

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-13-017**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Jacqueline Freedman
Ms Irene Giesbrecht

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Danielle Robinson.

HEARING DATE: December 19, 2013

ISSUE(S): Whether the Appellant is entitled to Personal Injury
Protection Plan ('PIPP') benefits in respect of his broken
tooth; specifically, did he suffer a bodily injury caused by an
automobile.

RELEVANT SECTIONS: Subsection 70(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

Background:

The Appellant, [text deleted], states that he was involved in a minor motor vehicle accident on October 13, 2012. He reported this accident to MPIC on November 6, 2012, although he did not obtain any particulars from the driver of the other vehicle. He states that he injured a tooth in the accident, which subsequently broke three weeks later. MPIC issued an Internal Review decision dated January 30, 2013, in which the Internal Review Officer stated MPIC's view was that there

is no evidence to support that an accident with an automobile took place. Further, MPIC indicated that the injury to the tooth took place several weeks after the alleged accident.

The Appellant filed an appeal to the Commission from the Internal Review decision. The issue which requires determination on this appeal is whether the Appellant suffered a bodily injury which was caused by a motor vehicle accident such as to entitle him to PIPP benefits under the MPIC Act.

Decision:

For the reasons set out below, the Commission finds that the Appellant is not entitled to PIPP benefits under the MPIC Act.

Evidence of the Appellant:

The Appellant testified as to the circumstances of the motor vehicle accident which he says occurred on October 13, 2012 (we note that he had initially provided MPIC with an accident date of October 18, 2012 but this error was subsequently corrected by him). He indicated that he was in his vehicle waiting to turn left and there was a car in front of him which had advanced into the intersection. The car in front of him began to back up to get out of the way of oncoming traffic; however, the driver reversed without looking and banged into his vehicle. The Appellant was drinking from a glass pop bottle at the time and the bump from the car in front of him jarred the pop bottle into his teeth and caused damage to one tooth.

The Appellant identified for the panel that the damaged tooth was on the bottom left of his mouth, on the side.

The Appellant indicated that at the time of the accident, the impact of the car in front of him onto his car did not seem significant. There did not appear to be damage to either vehicle; therefore, he did not take particulars from the other driver, nor did he look for any witnesses to the accident. The Appellant also indicated that although the pop bottle did jar into his mouth, and the pop bottle contents spilled all over him, the impact on his tooth was not initially significant. The Appellant noted, however, that the pain to his tooth began to increase over the course of the evening. The following day, October 14, 2012, he went to a walk-in clinic to obtain Tylenol #3 for pain relief. Eventually, the tooth cracked and the crack got bigger. Three weeks later, when he bit into a sandwich, the tooth broke. It was at this point, on November 6, 2012, that he contacted MPIC and initiated the claims process.

He went to see a dentist in January, 2013 and was advised that the cost to repair the tooth could be anywhere from \$1,200 to \$2,000. He indicated that he would prefer to resolve the dispute with MPIC before having the tooth repaired due to the expense involved. The Appellant further stated that the tooth still causes him pain and he continues to take Tylenol #3 to deal with the pain. Since the time the tooth broke, the remainder of the tooth has continued to deteriorate and little of the tooth remains visible in his mouth.

The Appellant noted that he did not have regular dental care prior to the time of the accident. He had "let it slide" and he is now playing catch-up. Since January 2013 he has had other dental work done, but has not had the tooth in question repaired.

The Appellant said that if he could have anticipated the difficulty he would have in convincing MPIC of what had happened, he would have definitely obtained the particulars from the other driver, but at the time of the accident he didn't appreciate the significance of the impact. In addition, when he went to visit his doctor for Tylenol #3, and when he made a visit to the [text deleted] Hospital Emergency for a Tylenol #3 refill, in explaining his circumstances, he did explain the nature of the injury. He doesn't know why the doctors didn't transcribe what he told them into their notes. The notes from the [text deleted] Hospital Emergency visit do refer to a pop bottle hitting his tooth, but not to a motor vehicle accident.

On cross-examination, MPIC raised an issue with the Appellant relating to whether he had any prior damage to any of his teeth. In his initial contact with MPIC, he noted that he may have had a prior tooth injury 12 to 14 years ago. The Appellant indicated that he had crowns on his upper teeth, which may have been injured in a soccer game. The Appellant noted that he stopped playing soccer eight or nine years ago.

Submission of MPIC:

MPIC submits that the onus is on the Appellant to establish that there has been an accident and that the injury was caused by an automobile. The Appellant was alone in the vehicle and took no particulars from the other driver, and took no steps to look for a witness or to have any damages to his car assessed. MPIC submits that there is no corroboration to support the fact that an accident even occurred and says it is a question of the Appellant's credibility.

If the panel accepts that an accident did occur, MPIC notes that the Appellant did not contact them until November 6, 2012, some three weeks after the date of this accident. It is clear that he said the tooth broke because of biting on a sandwich. The limited medical information that the Appellant has provided does not support the Appellant's position that a motor vehicle accident was the cause of the tooth breaking. The onus is on the Appellant to establish that the accident was the cause of the injury and MPIC submits that he has not done this.

Submission of the Appellant:

The Appellant submits that he has provided the best evidence available. He says he is telling the truth with respect to everything that happened. He provided a note from his doctor and he provided the chart notes from the visit to the [text deleted] Hospital Emergency. He is prepared to have his dentist provide a report if that would be helpful.

Reasons for Decision:

In order to qualify for PIPP benefits, a person must establish on a balance of probabilities that he falls within the provisions of the MPIC Act. Subsection 70(1) of the MPIC Act provides the following definitions:

Definitions

[70\(1\)](#) In this Part,

"accident" means any event in which bodily injury is caused by an automobile;

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load ...

The onus is on the Appellant to show, on a balance of probabilities, that he falls within the above quoted definitions. The panel has paid careful attention to the Appellant's evidence and to his description of the events of October 13, 2012 and the subsequent weeks. We found that he testified in a clear and forthright manner.

While there is no corroboration of the Appellant's testimony as to the events of October 13, 2012, we are prepared to assume, for the purpose of this decision, that the collision occurred as the Appellant described it. However, even with that assumption, the Appellant must still establish that he suffered a "bodily injury caused by an automobile" as described in subsection 70(1) of the MPIC Act.

The Appellant states that the tooth in question was injured when the pop bottle from which he was drinking was jarred against his tooth. He says that initially, the injury did not seem significant although there was pain later that evening. Eventually, the tooth cracked, and three weeks later the tooth broke when he was biting into a sandwich. Unfortunately, the Appellant had not had regular dental care prior to the incident and thus we do not have any way of obtaining knowledge of the condition of his teeth prior to October 13, 2012. The Appellant did not see a dentist until some three months after the incident. Therefore, even if the Appellant's current dentist were to have provided him with a report, it would not be probative.

The Appellant has provided no other evidence, apart from his own testimony, with respect to the cause of his broken tooth. The panel finds that the Appellant has not met the onus of establishing that, on a balance of probabilities, his broken tooth was caused by the incident of October 13, 2012.

Disposition:

Accordingly, based on the foregoing, the Appellant's appeal is dismissed and the Internal Review decision of January 30, 2013 is upheld.

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

YVONNE TAVARES

JACQUELINE FREEDMAN

IRENE GIESBRECHT