

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-148

PANEL: Mr. Mel Myers, Q.C.

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf via teleconference;
The Appellant was assisted by an Interpreter, [text deleted].
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: September 2, 2011

ISSUE(S): Entitlement to Income Replacement Indemnity ("IRI") benefits and funding for treatment.

RELEVANT SECTIONS: Sections 70(1), 71(1), 81(1)(a) and 136(1)(a) of The Manitoba Public Insurance Corporation Act ('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

On September 18, 2003 the Appellant was involved in a motor vehicle accident when another vehicle ran a stop sign and struck the driver's side of the Appellant's vehicle. As a result of this accident the Appellant suffered whiplash injuries and pain to her neck, shoulders and back, contusions to both her knees, headaches and dizziness. At the time of the accident, the Appellant was employed with [text deleted].

On September 28, 2003, the Appellant made an application for the payment of medical and travel expenses and on November 2, 2003 she made an application for compensation to MPIC.

Case Manager's Decision – March 24, 2004:

On March 24, 2004 the case manager wrote to the Appellant and indicated that the medical information on the file confirmed that the Appellant was functionally capable of returning to her employment as of October 6, 2003. The case manager also noted that the Appellant's employer also confirmed that the Appellant did return to work on this date. The Appellant was paid IRI benefits until October 6, 2003.

The Appellant made a further application for IRI benefits and for treatment expenses to MPIC.

Case Manager's Decision – February 17, 2009:

On February 17, 2009, the case manager issued a decision rejecting the Appellant's application for compensation for IRI benefits and for treatment expenses. The case manager indicated that the Appellant's entire medical file had been reviewed by MPIC's Health Care Services team and the medical information reviewed indicated that there was insufficient evidence to support a causal relationship between the Appellant's signs/symptoms and the injuries sustained in the motor vehicle accident of September 18, 2003. As a result, MPIC was unable to approve funding for the requested treatment or consider any wage loss benefits.

The Appellant did not make an Application for Review of the case manager's February 17, 2009 decision.

The Appellant made a further application for compensation for treatment expenses and loss of wages based on new medical information provided by [Appellant's Doctor #1] on July 10, 2009.

Case Manager's Decision – October 27, 2009:

On October 27, 2009 the case manager issued a decision which indicated that the new medical information was reviewed by MPIC's Health Care Services team and the new medical information did not support a causal relationship between the current signs/symptoms and the motor vehicle accident of September 18, 2003. As a result, the case manager indicated that there was no change in the original decision of February 17, 2009.

The Appellant made an Application for Review dated December 17, 2009. The Appellant did not request a hearing with the Internal Review Officer.

Internal Review Officer's Decision – July 23, 2010:

The Internal Review Officer issued a decision on July 23, 2010 in respect of the case manager's decision dated October 27, 2009.

The Internal Review Officer's decision of July 23, 2010 succinctly sets out the history of the Appellant's claim from the date of the motor vehicle accident on September 18, 2003.

- “[Appellant's Doctor #2] of [text deleted] X-Ray Clinic wrote an x-ray report dated September 19, 2003 in which it was noted that there were minor degenerative changes to your knees, as well as degenerative changes of your lumbar spine.
- [Appellant's Physiotherapist] prepared a Health Care Provider Progress Report dated April 16, 2004 in which she wrote that you were suffering from pain and limited range of motion in your right knee and right shoulder, and that these symptoms had been gradually becoming worse since you returned to work. She recommended that you be provided with physiotherapy treatment.
- This request was reviewed by [MPIC's Doctor #1], an independent consultant with MPI's Health Care Services on May 17, 2004. [MPIC's Doctor #1] wrote that there were no significant knee findings, no diagnosis and no physiotherapy plan. Based on this, she concluded that she could not establish any necessary treatment at this time.

- On July 14, 2008, you contacted MPI Case Manager [text deleted] to ask about re-opening your claim, as you were having difficulties with your neck, back, shoulders and knees since the accident, and you were now unable to keep working due to your symptoms. You were advised to provide medical documentation to support this.
- [Appellant's Doctor #1] provided a number of chart notes and reports on your condition on October 7, 2008. Among those reports was a Bone Densitometry Report prepared by [Appellant's Doctor #3], date-stamped October 12, 2007, which reported that very minor early degenerative changes were seen in your knees and that you had mild degenerative disc disease in the lumbar spine.
- [Appellant's Doctor #4] of [text deleted] provided a report dated January 22, 2008, in which it was noted that you had active arthritis at a number of sites, including your feet, ankles, knees, right acromioclavicular joint, superior aspect of the head of the right humerus, left wrist, finger joint, elbows, sternoclavicular joint and at least the right hip. This report also noted degenerative disc disease in your lower lumbar spine, and active bursitis in your hips. No other pathology was noted to explain your widespread pains.
- On March 11, 2008, [Appellant's Doctor #5] wrote a letter in which it was indicated that you continued to have pain in your back, shoulders and knees. The letter said that your bone scan showed multi-focal arthritic joints, while your shoulder showed tendonitis of the supraspinatus and rotator cuff, with a small tear in the supraspinatus, and degenerative changes in the AC joint.
- On March 25, 2008, orthopaedic and reconstructive surgeon [Appellant's Orthopaedic Surgeon] wrote a letter in which it was indicated you had a combination of arthritis involving the knee, as well as other areas of pain.
- You then underwent a CT scan, the results of which were summarized by [Appellant's Doctor #5] in a letter of May 12, 2008. It was noted that there was a bulging annulus with mild compression along the anterior aspect of the thecal sac at the L3-4 level, with mild arthritis in the facet joint. A disc herniation was noted at the L4-5 level, with degenerative changes in the facet joint. Finally, there was mild posterior lipping and annular bulge with mild compression at the L5-S1 level, again with mild degeneration facet joints.
- [Appellant's Doctor #1] wrote a letter dated September 15, 2008 in which he wrote that you were unable to work as a direct result of your "motor vehicle injuries". He wrote that you had worsening pain, and that your disability was worsening. Specifically, he noted that you walked with a limp due to your right knee, that your neck and lower back movements were restricted, and that your ADL's were restricted.
- [Appellant's Doctor #6] of [text deleted] X-Ray and Ultrasound provided an ultrasound report from an examination of November 1, 2008 (s/b December 23, 2008). In it, it was noted that your right shoulder showed some degenerative change at the AC joint, along with mild associated capsular thickening. The report also noted mild degenerative change at the insertion of the rotator cuff were seen on an examination of your right shoulder, along with mild to moderate degenerative change at the AC joint.

- [Appellant's Doctor #5] wrote a report dated December 17, 2008. It was reported that you were applying for a Disability Pension, and that you had increasing problems sitting or standing. It was also reported that you could not do any bending, lifting, pushing, pulling or sustained overhead activity. You were reported as showing tenderness throughout your body, and a generally reduced range of motion on examination. The previous x-ray and CT scan results were also summarized. [Appellant's Doctor #5] wrote that you were unable to return to the workforce in any capacity.
- [MPIC's Doctor #2], an independent consultant with MPI's Health Care Services, reviewed your file on February 9, 2009. She noted that you suffered soft tissue injury relating to the cervical, parascapular, thoracic and lumbar regions in the accident, as well as contusions to both knees. She wrote that your medical records have identified degenerative changes and active arthritis at a number of sites. She also wrote that these conditions are not causally related to the injuries sustained at the time of the September 2003 collision.
- Based on [MPIC's Doctor #2's] review, you were sent a decision letter dated February 18, 2009 (s/b February 17) denying your entitlement to funding for treatment and for wage loss benefits. You filed an Application for Review of this decision, but that Application was closed on the basis that you were planning to provide additional medical information, after which you would be entitled to a fresh decision.
- [Appellant's Doctor #1] provided a report dated July 10, 2009 in which it was stated that your condition had worsened since the previous report. [Appellant's Doctor #1] wrote that you were suffering from worsening depression and that you were unable to work due to constant pain, spasm, weakness and reduced movements of you (sic) cervical, lumbar spine and right knee. The report also said that your symptoms are a direct result of your accident.
- Also included with [Appellant's Doctor #1's] report was a report from [Appellant's Rheumatologist] dated September 24, 2008. [Appellant's Rheumatologist] noted that you had started to have increasing pain in your right lower back, knees, right shoulder, heels and right third finger approximately 3-4 years ago. Your knees were aggravated by bending or walking, and your shoulders were aggravated by any rotation or abduction. You also had difficulties with sitting or bending forward. [Appellant's Rheumatologist] wrote that you presented with chronic pain syndrome, mainly fibromyalgia, most likely after the accident. The report also said that inflammatory arthritis should be ruled out.
- [MPIC's Doctor #2] completed another review on October 2, 2009. In that review, she first summarized the new medical information that had been received. After reviewing the file, her conclusion was that the most recent assessment undertaken by your doctors had identified multifocal degenerative changes and arthritis, with accompanying widespread pain. She wrote that the demonstration of degenerative changes and arthritis, along with chronic pain report, are on balance not causally related to the accident.
- [Appellant's Doctor #5] provided a letter dated November 4, 2009 in which it was reported that Canada Disability Pension had denied your application, and that you had

increasing pain and weakness in multiple parts of your body. [Appellant's Doctor #5] also reported that you showed significant tenderness and reduced range of motion on examination. The report also discussed a further MRI that had been conducted, which showed a small right para-central disc protrusion at T12 at L1, mild to moderate arthritis at L2-3, an annular tear with degenerative changes with ligamentum flavum hypertrophy and moderate arthritis at the L3-4 and L4-5 levels, and a bulging of the disc with arthritis at the L5-S1 level. [Appellant's Doctor #5] reported that there was no hope of improvement in the foreseeable future which would enable you to return to the workforce.

- [Appellant's Doctor #1] provided a letter dated November 30, 2009 in which it was written that you had not worked at all since 2008, and you were severely disabled with cardiac worsening and increasing pain.
- [MPIC's Doctor #2] provided another review on June 23, 2010 in which she wrote that the new information provided since her previous opinion did not change her opinion that our ongoing musculoskeletal presentation did not bear an ongoing, temporal relationship to the accident, but rather to underlying degenerative and arthritic conditions.”

The issue for determination by the Internal Review Officer was whether there was a causal relationship between the September 18, 2003 motor vehicle accident and the Appellant's current symptoms. The Internal Review Officer concluded that there was no causal relationship between the Appellant's current symptoms and the motor vehicle accident and therefore rejected the Appellant's Application for Review and confirmed the case manager's decision. In his decision, the Internal Review Officer set out the reasons for rejecting the Appellant's Application for Review:

“In order to be entitled to IRI benefits, you must be unable to perform our pre-accident employment because of a physical impairment resulting from injuries you sustained in a motor vehicle accident. Similarly, a claimant's injuries or symptoms must be caused by a motor vehicle accident in order for them to be entitled to funding from MPI for care to address those symptoms. The question to be answered in terms of both your entitlement to IRI and your entitlement to funding for treatment is therefore whether your symptoms are causally related to the accident.

From my review of the file, I do accept that you suffer from significant pain through your body, particularly in your knees, shoulder and lower back. I also accept [Appellant's Doctor #5] and [Appellant's Doctor #1's] opinion that you are unable to return to work due to your pain symptoms. The fact that you have suffered from this pain does not provide any evidence of a causal relationship between the pain and the accident, however.

[MPIC's Doctor #2] has consistently written that your symptoms are not causally related to the motor vehicle accident. She has noted that the specific injuries you suffered in the accident were soft tissue injuries, and that you were able to return to work. She has also noted that many of the doctors who have examined you have identified various degenerative conditions, and that there is no basis to conclude that these degenerative conditions are in any way related to the accident.

In terms of your accident-related injuries, I do agree with [MPIC's Doctor #2] that the specific, identified injuries you suffered in the accident consisted of soft tissue injuries, and that you had recovered from these injuries to a level that you were able to return to work less than a month after the accident. There is no basis in any of the documentation reviewed above for concluding that you developed any of the degenerative conditions with which you have been diagnosed as a consequence of any of these soft tissue injuries.

Many of the doctors who have examined you have diagnosed you as suffering from arthritis throughout various parts of your body. Among the specific diagnoses that have been made are that you are suffering from arthritis of the feet, ankles, knees, right acromioclavicular joint, superior aspect of the head of the right humerus, left wrist, elbows, sternoclavicular joint, right hip, as well as various other joints. In addition to the arthritis diagnoses, you have also been diagnosed with a variety of "degenerative" conditions, particularly in your back.

[MPIC's Doctor #2] wrote that in her opinion, your current symptoms are caused by these long-term degenerative conditions, including the arthritis. Given the nature of the diagnoses reviewed above, I do not see any basis to conclude that they are causally-related to the motor vehicle accident as opposed to the natural course of your arthritis and other degenerative conditions.

While I do take note of the fact that [Appellant's Doctor #1] and [Appellant's Rheumatologist] have each written that in their opinion your condition is likely caused by the motor vehicle accident, I would note that they have not provided any objective basis for this conclusion. The fact that you have these symptoms does not necessarily mean that they were caused by the accident. Similarly, while [Appellant's Rheumatologist] did write that in his opinion your (sic) are not suffering from inflammatory arthritis, this does not address the multiple doctors who have diagnosed you as suffering from fairly widespread arthritis.

Given the above, I have to accept [MPIC's Doctor #2's] opinion that the evidence does not support that your current symptoms are causally related to the motor vehicle accident. That being the case, I am upholding the case manager's decision.

Please note that this decision is based on the medical evidence currently on file. If you obtain further medical evidence that supports your having suffered an injury as a result of the accident that has resulted in a physical impairment precluding you from your pre-accident duties, you will be able to submit that new information to your case manager for a further decision."

Appeal:

The relevant provisions of the MPIC Act are:

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;

"victim" means a person who suffers bodily injury in an accident.

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.

Entitlement to I.R.I.

[81\(1\)](#) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;

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;

Appeal Hearing:

The appeal hearing took place on September 2, 2011 in [Manitoba]. The Appellant testified via teleconference from [Ontario].

MPIC's legal counsel, Matthew Maslanka, was present at the appeal hearing.

At the request of the Appellant, the Commission retained a translator, [text deleted], to act as a translator on the Appellant's behalf at the appeal hearing.

The Appellant testified that:

1. Prior to the motor vehicle accident she had suffered from a mild case of arthritis but otherwise she was very healthy and active.
2. As a result of the motor vehicle accident she suffered low back pain, pain to her knees, shoulders and neck.
3. These pains were caused by the motor vehicle accident and increased over a period of time.
4. She was able to work for the first four years after the motor vehicle accident but subsequent to that period of time she was unable to continue to work due to the significant pain she suffered as a result of the motor vehicle accident.
5. Based on the medical reports of [Appellant's Doctor #1] and [Appellant's Rheumatologist], there was a causal relationship between the injuries described in her testimony and the motor vehicle accident.
6. All of the physical problems she had were as a result of the motor vehicle accident.

In his submission, MPIC's legal counsel stated that:

1. He was relying on reports of [MPIC's Doctor #2] which clearly establish there was no causal relationship between the Appellant's current symptoms and the motor vehicle accident.
2. No weight should be given to the medical reports of [Appellant's Doctor #1] and [Appellant's Rheumatologist] who asserted there was likely a causal relationship between the motor vehicle accident and the Appellant's current symptoms.
3. The Internal Review Officer was correct in concluding there was no objective basis for their medical opinions.
4. The Appellant continued to work after the motor vehicle accident for a period of four years before she terminated her employment on the grounds that she was not capable of working due to injuries she had sustained in the motor vehicle accident.

MPIC's legal counsel therefore requested that the Commission confirm the Internal Review Officer's Decision and dismiss the Appellant's appeal.

Discussion:

The Commission was impressed with the sincerity and honesty of the Appellant and the manner in which she was able to cope with the many significant difficulties that she had experienced since the motor vehicle accident. The Appellant acknowledged that prior to the motor vehicle accident she did suffer from arthritis and she stated that after the motor vehicle accident, her arthritic pain increased significantly. She also acknowledged that she had worked for the first four years after the motor vehicle accident with pain and terminated her employment when she was unable to continue due to the pain she was suffering.

The Commission accepts the Appellant's testimony that she suffered from a number of physical problems which she described. However, the issue that the Commission has to determine was

whether or not the Appellant has established, on the balance of probabilities, that her complaints were causally connected to the motor vehicle accident. The Commission notes that prior to the motor vehicle accident the Appellant did suffer from arthritis which continued to increase in intensity after the motor vehicle accident. The Commission further notes that the Appellant was able to work for the first four years after the motor vehicle accident notwithstanding the pain she suffered.

The Commission:

1. Agrees with the Internal Review Officer's Decision that little weight should be given to the medical opinions of [Appellant's Rheumatologist] and [Appellant's Doctor #1] on the issue of causality. These doctors did not provide any objective basis for their medical opinions in respect of this issue.
2. Finds that even though the Appellant suffered various difficulties, this did not mean that these difficulties were caused by the motor vehicle accident.
3. Noted that [Appellant's Rheumatologist] did write that, in his opinion, the Appellant was not suffering from inflammatory arthritis but an examination of the medical reports indicates that several doctors had diagnosed the Appellant suffering from fairly widespread arthritis.

The Commission further agrees with the Internal Review Officer who stated:

“[MPIC's Doctor #2] has consistently written that your symptoms are not causally related to the motor vehicle accident. She has noted that the specific injuries you suffered in the accident were soft tissue injuries, and that you were able to return to work. She has also noted that many of the doctors who have examined you have identified various degenerative conditions, and that there is no basis to conclude that these degenerative conditions are in any way related to the accident.

In terms of your accident-related injuries, I do agree with [MPIC's Doctor #2] that the specific, identified injuries you suffered in the accident consisted of soft tissue injuries,

and that you had recovered from these injuries to a level that you were able to return to work less than a month after the accident. There is no basis in any of the documentation reviewed above for concluding that you developed any of the degenerative conditions with which you have been diagnosed as a consequence of any of these soft tissue injuries.”

The Commission finds that:

1. [MPIC’s Doctor #2’s] reports, as well reports from other medical doctors, consistently reject the Appellant’s complaints that her physical symptoms were due to the motor vehicle accident.
2. In this Decision the Commission has set out in detail the reports of [MPIC’s Doctor #2] who reviewed all of the medical evidence and concluded that there was no causal relationship between the Appellant’s physical complaints and the motor vehicle accident of September 18, 2003.
3. The Appellant did not provide any medical reports that on an objective basis contradicted the medical opinions of [MPIC’s Doctor #2].
4. In these circumstances, the Commission must give greater weight to the medical opinions of [MPIC’s Doctor #2] than it does to the testimony of the Appellant and the medical opinions of [Appellant’s Doctor #1] and [Appellant’s Rheumatologist].
5. It agrees with the medical opinion of [MPIC’s Doctor #2] on the issue of causality.

Section 70(1) of the MPIC Act indicates that the Appellant’s entitlement to benefits under Part 2 of the MPIC Act are available to her if she can establish that her bodily injuries which she complains about, were caused by a motor vehicle accident. Pursuant to Section 81(1)(a) and Section 136(1)(a) of the MPIC Act, an Appellant can only be entitled to IRI benefits for treatment expenses if there is a causal connection between the Appellant’s physical complaints and the motor vehicle accident. The standard of proof to achieve these benefits is not that there

is a possible or likely connection between her complaints and the motor vehicle accident, but that there is a probable connection.

The onus is upon the Appellant to establish on a balance of probabilities that there was a causal connection between the motor vehicle accident and her physical complaints and for the reasons set out herein, she has failed to do so.

The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated July 23, 2010.

Dated at Winnipeg this 14th day of September, 2011.

MEL MYERS, Q.C.