

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-123**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Dr. Patrick Doyle

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: November 1, 2007

ISSUE(S): Whether the Appellant's current symptoms are related to the motor vehicle accident of August 15, 1999

RELEVANT SECTIONS: Sections 70(1) and 71(1) of *The Manitoba Public Insurance Corporation Act* (the 'MPIC Act').

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], is appealing the Internal Review decision dated April 25, 2003, with respect to whether her current neck and headache symptoms are connected to the motor vehicle accident of August 15, 1999.

The Internal Review decision of April 25, 2003 confirmed the case manager's decision of April 9, 2002. The Internal Review Officer found that there was no clear indication with supported

evidence from any healthcare practitioner that the Appellant's neck and headache symptoms resulted from the accident of August 15, 1999. The Internal Review Officer therefore dismissed the Appellant's Application for Review and confirmed the case manager's decision.

In order to qualify for Personal Injury Protection Plan ('PIPP') benefits contained in Part 2 of the MPIC Act, the Appellant must establish that her current symptoms are connected to the motor vehicle accident of August 15, 1999. Section 71(1) of the MPIC Act provides as follows:

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.

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;

"automobile" means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;

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

"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;

Therefore, the issue which arises on this appeal is whether or not the Appellant's present neck and headache symptoms were caused by the motor vehicle accident of August 15, 1999.

Appellant's Submission

Counsel for the Appellant submits that the medical evidence immediately after the motor vehicle accident establishes that the Appellant developed neck pain as a result of the motor vehicle accident. He notes that the initial medical reports verified the Appellant's injury as resulting from the motor vehicle accident of August 15, 1999. In particular, he points to the following:

- [Appellant's Doctor #1's] report of August 31, 1999, wherein [Appellant's Doctor #1] comments that:

This letter serves as a progress report on this patient who had an accident on August 15, 1999.

She was left with whiplash type symptoms with pain in the left neck and shoulder, specifically involving her trapazies and posterior occipital muscles.

- [Appellant's Doctor #1's] report of February 17, 2000, wherein [Appellant's Doctor #1] notes that:

. . . The above patient had a whiplash injury sustained on August 15, 1999 at which time she sustained a strain to the occipital as well as para cervical muscles.

- [Appellant's Neurologist's] report of September 5, 2000, wherein he reports the following:

She was involved in a road traffic accident approximately one year ago. Another struck her car on the passenger side. She did not specifically strike her head. She initially had undergone acupuncture, which was helping. Then she moved to the city and since that time she has had a constant headache which is diffuse in location and pressure like in nature. This is unassociated with nausea or sensitivity to light. She uses Tylenol #1 on a fairly regular basis with incomplete relief. There is no specific diurnal variation to the headaches.

- MPIC did initially accept the Appellant's injury claim and provided her with benefits pursuant to PIPP.
- [Appellant's Doctor #2's] report of February 1, 2002 wherein he reports that:

I have been treating [the Appellant] for headaches since May 2000. The specific dates of these appointments regarding this problem are as follows: May 10/00, May 25/00, Aug 22/00, Sep 13/00, Sep 26/00, Nov 15/00, and Dec 13/00. During these visits, she complained of headaches with sharp pain for hours at a time, occurring every few days.

My impression was that she suffers from chronic daily headache syndrome, with some component of tension headache. On May 25/00, I had referred her to [Appellant's Neurologist] and was given a CT scan, which was normal. These reports are included.

Based upon the foregoing events, counsel for the Appellant submits that the Appellant did sustain an injury in the motor vehicle accident of August 15, 1999 – the initial medical reports established that the neck and head complaints originated with that motor vehicle accident. He indicates that the Appellant initially underwent treatment in the fall of 1999 and reattended for medical treatment in the spring of 2000. Counsel for the Appellant argued that the Appellant was reporting her current symptoms – neck pain and headaches - to her caregivers in the spring of 2000. He maintains that these symptoms continued from the accident of August 15, 1999 and accordingly, the Appellant has established, on a balance of probabilities, that her injuries arose from that accident. Counsel for the Appellant therefore submits that the Appellant is entitled to PIPP benefits pursuant to the MPIC Act and Regulations.

MPIC's Submission

Counsel for MPIC submits that the Appellant has not established that her current headaches and neck symptoms are connected to the motor vehicle accident of August 15, 1999. She maintains that although the Appellant was initially injured – she ceased treatments on September 24, 1999, when her injuries cleared up. The Appellant did not contact her case manager again until November 28, 2001. Counsel for MPIC argues that even the medical consultations which the Appellant underwent beginning in May 2000 are too far removed from the initial injuries of

August 15, 1999 and the treatment dates in September 1999 to be connected. Counsel for MPIC therefore submits that the Appellant has not established a causal connection between her current headaches and neck symptoms and the motor vehicle accident of August 15, 1999.

Discussion

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant's headache complaints and neck pain complaints are, on a balance of probabilities, related to the injuries she sustained in the motor vehicle accident of August 15, 1999. We base our findings of a causal relationship between the motor vehicle accident and the Appellant's current complaints upon the following factors:

1. The Appellant did report neck complaints to her family physician within three (3) days of the motor vehicle accident, which establishes a temporal relationship to the motor vehicle accident. Indeed, her claim was initially accepted by MPIC.
2. The Appellant did attend for medical care with [Appellant's Doctor #2] for her headaches upon her move to [text deleted] in May 2000.
3. The Appellant's sworn testimony at the hearing, that her current neck complaints and headaches originated with the motor vehicle accident of August 15, 1999.

Based upon the foregoing factors, the Commission finds that the Appellant's current headaches and neck symptoms were, on a balance of probabilities, caused by the motor vehicle accident of August 15, 1999. We accept the Appellant's sworn testimony that these symptoms originated with the motor vehicle accident of August 15, 1999 and find it more likely than not that the complaints for which she sought treatment in the spring of 2000 commenced with the accident of

August 15, 1999. Accordingly, the Commission finds that the Appellant is entitled to PIPP benefits pursuant to the MPIC Act and Regulations. Her claim shall be referred back to MPIC's case manager for a determination of her specific entitlements.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated April 25, 2003 is therefore rescinded.

Dated at Winnipeg this 10th day of January, 2008.

YVONNE TAVARES

NEIL COHEN

DR. PATRICK DOYLE