

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant] [Estate of [text deleted]]
AICAC File No.: AC-12-196**

PANEL: Ms Laura Diamond, Chairperson
Mr. Trevor Anderson
Ms Janet Frohlich

APPEARANCES: [The Appellant] appeared on behalf of the Estate;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: August 12, 2014

ISSUE(S): Whether the Appellant is entitled to Personal Injury
Protection Plan benefits.

RELEVANT SECTIONS: Section 119(1) 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

An appeal was filed by the Estate of the deceased from an Internal Review decision dated October 24, 2012.

The deceased was injured in a motor vehicle accident on October 6, 2011. She received chiropractic treatment with a diagnosis of cervical and thoracic sprain. She also received physiotherapy treatments.

The deceased had a history of cervical cancer for which she had previously received treatment. On November 9, 2011, she was admitted to [Hospital #1] where a CT scan confirmed a right pulmonary embolus as well as fractures from metastatic cervical cancer. She began palliative radiotherapy and remained in hospital until her untimely passing on November 25, 2011.

A case manager's decision dated June 11, 2012 found that, based on the medical information obtained, it was not probable that the cause of the deceased's death was related to her motor vehicle accident injuries. The case manager found that it was not probable that her motor vehicle related injuries accelerated the metastatic disease associated with the underlying cervical cancer and MPIC declined to extend entitlement under the Personal Injury Protection Plan ("PIPP").

The deceased's Estate (the Appellant) sought an Internal Review of this decision.

On October 24, 2012, an Internal Review Officer for MPIC reviewed the file. He reviewed the medical information, including information from physicians at Cancer Care Manitoba. The Internal Review Officer found that this information confirmed that the deceased passed away due to the progression of her cancer and that the accident had no part to play in her death. He concluded that the motor vehicle accident did not contribute to the progression of the cancer and ultimate death from that disease.

Accordingly, the case manager's decision was upheld. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submissions for the Appellant:

The deceased's husband testified at the hearing into the appeal. He explained that he had known his wife for a long time and knew her very well.

He recalled the treatment which his wife had undergone for her cancer, but explained that after these treatments, she had recovered and was much healthier and happier. She had gone to the doctor in August of 2011, prior to the motor vehicle accident, and the family believed that she was in remission, was cancer free and would be checked every three months.

Following the motor vehicle accident, the deceased's husband described her as being crippled right from day one, with major whiplash and problems with her ribs and chest, including difficulty breathing. On the advice of a friend, they sought chiropractic treatment. They understood that she had major inflammation in her neck and would require treatments and adjustments.

However, the deceased's husband explained that as she continued to go for chiropractic therapy, she became worse, with more pain and more stiffness and a lot of sleepless nights. He was of the opinion that the seatbelt had impacted her chest and neck and triggered something. She was in a lot of pain, and when the initial chiropractic treatment was not helping, she sought treatment from another chiropractor.

The deceased's husband saw her condition worsen. He had to stop working so that he could help her and take more time for her. Finally they ended up at the hospital. He explained that she had been back to normal: healthy, happy, energetic, working and outgoing in August 2011, but after the motor vehicle accident, her whole world changed. She was crippled after the motor vehicle accident and he believed that the accident had shortened her life.

The panel also heard evidence from [text deleted], a friend of the deceased. He described the deceased's battle with cancer and her recovery. He described a party which was held when she finished her treatment and was in remission and both families celebrated.

However, there was a big difference in the deceased following the motor vehicle accident. She was in a lot of pain and had to go for chiropractic treatment.

Both witnesses also described the impact which the deceased's illness, accident and death had upon the entire family. Her husband submitted that this had been a very difficult and draining process for him and his children. The Appellant also submitted written summaries from friends and relatives describing the deceased's recovery from cancer and her deterioration following the motor vehicle accident. The deceased suffered a rapid deterioration in her condition following the motor vehicle accident and it was submitted that MPIC should be responsible for compensation in this regard.

Evidence and Submission for MPIC:

Counsel for MPIC relied upon medical reports in the indexed file from [Appellant's Gynecologic Oncologist #1] and [Appellant's Gynecologic Oncologist #2], [text deleted].

[Appellant's Gynecologic Oncologist #1] had initially reported on March 3, 2011, indicating that the deceased was found to have Stage IIB cervical cancer and was treated with radiation and Cisplatin.

[Appellant's Gynecologic Oncologist #1] reported again on September 20, 2012 indicating that the deceased was originally treated for an advanced IIB carcinoma of the cervix with radiotherapy, with an extended field because of what appeared to be a metastatic disease to para-aortic nodes. She was later admitted to [Hospital #2] on November 9, 2011 due to increasing pain and pulmonary embolism. A CT scan demonstrated a right pulmonary embolism as well as a pathological fracture from metastatic cervical cancer. He explained that the deceased's outcome was related to her cervical cancer and was not caused by the motor vehicle accident, which did not contribute to the progression of the disease.

[Appellant's Gynecologic Oncologist #2] reported in a Death Summary dated November 25, 2011, with a final diagnosis of recurrent cervical cancer with pulmonary embolism.

He then reported again on October 3, 2013 indicating that the patient suffered from metastatic disease with evidence of pathological fractures from this metastatic disease. He noted that these lesions were consistent with cancer as opposed to a motor vehicle accident induced fracture and that there was no evidence that the embolism was related to the car accident or bone fractures.

Counsel for MPIC also reviewed a report from MPIC's Health Care Services team dated May 8, 2012. The summary of the patient's death was reviewed along with the final diagnosis of recurrent cervical cancer with pulmonary embolism. The Health Care Services report indicated that the deceased's probable cause of death was metastatic cervical cancer and that it was improbable that the collision in question would hasten the patient's demise due to metastatic disease.

Counsel for MPIC reviewed the MPIC Act. He submitted that the onus is on the Appellant to establish on a balance of probabilities that there is entitlement to the benefits being sought.

He also reviewed previous decisions of the Commission focusing upon an analysis of the connection between death from causes such as heart attacks and motor vehicle accidents.

In this case, he submitted there was no evidence establishing a connection between the motor vehicle accident and the unfortunate death. In fact, the evidence was to the contrary. [Appellant's Gynecologic Oncologist #1] and [Appellant's Gynecologic Oncologist #2], [text deleted], reviewed the material and indicated that they did not think the motor vehicle accident contributed to the Appellant's cancer or death. The deceased's fractures and pulmonary embolism were attributed to her cancer and metastatic disease, and both doctors had indicated that these had not been worsened by the motor vehicle accident.

Counsel indicated that while this was a difficult situation, when one looks at the inquiries made and the reports requested from the deceased's doctors and reviewed by MPIC's Health Care Services team, the only evidence is that the deceased's death was due to the cancer she had. The motor vehicle accident did not cause or hasten her death in any shape or form, and the appeal should be dismissed.

Discussion:

The MPIC Act provides:

[119\(1\)](#) In this Division,

"**deceased victim**" means a victim who died as a result of the accident;

The onus is on the Appellant to show, on a balance of probabilities, that the deceased died as a result of the accident and falls under the definition of deceased victim in Section 119 of the MPIC Act.

The panel has reviewed the submissions of the Appellant and counsel for MPIC, as well as the medical and other information on the file.

Our review of the file shows that the deceased's husband and family pursued a variety of options for her care. Her husband was frustrated and worried by her worsening condition in the fall of 2011 and, following chiropractic care, he took her to the [text deleted] Clinic, where she received medical treatment and was transferred to the [Hospital #1].

However, although the deceased's husband did everything he could, investigations at [Hospital #1] found a pulmonary embolism and metastatic disease resulting from her cancer.

Although the deceased's husband was convinced, and submitted, that her death was hastened by her motor vehicle accident injuries, both [Appellant's Gynecologic Oncologist #1] and [Appellant's Gynecologic Oncologist #2] clearly stated in their reports that this was not the case.

On September 20, 2012, [Appellant's Gynecologic Oncologist #1] stated:

“CT scan at that time demonstrated a right pulmonary embolus as well as a pathological fracture from metastatic cervical cancer to her left posterior second and fourth ribs and also to the T2 vertebral body. There were lytic lesions in these areas consistent with metastatic cancer rather than a fracture related to motor vehicle accident.

In addition, she had CT evidence of mediastinal bilateral lymphadenopathy.

She was started on palliative radiotherapy to help control pain in these areas. Unfortunately, [the deceased's] outcome was related to her cervical cancer and her

motor vehicle accident, I think, is coincidental to unfortunately her diagnosis of metastatic disease and unfortunately her final outcome.

We routinely do not do imaging in follow-up of cervical cancer. Routinely most recurrences would tend to be in the pelvis. She probably had metastatic disease at her follow-up visit on 15 Aug 2011, but was not symptomatic enough to warrant any further evaluation.

In essence, I summarize that I do not think the motor vehicle accident contributed to the progression of her cancer and unfortunately her ultimate death from her cancer.”

[Appellant’s Gynecologic Oncologist #2] reported on October 3, 2013. He indicated:

“With regards to the patient’s bone fractures she did have metastatic disease and evidence of pathological fractures from her metastatic disease. These lytic lesions were consistent with cancer as opposed to a motor vehicle accident-induced fracture. It is certainly possible that the fractures had worsened due to the motor vehicle accident; however, I do not believe that these caused a shortening of [the deceased’s] life. The origin of her pulmonary embolism is also likely related to cancer. We know that metastatic cancer and specifically metastatic gynecologic cancer increased the risk of thromboembolism quite significantly. There is no evidence that we had clinically to feel that this embolism was related to her car accident or bony fractures...”

Accordingly, based upon a review of the evidence and, particularly the reports of the medical specialists quoted above, the panel finds that the Appellant has failed to establish, on a balance of probabilities, that the deceased’s death was related to or accelerated by her motor vehicle accident injuries. Accordingly, the decision of the Internal Review Officer dated October 24, 2012 is upheld and the appeal dismissed.

Dated at Winnipeg this 16th day of September, 2014.

LAURA DIAMOND

TREVOR ANDERSON

JANET FROHLICH