

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-07-59**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Guy Joubert  
Mr. Les Marks

**APPEARANCES:** The Appellant [text deleted] was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

**HEARING DATE:** November 9, 2009

**ISSUE(S):** Entitlement to Personal Injury Protection Plan ("PIPP") benefits

**RELEVANT SECTIONS:** Sections 81 and 136 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] is appealing the Internal Review Decision dated June 1, 2007 with respect to her entitlement to PIPP benefits.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On March 23, 2007, the Appellant was a pedestrian that was hit by a taxi in the parking lot of [a hotel].
2. In support of her claim, the Appellant submitted a surveillance video on a disc showing the incident in question. The video depicted the following:

- (a) an opening shot of a parking lot as identified by the Appellant as being the [text deleted] Hotel parking lot;
  - (b) a taxicab disgorging passengers;
  - (c) the Appellant walking in front of the taxicab;
  - (d) the taxicab moving forward slightly;
  - (e) as the Appellant reached the passenger side front of the taxicab, she looks slightly to her right;
  - (f) the Appellant continues to walk towards the camera (presumably to the entrance of the hotel) with a regular gait.
3. The Appellant provided an occurrence summary from the Winnipeg Police Service confirming that tickets for “drive imprudently” and “fail to leave particulars at scene of accident” were issued to the taxi driver.
  4. The Appellant testified at the hearing that she remembered being struck twice by the taxi. She also advised that initially she didn’t think she was hurt and the incident happened so quickly that she didn’t take down any information from the taxi driver. The Appellant further testified that almost an hour later she became very sore and that’s when she called the police to report the incident.
  5. As a result of this incident, the Appellant testified that her low back and hip were very sore and she had a headache. She undertook chiropractic treatment for the injuries sustained in the motor vehicle accident.
  6. At the time of the motor vehicle accident, the Appellant was employed as a [text deleted]. The Appellant testified that due to the injuries which she sustained in the accident, she was unable to return to her job as a [text deleted], as it was physically demanding work.
  7. On or about April 4, 2007, the Appellant submitted a claim to MPIC for PIPP benefits.

8. In a decision dated April 27, 2007, MPIC's case manager wrote to the Appellant advising that there was no entitlement to PIPP benefits, as a review of the medical information on file did not support the Appellant's inability to perform her duties as a [text deleted] on a full-time basis due to the incident of March 23, 2007. The case manager advised that the minor contusion that the Appellant may have sustained would not require any specific supervised care in order to address symptoms associated with this condition and accordingly there was no entitlement to PIPP benefits in relation to the incident.
9. The Appellant sought an Internal Review of that decision. In a decision dated June 1, 2007, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that if the Appellant were in fact hit by the taxi, the only injury she could have sustained would be minor bruising. The Internal Review Officer agreed with the case manager that such an injury would not lead to the symptoms described by the Appellant's healthcare practitioners and therefore she concluded that the incident was not the cause of the Appellant's symptoms. As a result, the Internal Review Officer found that the Appellant was not entitled to PIPP benefits in relation to the incident of March 23, 2007. The Internal Review Officer also found that any slight injury that might have occurred as a result of the incident would not be severe enough to render the Appellant incapable of performing the activities of daily living or the essential duties of her pre-accident employment as a [text deleted]. As a result there was no entitlement to income replacement indemnity benefits in relation to the Appellant's time off from work.

The Appellant has now appealed that Internal Review Decision to this Commission. The issue which requires determination on the appeal is whether the Appellant is entitled to PIPP benefits as a result of the incident on March 23, 2007.

**Appellant's Submission:**

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant was injured in the incident of March 23, 2007. She argues that the medical evidence supports and confirms the Appellant's testimony. The Claimant Adviser maintains that both the Appellant's family physician and her chiropractor confirm that the Appellant did not have her symptoms prior to her motor vehicle accident and her symptoms are consistent with the mechanism of injury. The Claimant Adviser also argues that [MPIC's Doctor] of MPIC's Healthcare Services Team disregarded the Appellant's caregiver's objective medical evidence, when he came to his conclusion that she would not have developed her injuries from the minor motor vehicle accident. The Claimant Adviser maintains that [MPIC's Doctor's] reports are therefore flawed since he did not take the doctors' reports or their objective evidence into account. As a result, the Claimant Adviser submits that the Appellant is entitled to PIPP benefits as a result of the motor vehicle accident of March 23, 2007.

**MPIC's Submission:**

Counsel for MPIC submits that the Appellant is not a reliable historian. He argues that her reporting is suspect. She did not report the incident accurately and therefore he argues that she wasn't accurately reporting the incident to her doctors either. As a result, counsel for MPIC maintains that the reports from the medical caregivers are not reliable since the information they were receiving from the Appellant was flawed to begin with.

Counsel for MPIC maintains that [MPIC's Doctor's] review of the medical information and of the incident in question is the most accurate. [MPIC's Doctor's] opinion is that there is no cause and effect between the incident and the medical conditions which the Appellant subsequently presented to her caregivers with. [MPIC's Doctor] advised that the Appellant would have had to

sustain significant trauma to have presented with those complaints and that it is not probable that she sustained the injuries to the multiple regions of the body that she was complaining about as a result of the brief incident that took place on March 23, 2007.

Lastly, counsel for MPIC maintains that the onus is on the Appellant to show that the Internal Review Decision is wrong. He maintains that that onus has not been met as there is not enough medical evidence to show that her medical symptoms are related to the minor incident of March 23, 2007. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated June 1, 2007 should be confirmed.

**Decision:**

Upon 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 testimony of the Appellant, the submissions of the Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to PIPP benefits arising out of the accident of March 23, 2007. Upon a review of all of the evidence in support of the Appellant's claim, the Commission finds that the accident of March 23, 2007 was a very minor accident. As such, we accept [MPIC's Doctor's] opinion that the only injury which the Appellant would have sustained as a result of that accident would have been minor bruising. We accept that such an injury would not lead to the symptoms described by the Appellant and by her healthcare practitioners. We find that any slight injury that might have occurred as a result of the accident of March 23, 2007 would not have been severe enough to render the Appellant incapable of performing the activities of daily living or the essential duties of her pre-accident employment as a [text deleted]. We find that the medical evidence on the Appellant's file is insufficient to establish that her significant injuries were related to the very minor incident of

March 23, 2007. Accordingly, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, an entitlement to PIPP benefits as a result of the March 23, 2007 accident.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated June 1, 2007 is confirmed.

Dated at Winnipeg this 31<sup>st</sup> day of December, 2009.

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**YVONNE TAVARES**

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**GUY JOUBERT**

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**LES MARKS**