

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-06-017**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], was represented by Ms Shirley Van Schie;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: February 20, 2013

ISSUE(S): 1. Entitlement to Income Replacement Indemnity benefits beyond September 21, 2005;
2. Entitlement to reimbursement of physiotherapy treatments and medications.

RELEVANT SECTIONS: Sections 70(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 5(a) and 38 of Manitoba Regulation 40/94

AICAC: 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 a motor vehicle accident on May 23, 2005, when the vehicle she was travelling in was rear-ended by a second vehicle. No damage occurred to the vehicle that [the Appellant] was a passenger in.

The Appellant attended upon her family physician the next day with complaints of headaches, sore neck and upper back, sore left shoulder and arm, lower back pain. The Appellant also

complained that she was in shock and disoriented. The family physician advised her to attend the Emergency Department if her complaints worsened. The Appellant did attend [text deleted] Hospital Emergency Department later that day. No x-rays were taken. She did have a CT scan of her head with normal results. Subsequently she re-attended her family physician who referred her to [Appellant's Neurologist]. [Appellant's Neurologist] saw [the Appellant] on June 8, 2005. However, it was not possible to do an adequate examination on that date because of her complaints of pain. As a result, the examination had to be curtailed as the Appellant restricted [Appellant's Neurologist] so significantly because of her complaints of pain. In a report dated July 13, 2005, [Appellant's Neurologist] indicated that:

I had previously seen [the Appellant] on June 2, 2003. At that time, she had been complaining of "a lot of body pain, from head to toe, blurred vision, pain in the left eye, seeing vertical blinds, present intermittently most of the day, horizontal white and blue lines. She also complained of twitching on the outer aspect of the left eye. She also complained that the (sic) left sided headache, left periscapular and paraspinal pain. She had pain in the back of the leg, pain in the left foot. She also complained of an ice cold sensation, eyes swelling intermittently, soreness and puffiness of the eyes. She also complained of pain at the base of the skull.

[Appellant's Neurologist] felt that her complaints of pain when he saw her on June 8, 2005 were almost identical to her complaints of pain when he first saw her in June 2003.

At the time of the motor vehicle accident, the Appellant was employed by [text deleted] as an [text deleted]. She was able to return to work following her motor vehicle accident until May 31, 2005 at which time she left work complaining of poor concentration. Due to the Appellant's inability to continue with her employment thereafter, she became entitled to income replacement indemnity ("IRI") benefits in accordance with Section 81(1) of the MPIC Act.

On September 8, 2005, MPIC`s case manager provided the Appellant with a decision regarding further entitlement to IRI benefits, pharmacological and physiotherapy benefits. MPIC`s case manager advised the Appellant that:

Based on a review of the medical information on your file, it was the opinion that it was not medically probable you developed a condition as a result of the incident in question, that in turn would account for your vast array of symptoms. That you did not develop a medical condition as a result of the incident in question that in turn would lead to a physical impairment of function that would preclude you from performing sedentary work duties. That it is medically probable that your present symptoms are a by-product of a condition not causally related to the incident in question but instead stem from a pre-existing condition. That you have not been identified as developing a condition as a result of the incident in question for which pharmacological and/or physiotherapy interventions would be viewed as a medical requirement. Therefore, there is no further entitlement to Personal Injury Protection Plan benefits.

The Appellant sought an Internal Review of this decision. In a decision dated December 21, 2005 the Internal Review Officer dismissed the Appellant`s Application for Review and confirmed the case manager`s decision to terminate her entitlement to IRI benefits and reimbursement for pharmacological and physiotherapy treatments. The Internal Review Officer found that the Appellant`s condition was not caused by the motor vehicle accident and therefore she was not entitled to further IRI benefits or reimbursement of physiotherapy treatments or pharmaceutical medications.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to further IRI benefits beyond September 21, 2005 and reimbursement for further physiotherapy treatment and pharmacological medications as a result of the motor vehicle accident of May 23, 2005.

Appellant`s Submission:

Counsel for the Appellant submits that the Appellant sustained injuries in the motor vehicle accident of May 23, 2005 that have caused her to be disabled to this day and unable to return to work. Counsel for the Appellant contends that the Appellant has not been able to return to work due to myofascial pain symptoms. She argues that the fact that there was no neurological abnormality, would not rule out other causes for the Appellant`s dysfunction, including the myofascial pain.

Counsel for the Appellant argues that the Appellant was working full-time and involved with numerous community activities at the time of the motor vehicle accident. Following the motor vehicle accident, the Appellant was unable to continue with those activities. Counsel for the Appellant claims that there is no evidence of any other intervening factor to account for the Appellant`s symptoms. Accordingly, she attributes the Appellant`s vast array of symptoms to the motor vehicle accident of May 23, 2005. As a result, she submits that the Appellant is entitled to ongoing benefits from MPIC and that her appeal should be allowed.

MPIC`s Submission:

Counsel for MPIC maintains that the Appellant has the onus of proof in this case. The Appellant must establish that her ongoing symptoms are connected to the motor vehicle accident of May 23, 2005. Counsel for MPIC submits that the Appellant has not met the onus of proof required in this case. Counsel for MPIC argues that the following documents support the Internal Review decision:

- Health Care Provider Progress Report from [text deleted] dated August 19, 2005 which indicated that the Appellant could return to work as of August 29, 2005.

- Report dated July 13, 2005 from [Appellant's Neurologist], wherein [Appellant's Neurologist] noted that the Appellant's complaints of pain when he saw her on June 8, 2005 were almost identical to her complaints of pain when he saw her in June 2003.
- Primary Health Care Report from [Appellant's Doctor] dated July 15, 2005, wherein [Appellant's Doctor] indicated that the Appellant did not sustain a blow to the head during the motor vehicle collision.
- Report dated November 1, 2005 from [Appellant's Neurologist] which indicated that [the Appellant] has recovered from any ill effects of her accident. She had a previous history of a migraine syndrome, this appeared to be her only problem at the time.
- Interdepartmental memorandum dated August 15, 2005 from [MPIC's Doctor] which indicates that "it is medically probable that [the Appellant's] present symptoms are a byproduct of a condition not causally related to the incident in question but instead stem from a pre-existing condition".

Counsel for MPIC submits that there is no medical evidence contradicting the medical reports of [Appellant's Neurologist] and [MPIC's Doctor]. Further he argues that there is no medical report establishing that the Appellant has myofascial pain which prevents her from working due to injuries arising from the motor vehicle accident of May 23, 2005. Counsel for MPIC also maintains that the Appellant was not a credible historian. She had minor injuries from the motor vehicle accident, not serious injuries as she reports.

Counsel for MPIC submits that the Appellant has not met the onus of establishing that her ongoing complaints and symptoms are related to the motor vehicle accident of May 23, 2005.

As a result, he submits that her appeal should be dismissed and the Internal Review decision dated December 21, 2005 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 submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to further IRI benefits or coverage for further physiotherapy treatment or medication expenses beyond September 21, 2005.

Reasons for Decision:

In order to qualify for Personal Injury Protection Plan benefits, the Appellant must establish, on a balance of probabilities, that a bodily injury was caused by an automobile as outlined in Section 70(1) of the MPIC Act which provides as follows:

[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; (« dommage corporel causé par une automobile »)

Based upon the totality of the evidence before it, the Commission is unable to conclude that the Appellant developed a condition as a result of the motor vehicle accident of May 23, 2005 which would account for her vast array of symptoms. The Internal Review Officer, in her decision of

December 21, 2005 found that the Appellant`s condition was not caused by the motor vehicle accident. Based upon all the medical evidence provided, including all of the medical reports before it, the Commission finds that the decision by the Internal Review Officer was appropriate in the circumstances. The Commission finds that the Appellant has not established that her ongoing condition is related to the accident of May 23, 2005. Rather, the Commission finds that it is more likely, as determined by MPIC, that her ongoing symptoms are a by-product of a condition not causally related to the incident in question, but instead stem from a pre-existing condition. We find that the Appellant has not provided sufficient evidence in order to refute that statement.

As a result, the Appellant`s appeal is dismissed and the Internal Review decision dated December 21, 2005 is therefore confirmed.

Dated at Winnipeg this 22nd day of April, 2013.

YVONNE TAVARES

PAUL JOHNSTON

SANDRA OAKLEY