opinion that the Appellant's flight from [text deleted] to [text deleted] was not a medical necessity, and no other medical information established that it was. The same comments, she argued, applied to the taxi fare to the airport.

Accordingly, counsel for MPIC submitted that the Appellant had not met the onus upon her to establish entitlement to any of the issues under appeal.

Discussion

Section 70(1) of the MPIC Act provides the following definitions:

Definitions

70(1) In this Part,

"accident" means any event in which bodily injury is caused by an automobile;

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;

"victim" means a person who suffers bodily injury in an accident.

Section 71(1) of the MPIC Act provides that:

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

In order to qualify for benefits pursuant to Part 2 of the MPIC Act, the Appellant must fall within the requirements of Section 71(1), and must have suffered bodily injury in an accident. The

bodily injury must be caused by an automobile.

As counsel for MPIC points out, the Appellant is only entitled to MPIC funded chiropractic treatment, bed, massager and therapeutic cream if that medical treatment is medically necessary and required because of the accident. The relevant sections of the MPIC Act and Regulations are as follows:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94

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;

The onus is on the Appellant to show that her inability to continue full time employment has occurred as a result of the accident.

Section 81(1) of the MPIC Act provides:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

The entitlement to reimbursement for personal assistance expenses is set out in Section 131 of the MPIC Act:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 40/94 of the Regulations deals with the reimbursement of personal home assistance under Schedule A in Section 2.

Schedule A to the Regulations is an evaluation grid of personal care assistance requirements.

Schedule B is an evaluation grid for home assistance requirements.

Decision

1. Entitlement to coverage for expenses related to ankle fracture.

The Commission is unable to find a causal connection between the motor vehicle accident of March 28, 2002 and the injury to the Appellant's ankle. Although the Appellant attributes her fall to a back spasm arising out of the injury, the panel notes the opinion of [MPIC's doctor], dated July 4, 2003, that the claimant's perception of severe spasming causing her legs to give out is improbable. On the balance of probabilities, it is our view that the unfortunate injury to the claimant's ankle was unrelated to injuries sustained in the motor vehicle accident.

2. Whether the Appellant was involved in a hit and run accident on July 27, 2002.

The Appellant's recollection of this incident is fuzzy, and the hospital records reviewed show that the Appellant was heavily intoxicated when she was brought to hospital. As well, the RCMP investigation of the incident found that the vehicle which the Appellant alleged had struck her, had not been driving in the vicinity as its owner and his family were away on vacation at the time.

It is the finding of the Commission that the evidence does not support the Appellant's claim that she was involved in a hit and run motor vehicle accident on this date.

Accordingly, the Commission finds that the Appellant did not suffer bodily injury caused by an automobile and was not entitled to benefits under the MPIC Act for any injuries arising out of the incident of July 27, 2002.

3. Entitlement to IRI benefits.

There is no medical evidence to support the Appellant's claim that she is unable to work as a result of injuries sustained in a motor vehicle accident. We have reviewed the documentary evidence and medical reports on file and can find no recommendation from any of the physicians who treated or assessed her to support this claim. Accordingly, the Commission finds that the Appellant is not entitled to IRI benefits.

4. Entitlement to funding for an electric bed, body massager and therapeutic cream.

The Commission has reviewed the documentary evidence and medical reports on file. We find that none of the Appellant's health care providers have provided her with a prescription for these items or a statement that the Appellant requires these items. Accordingly, it is the finding of the Commission that there is no medical necessity for the Appellant to have an electric bed, body massager or therapeutic cream.

5. Entitlement to coverage for further chiropractic treatment benefits.

The Commission has reviewed the medical reports and assessment provided by the Appellant's treating chiropractor, by [text deleted], who performed a third party examination, and [text

deleted], Chiropractic Consultant for MPIC's Health Care Services Team. The weight of evidence does not indicate that the Appellant required ongoing chiropractic care as a result of injuries sustained in the motor vehicle accident. Accordingly, it is the finding of the Commission that further chiropractic treatment benefits are not medically required in the Appellant's case.

6. Entitlement to reimbursement for flight from [text deleted] to Winnipeg.

The Commission has reviewed the report of the patient's own chiropractor, [text deleted], dated May 31, 2002. He states:

It was my understanding that [the Appellant] was to travel from [text deleted] to [text deleted] for reasons that had nothing to do with her motor vehicle accident. I do not believe it was a medical necessity to fly for this trip.

Accordingly, the Commission concurs with the opinion of the Appellant's own treating chiropractor that there was no medical necessity for the Appellant to fly from [text deleted] to [text deleted], and as such she is not entitled to reimbursement from MPIC for this trip.

7. Entitlement to reimbursement for taxi fare to the airport.

For the same reasons as stated above in regard to the Appellant's flight from [text deleted] to [text deleted], the Commission is of the view that the Appellant is not entitled to reimbursement for the taxi fare for her trip to the airport in order to board her flight from [text deleted] to [text deleted].

8. Entitlement to homecare related expenses.

The Commission finds that the Appellant was not in need of homecare assistance as a result of her motor vehicle accident. We have reviewed the documentary evidence on file which shows that the Appellant scored 1.5 on the homecare grid assessment. The Appellant did not meet the minimum level of a score of 5 which is required for an individual to be entitled to homecare assistance.

Further, [Appellant's chiropractor], in his report dated May 31, 2002 stated:

[The Appellant] claimed she was in considerable pain after the motor vehicle accident and also maintained she was having difficulty performing household chores such as vacuuming. Some pain/discomfort and reduced function is expected after an accident of this nature, however, I do not believe that her injuries incapacitated her to a level that would require domestic/homecare assistance. In fact, returning to regular activities as soon as possible after the accident would only serve to benefit her in the rehabilitation process.

As a result, the Commission finds that the Appellant is not entitled to homecare related expenses.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decisions of MPIC's Internal Review Officers dated June 13, 2003 and May 17, 2004.

Dated at Winnipeg this 25th day of February, 2005.

LAURA DIAMOND

DEBORAH STEWART

HONOURABLE ARMAND DUREAULT