

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-06**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Wilf De Graves
Ms Linda Newton

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

HEARING DATE: May 2, 2011

ISSUE(S):

1. Entitlement to personal assistance/home assistance benefits beyond July 20, 1999;
2. Entitlement to reimbursement for medication expenses;
3. Entitlement to permanent impairment benefits.

RELEVANT SECTIONS: Sections 127, 131 and 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 2 and 38 of Manitoba Regulation 40/94 and Schedule A of Manitoba Regulation 41/94.

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, [text deleted], was involved in an accident on April 3, 1996. At the time, the Appellant was a passenger on a transit bus that came to an abrupt stop. In order to protect herself from striking the front window of the bus, she held out her hand which came into contact with the fare box. As a result of that accident, the Appellant sustained an oblique fracture of the base of the proximal phalanx of the second digit of the left hand, with no displacement. She also sustained some bruising to the right hand, left foot and possibly the right knee and ankle. There was also an indication that she had a mild strain of the cervical spine. Due to the bodily injuries

which the Appellant sustained in the accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

On June 22, 1999, MPIC's case manager issued a decision which advised as follows:

Based on the medical evidence in your file, you do not qualify for further personal assistance/home assistance as well as medication expenses. [Appellant's Doctor #1] clearly documented the only injury sustained as a result of this motor vehicle accident was a fracture involving your second finger. There was no documentation of excessive bruising and/or swelling involving the left hand. There is no documentation of any injury occurring to the right hand. There is no documentation of any injuries occurring to joints of your lower extremities. He did document that you had problems involving your knees and ankles prior to the motor vehicle accident.

X-rays taken at that time did not identify any osteoarthritic changes involving the second metacarpal phalangeal joint. X-rays taken on July 9, 1997 identified osteoarthritic changes but no abnormalities involving the proximal phalanx of the second finger. This information would indicate that the fracture fully healed with (sic) permanent alteration in the bone or associated joint.

The medical information in the file has been reviewed by our Medical Consultants and they note that the fracture involving the proximal phalanx of the second finger is the only condition that developed as a result of the incident of April 3, 1996. They also advise that the medical information and radiological investigations clearly identify osteoarthritic changes occurring sometime following the incident but not as a direct result of the incident based on a reasonable degree of medical probability. There is no documentation identifying any impairment of function involving your left index finger.

The assistance that you require in your home with regard to your hair care and house cleaning expenses arise from osteoarthritis and is not as a direct result of this incident. As well, the medication required again relates to your osteoarthritis.

Further to our meeting of Tuesday, June 15, 1999, this will confirm that you no longer qualify for personal assistance/home assistance effective July 20, 1999.

The Appellant sought an Internal Review of that decision. In a decision dated November 18, 2002, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical documentation on the file did not support the Appellant's entitlement to further personal

care/home assistance benefits, reimbursement of medication expenses or permanent impairment benefits as a result of the motor vehicle accident of April 3, 1996.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are:

1. Entitlement to personal assistance/home assistance benefits beyond July 20, 1999;
2. Entitlement to reimbursement of medication expenses; and
3. Entitlement to permanent impairment benefits.

Appellant's Submission:

The Appellant submits that as a result of the injuries she sustained in the accident of April 3, 1999, she had an early onset of osteoarthritis which has significantly impacted her life. The Appellant claims that within a year of the accident, arthritis set in both of her hands, her knees, and her feet. She maintains that the heavy trauma which she sustained in the accident led to a quicker onset of arthritis in her hands, knees and feet, than if she had not been involved in the accident of April 3, 1996.

Due to her condition, she is limited in her employment opportunities, and she continues to take medication for arthritis. The Appellant submits that the accident of April 3, 1996 caused the early onset of her condition and therefore she claims that she is entitled to further PIPP benefits from MPIC.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's current condition is not related to the motor vehicle accident of April 3, 1996 and therefore she is not entitled to any further PIPP benefits. In

support of his position, counsel for MPIC relies upon the medical report of [Appellant's Doctor #2] dated July 3, 2002 wherein [Appellant's Doctor #2] opined that:

In review with [the Appellant], it is unlikely that the motor vehicle accident caused the development of arthritis, as she had no interarticular fractures. However the accident could have exacerbated some of the symptoms of her hand and created more stiffness. However there is a wide spread involvement of both hands involving all IP joints. It would be difficult to attribute her problems solely to the motor vehicle accident and it is very likely that her current status would have occurred irrespective of the original injuries. Currently there is no surgical treatment required at this time. I would treat her symptomatically with range of motion exercises and anti-inflammatories. I would be happy to see her in the future with any problems.

Counsel for MPIC also relies upon the medical opinion of [MPIC's Doctor], Medical Consultant to MPIC's Health Care Services Team. In his Inter-departmental Memorandum dated August 3, 2005, [MPIC's Doctor] states that "It is my opinion the osteoarthritic changes she developed in both hands developed irrespective of the incident in question, in all probability." In his Inter-departmental Memorandum dated September 21, 2010, [MPIC's Doctor] states that:

I reviewed documents recently submitted to [the Appellant's] file as it relates to her pre and post motor vehicle accident medical history. Based on the review, it is once again my opinion the osteoarthritic changes that have been identified in both hands did not develop as a direct result of the incident in question in all probability.

The documents do not contain the information that would refute the opinion rendered by [Appellant's Doctor #2] (i.e. "*It would be difficult to attribute her problems solely to the motor vehicle accident and it is very likely that her current status would have occurred irrespective of the original injuries*").

As a result, counsel for MPIC submits that the Appellant's current medical condition is not related to the motor vehicle accident and therefore the Appellant is not entitled to any further PIPP benefits beyond July 20, 1999. Counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision of November 18, 2002 should be confirmed.

Decision:

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 the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to:

1. personal assistance/home assistance benefits beyond July 20, 1999;
2. reimbursement of medication expenses beyond July 20, 1999;
3. permanent impairment benefits.

Reasons for Decision:

The Commission finds that the medical evidence before it does not support a causal connection between the Appellant's current condition and the accident of April 3, 1996. The Commission accepts [Appellant's Doctor #2's] opinion set out in his report of July 3, 2002 that, "it would be difficult to attribute her problems solely to the motor vehicle accident and it is very likely that her current status would have occurred irrespective of the original injuries". Taking into consideration the totality of the evidence before the Commission, the Commission finds that the Appellant has not established any entitlement to the PIPP benefits requested beyond July 20, 1999. Further, there was simply no evidence before the Commission upon which to base a permanent impairment award or that there were any permanent impairments which arose from the injuries resulting from the accident of April 3, 1996.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated November 18, 2002 is confirmed.

Dated at Winnipeg this 18th day of May, 2011.

YVONNE TAVARES

WILF DE GRAVES

LINDA NEWTON