

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-108**

PANEL: Mr. Mel Myers, Q.C.

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

HEARING DATE: August 12, 2009

ISSUE(S): Whether the Appellant is entitled to Personal Injury Protection Plan Benefits

RELEVANT SECTIONS: Section 70(1) 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] reported that she was a passenger on [a bus] on April 28, 2008. While alighting at the rear of the bus the doors closed before she had an opportunity to fully exit. The Appellant reported that the pressure from the doors caused an injury to her right shoulder, neck, back, and lower extremities.

The Appellant further reported that following the motor vehicle accident she attended the [hospital] and was seen by a "training doctor". No x-rays were taken.

The Appellant attended a medical appointment with her general practitioner, [text deleted], on June 3, 2008 and reported the bus incident to him. The doctor's chart notes reflect the Appellant's complaints of a sore right shoulder and back. The doctor referred the Appellant for physiotherapy treatments.

The physiotherapist provided a report dated June 9, 2008, which noted the Appellant suffered a stroke in 1995 and had a history of regular chiropractic treatment attendance. She provided a diagnosis of soft tissue injuries to the Appellant's right scapular area and cervical spine, a WAD 1 (Whiplash-Associated Disorder – Category 1 injury).

[Text deleted], the Appellant's chiropractor, provided his chart notes to MPIC and a list of the Appellant's chiropractic treatments before and after the motor vehicle accident. The chiropractor reported that treatment of the Appellant prior to the reported bus incident included her neck, low back, and right foot.

An examination of [Appellant's chiropractor's] ledger indicates the Appellant commenced receiving chiropractic treatments on July 14, 2006 for a period of approximately 22 months prior to the motor vehicle accident. Following the April 28, 2008 incident, the Appellant reported headaches, neck, low back, hip and foot pain. [Appellant's chiropractor's] attendance ledger indicates that subsequent to the April 28, 2008 incident, chiropractic treatments were reduced to two treatments per month.

On June 25, 2008, the case manager wrote to the [hospital] and stated:

“It is our understanding that [the Appellant] was admitted to your Emergency Department on or about April 28, 2008.

Please provide me with a copy of the complete clinical chart, including the following:

- case summary
- emergency chart notes
- x-ray reports

We have enclosed a signed Authorization for Release of Health Care Information that will allow you to release the requested information.”

On July 4, 2008 the case manager received a report from the [hospital] that there was no record of treatment of the Appellant on or about April 28, 2008.

The case manager also investigated the Appellant’s report of the injuries that she sustained in leaving a bus on April 28, 2008. The case manager received a report from the transit driver dated July 14, 2008 which indicated that he did not have any knowledge of the incident in question.

The Appellant made an application for compensation on June 12, 2008. On August 1, 2008 the case manager wrote to the Appellant and advised her that she not established that her injuries were caused by an automobile or use of an automobile pursuant to Section 70(1) of the MPIC Act.

The Appellant filed an Application for Review on August 11, 2008.

On October 20, 2008 the Internal Review Officer issued a decision confirming the case manager’s decision and dismissing the application of the Appellant’s Application for Review.

Appeal:

The Appellant filed a notice of appeal on October 27, 2008. The relevant provision in respect of this appeal is:

Definitions

[70\(1\)](#) In this Part,

"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;

Appeal Hearing:

The appeal hearing took place on August 12, 2009. The Appellant appeared on her own behalf and Ms Danielle Robinson appeared on behalf of MPIC.

The Appellant stated at the appeal hearing that:

1. Prior to the motor vehicle accident she had suffered a stroke in 1995 and subsequently was in receipt of a disability pension.
2. As a result of the stroke she had suffered continuous pain to her neck and back since 1995.
3. As a result of the April 28, 2008 Transit incident this pain to her neck and back has continued unabated to the present time.
4. The Appellant acknowledged to the Commission that the injuries that she suffered on April 28, 2008 were soft tissue injuries.

DISCUSSION

The Appellant asserts that as a result of the April 28, 2008 Transit incident she has suffered a long term injury resulting in pain to her neck and back.

The Appellant submitted that after she left the bus, the bus continued on its route. There were no witnesses that she was aware of who might have seen the accident.

The Appellant did not in a timely fashion report this incident to the Transit Authority and as a result the Transit Authority did not have an opportunity to effectively conduct an investigation as to whether or not the Appellant was involved in the April 28, 2008 incident while leaving a transit bus. As a result the Transit Authority could not confirm or reject whether the Appellant in fact suffered any injuries arising from the April 28, 2008 incident.

The Appellant reported to the Internal Review Officer that she could not recall the date that she attended the [hospital] following the bus incident but remembered being seen by a “training doctor”. The Commission notes, however, that when the case manager wrote to the [hospital] on June 25, 2008, she requested a report in respect of the Appellant’s admission to the Emergency Department on or about April 28, 2008. In response, the [hospital] records did not indicate any report of any treatment to the Appellant on or about that date. Although MPIC was aware that the Appellant was unable to actually pinpoint the date that she attended the [hospital], they did not attempt to determine from the [hospital] whether the Appellant did in fact attend the Emergency Department subsequent to April 28, 2008. As a result, MPIC was unable to confirm or reject the Appellant’s testimony that she did attend the [hospital] Emergency Department as a result of injuries that she sustained in the April 28, 2008 transit incident.

The Commission further finds that the Appellant's complaints in respect of her 1995 stroke and the history of regular chiropractic treatments up to and after the April 28, 2008 incident indicate a similarity to the complaints reported to her chiropractor, [text deleted], which was pain to her neck, right shoulder and back, which [Appellant's chiropractor] treated. As well, in his report, [Appellant's chiropractor] stated that similar complaints were made by the Appellant in respect of pain to her neck and back to [Appellant's doctor] five weeks after the April 28, 2008 incident and to her physiotherapist who provided a report to MPIC dated June 17, 2008.

In her report, the physiotherapist provided a diagnosis of soft tissue injuries to the right scapular area and cervical spine, a WAD 1 (Whiplash-Associated Disorder – Category 1 injury). The physiotherapist also reported that the maximum period for treating these soft tissue injuries would be four to six weeks. This diagnosis is inconsistent with the Appellant's claim that as a result of the April 28, 2008 Transit incident she commenced to suffer pain to her neck and back, this pain continued through to the date of the appeal hearing on August 12, 2009 (a period of 14 months after the April 28, 2008 incident).

On June 3, 2008, five weeks after the April 28, 2008 bus incident the Appellant saw [Appellant's doctor] when she reported that as a result of the bus incident, she suffered pain to her neck and back. The Commission asked the Appellant why she had not seen a doctor shortly after the April 28, 2008 incident but had waited until June 3, 2008 and the Appellant's reply was because she was in pain.

The Commission finds:

1. The Appellant suffered a stroke in 1995 and as a result has suffered continuous pain to her shoulder, neck and back.

2. As a result of the impact from the bus doors on the Appellant's shoulder, neck and back following the April 28, 2008 bus incident, there was an exacerbation of the Appellant's pre-existing shoulder, neck and back pain.
3. As a result of the April 28, 2008 bus incident the Appellant suffered soft tissue injuries which would have been resolved within four to six week with timely physiotherapy treatments.
4. The Appellant delayed in seeing [Appellant's doctor] for a period of five weeks after the motor vehicle accident, who then referred her for physiotherapy treatments.
5. Had the Appellant seen [Appellant's doctor] in a timely fashion after the motor vehicle accident, he would have referred her to physiotherapy treatment and having regard to the physiotherapist's diagnosis the Appellant's complaints to her shoulder, neck and back may have resolved themselves within a period of four to six weeks.
6. However, the Appellant failed to take the appropriate action to resolve the pain to her shoulder, neck and back in a timely fashion.

It should further be noted that the Appellant did not file an application for compensation with MPIC until June 20, 2008, nearly two months after the April 28, 2008 incident. By that time, the Appellant would have recovered from the soft tissue injuries she sustained in the April 28, 2008 incident. As a result, MPIC did not have the opportunity in a timely fashion to determine whether or not it should reimburse the Appellant for physiotherapy treatments in respect of her soft tissue injuries.

DECISION

The Commission therefore finds that:

1. As a result of suffering a stroke in 1995 the Appellant has suffered continuous pain to her shoulders, neck and back.
2. The Appellant admitted that the injuries that she sustained to her shoulder, neck and back were of a soft tissue nature.
3. The physiotherapist, after examining the Appellant, concluded that the pain to the Appellant's shoulder, neck and back were as a result of injuries, which with timely physiotherapy treatments would have resolved themselves within a period of four to six weeks.

The Commission therefore, having regards to the Appellant's admission, the relevant medical reports and the physiotherapist's diagnosis, rejects the Appellant's submission that the injuries sustained in the April 28, 2008 transit incident were of a long term nature.

For these reasons, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that as a result of the incident on April 28, 2008 she suffered long term injuries to her back, neck and shoulder. The Commission therefore dismisses the appeal and confirms the decision of the Internal Review Officer dated October 20, 2008.

Dated at Winnipeg this 26th day of August, 2009.

MEL MYERS, Q.C.