

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-001**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Nikki Kagan
Mr. Neil Margolis

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

HEARING DATE: February 27, 2013

ISSUE(S): Entitlement to reimbursement of medication expenses.

RELEVANT SECTIONS: Section 136(1)(d) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 38 of Manitoba
Regulation 40/94

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, [text deleted], was involved in a motor vehicle accident on January 7, 2007. She was the driver of a car, wearing her seat belt, when she swerved to miss an animal in the road. She lost control of her vehicle, went into the ditch and her car rolled several times. As a result of that accident, the Appellant reported a possible loss of consciousness, but stated that she exited the vehicle without assistance. An ambulance attended the scene and transported her to [text deleted] Hospital in [text deleted] where she complained of severe back pain and facial swelling.

Following the accident, the Appellant's parents picked her up at her home in [text deleted], MB and took her to their home in [text deleted], Ontario to help her during her recovery.

On January 11, 2007, the Appellant attended [text deleted] General Hospital with severe dyspnea, nausea and headache. After examination, the Appellant was flown to [Ontario] to undergo a CT Scan to rule out a possible skull fracture. She was not admitted, and her parents again attended to pick her up in [Ontario]. The Appellant returned to [Manitoba] on January 22, 2007. Due to the bodily injuries which the Appellant sustained in this motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated October 23, 2008 with respect to her entitlement to reimbursement of expenses for various medications.

On July 15, 2008, MPIC's case manager issued a decision which advised as follows:

Your entire medical file has been reviewed with Health Care Services regarding the medications that relate to the accident of January 7, 2007. Based on that review, it was determined that "at this time, the evidence would indicate that the following medications were being taken prior to the collision in question and therefore do not represent a medical requirement due to the collision in question":

- Endocet (Percocet)
- Oxycodone
- Citalopram (Celexa)
- Tylenol 3
- Exlax
- Venlasaxine (Effexor)
- Lorazepam (Ativan)
- "The medications Melatonin, and Zen Thianine as well as Tropic Relola, would not represent medical requirements, in my opinion".

Therefore, Manitoba Public Insurance will not consider any further reimbursement for the above listed medications.

The Appellant sought an Internal Review of that decision. In a decision dated October 23, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that:

I am confirming the case manager's July 15, 2008 decision that you are not entitled to reimbursement for medication expenses for Endocet (Percocet), Oxycodone, Citalopram (Celexa), Tylenol 3, Exlax, Venlafaxine (Effexor), Lorazepam (Ativan), Melatonin, Zen Thianine, and Trophic Relola. On the current evidence, I am not satisfied that these medications are required for a medical reason resulting from the January 7, 2007 accident.

The Internal Review Officer further noted that:

On June 24, 2008, [MPIC's Doctor] of the Health Care Services team reviewed your file and determined that the following medications were pre-existing and therefore, not medically required: Endocet (Percocet), Oxycodone, Citalopram (Celexa), Tylenol #3, Exlax, Venlafaxine (Effexor), Lorazepam (Ativan). [MPIC's Doctor] also opined that Melatonin, Zen thiamine as well as Trophic relora, were not medical requirements. Because Maxalt had not been taken prior to the accident, he found that there was a probable cause/effect relationship with the accident in question.

Your Application outlines the reasons that you believe that the decision of July 15, 2008 was incorrect. In particular, you believed that you had been receiving all benefits until you relocated to Ontario in October 2007 and are now being treated unfairly. You indicated that higher medication dosages demonstrate that your current symptoms are related to the January 2007 accident.

Because of the complexity of your clinical history, addiction issues, and other ailments and complaints unrelated to the January 7, 2007 accident, I cannot find that your current medications are medically required as a result of the accident. For example, you submitted that Oxycodone amounts were increased since January 7, 2007. Yet, at [text deleted] District Hospital, you admitted to intentionally overdosing on this medication for a "high".

I am therefore in agreement with [MPIC's Doctor] that you are not entitled to reimbursement of medical expenses for those medications referred to in his June 24, 2008 report. Maxalt is a recoverable expense provided that there are invoices to support out-of-pocket payments. Further evidence would be required to demonstrate that other medications not listed in this decision letter are medically required and causally related to the January 7, 2007 accident.

The Appellant has now appealed that decision to this Commission. On September 20, 2011, MPIC's case manager made a decision to pay the medication expenses previously purchased

“post MVA” by the Appellant based upon a further review from [MPIC’s Doctor] and a discussion with her supervisor. At a Case Conference Hearing at the Commission on September 22, 2011, the Appellant and counsel for MPIC agreed that the appeal would proceed with respect to a determination on payment of outstanding medication expenses for the following medications:

- Dihydroergotamine;
- Zopiclone;
- Hydromorphone;
- Diazepam; and
- Clonidine

Accordingly, the issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of her expenses for the foregoing five medications.

Relevant Legislation:

Section 136(1)(d) of the MPIC Act provides that:

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:

(d) such other expenses as may be prescribed by regulation.

Section 38 of Manitoba Regulation 40/94 provides that:

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

Appellant’s Submission:

The Appellant submits that as a result of the injuries she sustained in the motor vehicle accident of January 7, 2007, she has required the use of the medications in issue. With respect to each of the medications, the Appellant argues as follows:

1. Diazepam - The Appellant testified that her family physician, [Appellant's Doctor], first prescribed Diazepam for her because of her anxiety. The Appellant maintains that her first prescription for Diazepam was definitely after the accident due to sleep disturbances she was having from the motor vehicle accident. Although she had anxiety issues prior to the motor vehicle accident, the Appellant argues that the Diazepam was prescribed specifically to address her increased anxiety and sleep difficulties following the accident of January 7, 2007.
2. Zopiclone – The Appellant testified that [Appellant's Psychiatrist], in [Ontario], switched her to Zopiclone at night for her anxiety. The Appellant testified that she is currently trying to wean herself off Zopiclone and is down to 5 mg daily. The Appellant maintains that she was not on Zopiclone prior to the motor vehicle accident.
3. Clonidine – The Appellant testified at the hearing that following the motor vehicle accident, she became addicted to opiates. She was admitted to an addiction facility which helped her with her opiate dependency. The Appellant testified that Clonidine was used during her withdrawal from opiates. She further testified that she no longer takes Clonidine and it was just used to help her during her opiate withdrawal.
4. Dihydroergotamine (migraine agent) – At the appeal hearing, the Appellant testified that while she did have migraine headaches prior to the January 7, 2007 motor vehicle accident, her migraines became much more severe following the motor vehicle accident. The Appellant testified that her migraines after the motor vehicle accident increased in number and intensity. She has decreased her use of the migraine medication and now only takes it on an as needed basis.

5. Hydromorphone (opiate analgesic) – At the hearing, the Appellant testified that Hydromorphone was prescribed by her family physician for pain control. She no longer takes Hydromorphone and stopped taking it by the end of 2008, prior to entering the rehab program.

The Appellant contends that all of the medications for which she is seeking reimbursement were required as a result of the motor vehicle accident of January 7, 2007 and therefore she feels she should be entitled to reimbursement of those expenses.

MPIC's Submission:

Counsel for MPIC submits that the Appellant's use of the medications - Dihydroergotamine, Zopiclone, Hydromorphone, Diazepam and Clonidine is not related to the January 7, 2007 accident, but rather, was due to long standing conditions which the Appellant had prior to the motor vehicle accident. In support of his position, counsel for MPIC relies upon the interdepartmental memorandum of [MPIC's Doctor] dated December 14, 2012. In his memorandum, [MPIC's Doctor] comments as follows:

Therefore, I would state that in my opinion, on the balance of probability, the medications Dihydroergotamine, Zopiclone, Hydromorphone, Diazepam and Clonidine are not prescribed as a result of the January 2007 event. The patient is documented as having migraine headaches back as far as 2005 and was prescribed a triptan, (Imitrex), for the treatment of migraine headache. Therefore, there is definitive evidence that migraine headaches were diagnosed and treated prior to the event in question. The patient had a sleep disturbance and was using benzodiazepine medications on a regular basis prior to the event in question. She was prescribed benzodiazepine medications on June 20, 2006 and appeared to be getting prescriptions of benzodiazepine medications prior to the event in question, taking more than one pill a day. The patient use of two separate opiates was escalating (Oxycodone, codeine) prior to the event in question.

Clonidine is indicated for the withdrawal of opiates and the patient has what is described as chronic opiate use dating back prior to the event in question.

Therefore, on the balance of probability, the medical evidence indicates that the medications you have listed are not probably causally related to the event in question.

Counsel for MPIC submits that the Appellant had a complex medical history prior to the motor vehicle accident of January 7, 2007. She had previously been involved in two serious motor vehicle accidents in 1998 and was being continuously treated for chronic pain conditions, as well as anxiety, since those accidents. Counsel for MPIC argues that based upon [MPIC's Doctor's] review of the file, it is evident that the medications at issue are similar to medications which were in use prior to the January 7, 2007 motor vehicle accident. Additionally, some of these medications were already increasing prior to the accident. Counsel for MPIC contends that [MPIC's Doctor's] medical review should be relied upon and the Commission should accept his opinion that the medications at issue are not causally related to the Appellant's motor vehicle accident of January 7, 2007. As a result, counsel for MPIC submits that the Appellant is not entitled to funding for her expenses for these medications. He submits that the Appellant's appeal should be dismissed and the Internal Review decision dated October 23, 2008 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 entitled for reimbursement of her expenses for Dihydroergotamine, Zopiclone, Hydromorphone, Diazepam and Clonidine.

Reasons for Decision:

The Commission finds that the Appellant has established, on a balance of probabilities, that her requirement for the medications - Dihydroergotamine, Zopiclone, Hydromorphone, Diazepam

and Clonidine – is related to the motor vehicle accident of January 7, 2007. With respect to each of the medications, the Commission finds as follows:

1. Dihydroergotamine (migraine agent) – The Commission accepts the Appellant’s testimony at the appeal hearing that her migraine headaches increased in intensity and severity following the motor vehicle accident which necessitated a greater use of migraine medication following the accident. The Commission finds that the Appellant shall be entitled to reimbursement of her migraine medication until such time as her usage of such medication is equivalent to her pre-accident usage.
2. Zopiclone – The Commission accepts the Appellant’s testimony that her anxiety increased significantly after the motor vehicle accident. We find that her anxiety was related to the motor vehicle accident and therefore Zopiclone was required for a medical reason resulting from the motor vehicle accident. The Commission finds that the Appellant shall be entitled to reimbursement of her Zopiclone medication until such time as it is equivalent to her pre-accident use of Ativan.
3. Hydromorphone – The Commission finds that the Appellant’s increasing opiate addiction and dependence in 2007 does bear a relationship to the January 7, 2007 accident. The Appellant testified that after the accident she was seeking out these medications from her family physician. On a balance of probabilities, we are satisfied that the Appellant’s use of Hydromorphone during 2008 resulted from her injuries and anxiety related to the motor vehicle accident of January 7, 2007. As a result the Appellant shall be entitled to reimbursement of her expenses for the medication Hydromorphone.
4. Diazepam – The Appellant testified that [Appellant’s Doctor] prescribed Diazepam for her because of her increased anxiety following the January 7, 2007 motor vehicle

accident. The Commission accepts the Appellant's testimony that her anxiety increased following the January 7, 2007 motor vehicle accident which necessitated the change in prescription from Ativan to Diazepam. As a result, the Appellant is entitled to reimbursement of her medication expenses for Diazepam.

5. Clonidine – As previously noted, the Commission finds that the Appellant's opiate addiction and dependence was in part related to the January 7, 2007 motor vehicle accident. As a result, we find that Clonidine which is indicated for opiate withdrawal is related to the motor vehicle accident of January 7, 2007. As a result, the Appellant shall be entitled to reimbursement of her expenses for the medication Clonidine.

Accordingly, the Commission finds that the Appellant is entitled to reimbursement of expenses for the medications Dihydroergotamine, Zopiclone, Hydromorphone, Diazepam and Clonidine. As a result, the Appellant's appeal is allowed and the Internal Review Decision dated October 23, 2008 is hereby rescinded.

Dated at Winnipeg this 2nd day of May, 2013.

YVONNE TAVARES

NIKKI KAGAN

NEIL MARGOLIS