

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-31**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Wilson MacLennan

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

HEARING DATE: April 3, 2002

ISSUE: Entitlement to reimbursement of the cost of custom-fitting orthotics.

RELEVANT SECTIONS: Section 138 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 11 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 May 3, 2000, when the vehicle she was driving was rear-ended while at a full stop. Shortly after the motor vehicle accident, the Appellant developed right foot pain. She sought treatment from her chiropractor, [text deleted]. [Appellant's chiropractor] diagnosed the Appellant's right foot condition as plantar fasciitis and recommended custom-fitted orthotics to treat her injury. The Appellant's athletic therapist concurred with the chiropractor's assessment and recommendations.

The Appellant sought funding from MPIC for the purchase of custom-fitted orthotics. In a decision dated August 10, 2000, the Staff Adjuster denied the Appellant's request and advised her that:

After reviewing your file, it is our position that the development of plantar fasciitis is unrelated to the effects of being involved in the above noted accident. As such, MPI will not fund any expenses incurred to treat this condition and specifically, the costs of any custom fitting orthotics, in this instance.

The Appellant sought an internal review from this decision. In his decision dated February 21, 2001, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the Staff Adjuster's decision, on the basis that a causal connection had not been established between the motor vehicle accident and the Appellant's right foot condition. In the alternative, he found that custom-made orthotics as prescribed by the treating chiropractor were not medically required by [the Appellant].

The Appellant has now appealed this decision to the Commission. The issues which require determination in [the Appellant's] appeal are:

1. Whether or not the Appellant's right foot condition is causally connected to the motor vehicle accident; and
2. Whether or not the custom-fitted orthotics are medically required.

Section 138 of the MPIC Act and Section 11 of Manitoba Regulation 40/94 are applicable to the determination of these issues. They provide as follows:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Prosthesis and orthosis

11 Subject to sections 12 to 18, the corporation shall pay any expense that the corporation considers reasonable and proper and that the victim incurs for the purchase, rental, repair, replacement, fitting or adjustment of a prosthesis or orthosis if the prosthesis or orthosis is medically required and prescribed by a physician, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist.

At the hearing of the appeal, the Appellant made the following submissions:

1. that the motor vehicle accident was directly responsible for the development of the pain to her right foot. The Appellant stated that at the moment of impact, her right foot was planted firmly on the brake pedal. The impact of the rear-end collision caused her to sustain injury to her right leg, hip area, and right foot;
2. that prior to the motor vehicle accident, the Appellant never suffered any pain to her right foot and that this pain developed shortly after the accident occurred; and
3. that both the chiropractor and the athletic therapist who treated her, were of the opinion that the Appellant's right foot condition was due to plantar fasciitis, and was a direct result of the motor vehicle accident.

Counsel for MPIC relied on the opinion of [MPIC's doctor]. In his report of January 24, 2001, based on his examination of the Appellant on November 14 and 15, 2000, [MPIC's doctor] stated that:

My clinical diagnosis was of mechanical foot pain with first MTP pain secondary to degenerative joint changes. There was no convincing clinical evidence of plantar fasciitis [*sic*] based on my examination.

...

My clinical assessment did not contain physical findings that would be consistent with a diagnosis of plantar fasciitis. Instead, my findings pointed to mechanical factors present in the claimant's right foot that would have led to excessive weight bearing on her metatarsal heads, leading to irritative symptoms (pain). Motion through the degenerative first metatarsal phalangeal joint would also have contributed to [the Appellant's] pain.

I am unable to explain how the collision would have caused this right foot condition. It is likely based on my review of the file, her subjective history and findings of mechanical changes in the left foot, that this condition predated the collision. However, based on her reports she did not have a painful foot prior to the collision. It is possible that if sufficient force was applied through the ball of the foot by either forceful plantar flexion on the brake pedal or a rear impact sufficient to cause translation of the claimant forward in her seat causing her foot to strike the brake pedal forcibly, that an exacerbation of her underlying condition may have occurred.

With respect to treatment, the provision of custom-made orthotics has been described as a medical necessity by her treating chiropractor. I am not of the same opinion that custom-made orthotics would be considered a medical necessity. I believe that custom orthotics would be a reasonable treatment option to decrease the force on her metatarsal heads and first MTP joint but that they would be elective. Another option would be to add over-the-counter padded inserts into her shoes to decrease the pounding on the painful metatarsal heads with weight bearing.

Counsel for MPIC submitted that the opinion of [MPIC's doctor] should be preferred to that of the chiropractor and the athletic therapist, who had both misdiagnosed the Appellant's right foot condition. In conclusion, counsel for MPIC asserted that causation had not been established between the motor vehicle accident and the Appellant's right foot condition and a medical requirement for custom-made orthotics had not been established.

The Commission finds that the Appellant has not established, on a balance of probabilities, that the motor vehicle accident was the cause of her right foot condition or that custom-made orthotics were medically required for the treatment of her right foot condition. While [MPIC's doctor] comments that such a relationship may be possible, he does not consider it likely. Rather, he determined that "*it is likely based on my review of the file, her subjective history and findings of mechanical changes in the left foot, that this condition predated the collision*". Furthermore, with respect to treatment, [MPIC's doctor] is of the opinion that custom-fitted orthotics are not medically required for the treatment of the Appellant's foot condition. He concluded that adding over-the counter padded inserts into her shoes would be sufficient to

decrease the pounding on the painful metatarsal heads with weight bearing.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date February 21, 2001.

Dated at Winnipeg this 9th day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN