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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-04-193**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Deborah Stewart  
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:** March 22, 2005

**ISSUE(S):** Entitlement to reimbursement for medical and travel expenses related to the problem the Appellant is having with his right great toe.

**RELEVANT SECTIONS:** Section 136(1)(a) and (d) 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, [text deleted], was injured in a motor vehicle accident on August 6, 2003. He received treatment, including hospitalization and physiotherapy, for injuries including a renal contusion, compression fracture at T12 and pain in his right flank.

Sometime later, the Appellant developed a lesion on his right great toe which required medical attention. MPIC declined to reimburse the Appellant for medical and travel expenses related to the problem he was having with his toe, taking the position that the injury to the toe was not related to the motor vehicle collision.

### **Internal Review Decision**

On September 3, 2004, an Internal Review Officer for MPIC upheld the case manager's decision denying reimbursement for medical and travel expenses related to the problem the Appellant had with his toe. The Internal Review Officer found that the evidence failed to establish that the problems with his right toe were causally related to the motor vehicle accident of August 6, 2003. The Internal Review Officer noted that the problem did not arise until quite some time after the motor vehicle accident, and that the Appellant's physician, [text deleted], did not feel the problems with the toe were related to the accident. It was the view of the Internal Review Officer that the report of the Appellant's surgeon, [text deleted], only indicated that the toe problem may have been caused by the accident and that this fell short of establishing the causal connection necessary to invoke coverage under the Act.

It is from this decision of the Internal Review Officer that the Appellant now appeals.

### **Submission of the Appellant**

The Appellant submitted that it was his firm belief that his toe injury was caused by the accident. He noted that his shoes had been destroyed in the accident to the point where he had them burned. He submitted that an internal injury had occurred and his toenail was pushed back during the accident.

An earlier report made by the Appellant to his case manager, on August 18, 2003, indicated that he had “sore feet”. Although his toe looked normal after the accident and there was no bleeding, it took a couple of weeks for the internal injury to show up. Then the flesh started to deteriorate.

The Appellant testified that a couple of weeks following the accident, when he was living with his nephew, something with his toes and feet did not feel quite right, so he had his nephew’s daughter, who was licensed to do so, do a pedicure for him.

The Appellant submitted that his own doctor, [text deleted], had indicated, in a report dated May 20, 2004 that “*He had not complained of pain till the time of his accident . . .*” and that his surgeon, [text deleted], stated on March 9, 2002, that

This 75 year old gentleman may have injured his right great toe in an MVA in the middle of August last year. It became sore about the end of August. . . . He has no other history of an injury to the foot.

The Appellant submitted that he had never had problems with his toe prior to the accident and that it was the accident which had caused the injury.

Counsel for MPIC submitted that although the Appellant believes the injury to his toe was caused by the motor vehicle accident, the evidence on file leads to a different conclusion. He noted that [Appellant’s doctor’s] initial report to [Appellant’s surgeon], dated March 9, 2004, indicated

Thank you for seeing this gentleman with an ulcer on his right great toe. He has had the ulcer since the new year, shortly after he had his toe nails trimmed. . . .

Counsel for MPIC pointed to the Ambulance Report and Admissions Report from the hospital which made no mention of injury to the feet or toe and included no mention of any bleeding from the toe. The Appellant did not complain of any problems with his toe until weeks or months after the accident, and it is more likely that the injury was caused, not by the accident, but rather by damage to the Appellant's toe when his nails were clipped, during a pedicure about two weeks after the accident.

### Discussion

In order for the Appellant to be eligible for reimbursement of expenses, he must show that the expenses were incurred because of the accident.

Section 136(1) of the MPIC Act provides

**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;

....

(d) such other expenses as may be prescribed by regulation.

The onus is on the Appellant to prove that the injury to his toe was caused by the motor vehicle accident.

The Commission has reviewed the evidence of the Appellant and the documentary evidence on file, as well as the submissions of the parties. The Commission finds that the Appellant has failed to establish, on the balance of probabilities, that the injury to his toe was caused by the accident.

We have reviewed the reports of [Appellant's surgeon] and [Appellant's doctor], including [Appellant's doctor's] report of May 20, 2004 which stated

I saw [the Appellant] with a follow up foe (sic) the lesion of his toe. We have no etiological factor for this sore on his toe. A biopsy simply showed necrotic material. He had not complained of pain till the time of his accident, however he seems to think that this may be a result from his accident. I have nothing to indicate the injury to his toe is the result to (sic) his accident. Thank you.

[Text deleted], MPIC's Medical Consultant, reviewed the file on July 29, 2004 and stated

. . . There was no specific documentation found in the file that would relate the development of the pyogenic granuloma on the claimant's right great toe to the motor vehicle collision in question. Thus, I cannot determine that this condition developed as a direct result of the motor vehicle collision.

The Commission agrees with the opinions of these practitioners. As the injury surfaced substantially after the accident, and could just as likely have been caused by damage to the Appellant's toe when clipping his toenails, the Commission finds that, on the balance of probabilities, the Appellant has not established that the injury to his toe was caused by the motor vehicle accident.

Accordingly, it is the finding of the Commission that the Appellant is not entitled, under the MPIC Act and Regulations, to reimbursement for medical and travel expenses related to the problem he has had with his right great toe.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date September 3, 2004.

Dated at Winnipeg this 7<sup>th</sup> day of April, 2005.

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**LAURA DIAMOND**

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**DEBORAH STEWART**

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**DR. PATRICK DOYLE**