

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-135**

PANEL: Mr. Mel Myers, Q.C., Chairperson

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf and was assisted by an Interpreter, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: May 7, 2010

ISSUE(S): Entitlement to Personal Injury Protection Plan coverage for dental treatment totalling \$6,113.10

RELEVANT SECTIONS: Section 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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on October 31, 2006 while operating his van on the “[text deleted]”.

The Appellant made an application for compensation on June 30, 2007, eight months after the motor vehicle accident of October 31, 2006. The Appellant described his injuries as being unable to sleep for three days, having mild anxiety and depression, dental problems – unable to bite, chew and swallow food as well as prior to the accident.

The Internal Officer Decision dated November 2, 2007 sets out the essential facts in this case as follows:

1. On June 13, 2007, eight months after the accident occurred, [Appellant's Dentist], submitted a Dental Report requesting extensive dental treatment totalling \$6,113.10. [Appellant's Dentist] comments that you had pre-existing comprised (sic) periodontal health which further aggravates the problem.
2. Your file was reviewed by [MPIC's Dentist #1], [text deleted]. In his memorandum dated July 2, 2007, [MPIC's Dentist #1] noted the following:

“The dental problems are due to pre-existing dental disease – decay and periodontal disease and not caused by the motor vehicle accident. In my opinion there is no coverage that would be applicable since the problems are pre-existing.”

3. Your case manager issued a decision on July 20, 2007 reflecting [MPIC's Dentist #1's] opinion.
4. [Appellant's Dentist] submitted a subsequent report on October 11, 2007 and noted the following:

“This is to clarify that although this patient had pre-existing caries and compromised periodontal health. Any trauma [text deleted] a MVA definitely would have a deleterious effect on his dental problems. Hence I have no doubt that the MVA has definitely worsened his dental problem.”

5. Your file including [Appellant's Dentist's] report dated October 11, 2007 was further reviewed by [MPIC's Dentist #2], [text deleted]. In his memorandum dated October 25, 2007, [MPIC's Dentist #2] noted the following:

“After reviewing the file, it becomes apparent that it is most probable the patient would have experienced continued decline of his oral condition in the absence of the accident considering the bone levels around these teeth and the frank decay. Therefore, I do not agree with the arguments that this is a medical necessity as a result of the MVA or that the MVA aggravated a condition which would not have progressed otherwise.”

The Appellant made Application for Review of the case manager's decision and the Internal Review Officer issued her decision on November 2, 2007 rejecting the Appellant's claim and confirming the case manager's decision on the following grounds:

“Section 136(1) of the *Act* provides that a victim of an automobile accident is entitled to reimbursement of expenses incurred for medical and paramedical care required as a

result of the accident. Section 5 of Manitoba Regulation 40/94 provides that Manitoba Public Insurance shall pay an expense incurred by a victim for the purpose of receiving dental care when that care is medically required as a result of the accident.

To qualify for the specific PIPP benefits currently sought, you need to establish, on the balance of probabilities, that the existing and “potential” dental problems are causally related to your motor vehicle accident. In other words, it must be more probable than not that the injuries sustained in the accident have led to the current situation with your teeth. When viewed objectively, however, the evidence simply does not satisfy this “balance of probabilities” test.

1. While I can appreciate that your mouth was sore and you had difficulty chewing and swallowing following your accident, I am not convinced that your teeth were damaged to the extent of requiring extensive dental treatment totalling over \$6,000.00.

I am therefore, confirming the decision of the case manager as it is in accordance with both legislation and evidence, and no basis has been shown for interfering with the decision under review.”

The Appellant filed a Notice of Appeal on November 27, 2007.

Appeal Hearing:

The relevant provisions of the MPIC Act and Manitoba Regulation 40/94 in respect of this appeal are:

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.

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;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The Appellant testified that prior to the motor vehicle accident:

1. He had no problems with his teeth, and was able to eat and swallow without any pain or difficulty.
2. The impact of the motor vehicle accident caused the dental problems of the loosening and displacement of his teeth.
3. He eventually was unable to bite, chew or swallow food and began to feel pain in his mouth.
4. As a result of the motor vehicle accident he was stunned, confused and traumatized, unable to sleep for three days and suffered from anxiety and depression.
5. The injuries that his daughter-in-law had received in the motor vehicle accident were far more serious and disabling than his own injuries.
6. As a result, he did not initially file a claim with MPIC as he did not wish to prejudice his daughter-in-law's claim with MPIC.
7. Subsequently, however, his dental problems worsened and he made an application for compensation approximately 8 months after the motor vehicle accident.

In response to questions from the Commission, the Appellant testified that:

1. He had last seen a dentist six years before the motor vehicle accident in respect of wisdom teeth problems.
2. Prior to that occasion, he had not visited a dentist for a period of 14 years.
3. Since he had not had any dental problems in the six years prior to the motor vehicle accident, he did not feel it was necessary to see a dentist.

Discussion:

The Commission notes that MPIC's two dental consultants, [MPIC's Dentist #1] and [MPIC's Dentist #2] concur with [Appellant's Dentist's] report as to the state of the Appellant's dental health prior to the motor vehicle accident. [Appellant's Dentist] reported that the Appellant's dental problems were due to pre-existing dental disease – decay and periodontal disease. [MPIC's Dentist #2] in his report concluded that it was most probable that the Appellant had suffered continued decline of his oral condition subsequent to the accident. The Commission, having regard to the manner in which the Appellant looked after his teeth and the dental opinions of [Appellant's Dentist], [MPIC's Dentist #2] and [MPIC's Dentist #1], rejects the Appellant's testimony that prior to the motor vehicle accident he had no dental problems.

The Commission finds that the onus is upon the Appellant to establish on a balance of probabilities that his injuries were caused by the motor vehicle accident and materially contributed to his dental problems. Although [Appellant's Dentist], in his second report of October 11, 2007, reiterated that the Appellant had pre-existing tooth decay and compromised periodontal health, he concluded that the motor vehicle accident definitely worsened the Appellant's dental problems. In this report, [Appellant's Dentist] did not specifically set out the manner in which the Appellant's dental problems worsened as a result of the motor vehicle accident. As a result the Commission is not able to determine whether or not the motor vehicle

accident materially contributed to the Appellant's dental problems. The Commission therefore determines that the dental opinion of [Appellant's Dentist] in his October 11, 2007 letter does not corroborate the Appellant's testimony that the motor vehicle accident materially contributed to his dental problems.

In these circumstances the Commission gives greater weight to the dental opinions of [MPIC's Dentist #1] and [MPIC's Dentist #2] than it does to the opinion of [Appellant's Dentist] that the motor vehicle accident injuries caused or materially contributed to the Appellant's dental problems.

Decision:

The Commission finds the Appellant failed to establish on a balance of probabilities, pursuant to Section 136(1)(a) of the MPIC Act and Section 5(a) of Manitoba Regulation 40/94, that the motor vehicle accident injuries caused or materially contributed to the Appellant's dental problems. The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated November 2, 2007.

Dated at Winnipeg this 26th day of May, 2010.

MEL MYERS, Q.C.