Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-42

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Mary Lynn Brooks** **Dr. F. Patrick Doyle**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.**
HEARING DATE:	**December 1, 2004, April 18, 19 & 20, 2007**
ISSUE(S):	**Entitlement to funding for dental expenses**
RELEVANT SECTIONS:	**Section 136 of *The Manitoba Public Insurance Corporation Act* and Section 5 of Manitoba Regulation 40/94 (the 'Act and Regulations')**

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 was injured in a motor vehicle accident on November 15, 2002. As a result of her injuries, she became entitled to Personal Injury Protection Plan ('PIPP') benefits under the Act and Regulations. The Appellant received physiotherapy and chiropractic treatment as well as funding for orthotics.

However, the Appellant also experienced difficulties with her teeth, particularly tooth #26 and #27, which required dental attention. MPIC took the position that the Appellant was not entitled to funding for dental expenses, as the medical information reviewed indicated that there was insufficient evidence to support a causal relationship between these symptoms and the motor vehicle accident of November 15, 2002.

The Appellant sought an Internal Review of this decision. On March 10, 2004, an Internal Review Officer for MPIC concluded that the Appellant's dental symptoms (including inflamed and degenerating pulp tissue) were consistent with pre-existing dental disease and not trauma from the motor vehicle accident. The Internal Review Officer found that the medical information on the Appellant's file was insufficient to establish that dental care would be related to the motor vehicle accident of November 15, 2002.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submissions for the Appellant

The Appellant testified at the hearing into her appeal and submitted several reports from her dental caregivers including [Appellant's Prosthodontist], [text deleted], [Appellant's periodontist], [text deleted], [Appellant's endodontist], [text deleted], and [Appellant's oral and maxillofacial surgeon], [text deleted].

In addition to reports from these caregivers, the evidence before the Commission also included clinical notes of [Appellant's endodontist], [Appellant's periodontist] and [Appellant's Prosthodontist].

The Appellant also submitted reports from her chiropractor, [Appellant's chiropractor], regarding ongoing problems with her jaw, which he attributed to the motor vehicle accident.

The Appellant provided a history, supported by the medical reports, of a considerable amount of dental work done in her mouth prior to the motor vehicle accident of November 15, 2002. The Appellant had experienced difficulties with her bite or occlusion that led to pain, difficulty with chewing and headaches. She had undergone lengthy, time consuming and painful treatment to repair and reconstruct her teeth and bite, involving crowns on both sides of the upper and lower levels of her mouth. This treatment was provided by [Appellant's Prosthodontist], [text deleted], and completed in approximately 1992. Following the completion of this dental work, the Appellant testified, her bite was stable. She also wore a splint appliance, and attended at [Appellant's chiropractor], [text deleted], to make adjustments of her jaw, which would occasionally "go out". She attributed this to ligaments which had been stretched and weakened from all the dental treatment she had received. She testified that [Appellant's chiropractor] would then put this back into alignment for her.

In the Fall of 2002, prior to the motor vehicle accident, the Appellant experienced some sensitivity to one of her upper left teeth, tooth #26. This was a capped tooth, and [Appellant's Prosthodontist], after assessing x-rays, referred her to [Appellant's endodontist]. [Appellant's endodontist], in turn, believing the problem to be a possible periodontic issue, referred the Appellant to [text deleted], her Periodontist.

On November 5, 2002, [Appellant's periodontist] opened up the gum with a flap, to expose the tip of the root underneath. He provided the Appellant with a special tooth brush to enable her to

clean that area better. No extractions were necessary and the Appellant testified that while she experienced pain in her gums after this periodontic treatment, it was healing well.

The Appellant described the motor vehicle accident of November 15, 2002 and the pain and difficulties she experienced as a result of this accident. She testified that the tooth that [Appellant's periodontist] had worked on, #26, and the one behind it, # 27, began to throb following the motor vehicle accident. She experienced jaw pain and headaches and attended, initially, at her chiropractor, [text deleted], to see if he could help her by repositioning her jaw.

Sometime later, she also went back to see [Appellant's periodontist] who noted, a few weeks after the motor vehicle accident, that she had developed a boil on the roof of her mouth. He prescribed pain killers and the ulceration healed.

Then, on March 26, 2003, the Appellant attended at [Appellant's Prosthodontist's] office. He had been away on holidays in January and February and she testified that she had not been able to see him. [Appellant's Prosthodontist's] notes show that she advised him that she had been in a motor vehicle accident on November 15 and asked for an MRI of the left jaw. [Appellant's Prosthodontist] found that her occlusion didn't match and urged her to wear a splint. He also referred her to [Appellant's oral and maxillofacial surgeon] who diagnosed a mild displacement of her jaw.

She was also seen by [text deleted], her Endodontist. He found that pulp tissue was inflamed and degenerating, resulting in her symptoms, and performed a root canal on tooth #27, on September 26, 2003.

Medical Evidence

Evidence was submitted in the form of narrative reports, as well as clinical notes, from several of the Appellant's dental (and chiropractic) caregivers.

These included:

a) [Appellant's Prosthodontist]

1. August 22, 2002. Chart note by [Appellant's Prosthodontist] "*Specific exam – she is having pain on 26 and 23 when she bites. Referring for endo-assessment".*
2. August 28, 2002. *"Patient called back. She is in discomfort."*
3. October 4, 2002. Chart note. [Appellant's Prosthodontist] sets out *"Best long term treatment is implants. Options 1) tried to save 26. 2) Implants 24 26. She may want 3. 3) implants".*
4. October 29, 2002. Chart note. *"Options. 1) Implants – needs bone graft. 2) bridge 23 → 27… 3) Trt to fix 26. ….*

   She wants option 3"
5. October 29, 2002. In a Memorandum to [Appellant's periodontist], [Appellant's endodontist] and [Appellant's oral and maxillofacial surgeon], [Appellant's Prosthodontist] reviewed the Appellant's treatment options.

   > *She wants to try and save number 26 – if possible with periosurgery – if it doesn't work – then she'll want a fixed bridge 23 → 27. She knows the prognosis for 26 is poor*.
6. March 26, 2003. Chart Note. *"She had car accident November 15th. Left jaw feels mushy."*
7. April 3 and 7, 2003. Chart Notes regarding splint adjustments.

8. July 24, 2003. [Appellant's prosthodontist] reports regarding the periodontal treatment of tooth #26 by [Appellant's periodontist] on November 2, 2002 and the Appellant's car accident of November 15, 2002 where she sustained a "whiplash injury". He notes that since the accident the Appellant has noticed mild discomfort around the left TMJ joint and that the tooth that had been periodontally treated (#26), was sore and has remained sore since the accident. He diagnosed left mild disc displacement with rejection, and recommended continued treatment with splint therapy and physiotherapy and massage as needed. He notes:

> *There is no treatment that can be performed to reduce or eliminate the discomfort around tooth #26. It is possible that this tooth was damaged as a result of the accident (possible crack) although the radiographs do not show any pathology. If this tooth continues to be sore, then a decision must be made as to how to maintain and/or restore the maxillary left posterior area. Extending this long span bridge to tooth #27 is not the best option, as this would make the span extremely long and tenuous. A much superior treatment plan, given the possibility of losing #26, is to restore the area with dental implants.*
>
> *Two or three implants and a fixed bridge on the implants would be ideal.*
>
> *In the interim, [the Appellant] should leave the area as is. It is important to understand that the tooth may not recover, that the breakdown could escalate over the next number of years, and that implants may be needed in the future as a result of the car accident of Nov. 15/02.*

(Note: The evidence established that the "possible crack" referred to by [Appellant's prosthodontist] was never found.)

9. September 3, 2004. [Appellant's prosthodontist] reported:

> *[The Appellant] attends our office regularly for cleanings and check-ups, and over the last 12 years has required very little restorative or occlusal treatment. Tooth #26 and #27 treatments have been reported to you by myself and [Appellant's endodontist].*

> *Since her last car accident on November 15, 2002, her symptoms of discomfort in the maxillary left quadrant and left TMJ have been noticeably consistent and persistent. Comparing and contrasting the post-accident symptoms with pre-accident check-ups, it is readily apparent that the accident, with a high degree of probability, was a causative factor in the display of oro-facial symptoms.*
>
> *For this reason, I believe that MPIC should accept responsibility for the proposed dental treatment for [the Appellant]*.

b) [Appellant's endodontist]

1. August 29, 2002. Chart Note by [Appellant's endodontist] regarding tooth *"26 – 27 – IPA – ADD/XBL suspect perio pocket . . . refer [Appellant's periodontist]".*
2. December 9, 2003. [Appellant's endodontist] provides a report indicating that on September 26, 2003 he provided endodontic treatment for the Appellant, on tooth #27. He indicates that she had been experiencing discomfort on the maxillary left quadrant and sensitivity to temperatures. Tooth #26 had previously been endodontically treated and he concludes that if there was a problem with temperatures, the assumption would be that the offending tooth would be #27, the tooth with remaining pulp tissue. In response to the Appellant's inquiry if the motor vehicle accident in November of 2002 could be responsible for the breakdown of the pulp tissue in #27 [Appellant's endodontist] states:

> *I advised and explained to her that it is possible that the trauma received at the time of the accident could be in part responsible for the demise of the pulp tissue. I further explained that this tooth was previously restored with a full crown and that during the preparation of the crown, all the steps that lead to the development and placement of the crown can result in a certain level of inflammation within the pulp tissue.*

The pulp of #27 potentially already had a certain level of sub-clinical inflammation prior to the accident and the events of the accident and the trauma received by #27 would have added further inflammation to an already inflamed tooth.
I can not say for certain if "this is the straw that broke the camel's back?", however this event most likely had some effect on the pulpal tissue.

c) [Appellant's periodontist]

1. August 30, 2002. In a Memorandum to [Appellant's Prosthodontist], [Appellant's periodontist] reported on his examination and treatment of the Appellant *"regarding a swelling on the facial of #27/26 (interproximally).*

   I elevated a flap and noted the following:
   - *Class 11 distal furca #26*
   - *Severe vertical defect on the distobuccal of #26*
   - *#26 bridge abutment*

   Diagnosis: Vertical root fracture or localized severe periodontitis

   Prognosis: Poor

   Treatment Plan:
   I would have considered amputating the distobuccal root but a) [Appellant's endodontist] thought that the roots may have been fused and b) is there going to be enough support for the bridge without this root.
   Therefore, I sutured the area, I. has antibiotics and I told her that I would speak to you and [Appellant's endodontist] and get back to her as to what the next step is.
   Alternative treatment might involve a regenerative procedure or extraction and implant placement in the 25,26 area.

2. November 14, 2002. [Appellant's periodontist] reports to [Appellant's Prosthodontist]

   . . . I saw her on November 5, 2002 and elevated a flap. The defect presented as a severe osseous well around the disto-buccal root and a class II distal furca. Given the splaying of the two buccal roots, I felt confident that they were not fused and I amputated the disto-buccal root. I am pleased with the results to date and will continue to follow her progress.

This has not seemed to have compromised the stability of the bridge.

3. December 17, 2002. Chart Note. *"Patient came in complaining about 1) ulcerative lesion on palate 2) swollen left cheek 3) sinus problem 4) sore jaw."*

4. August 29, 2003. Chart Note regarding *"Patient complaining about sensitivity left cold – car accident – some clicking November 15th – mva."*

5. August 29, 2003. [Appellant's periodontist] reports to [Appellant's Prosthodontist]. He notes that he had seen the Appellant who was complaining about several issues:

Ulcerated lesion on palate, swollen left cheek, sinus problems and a sore jaw. She further related she was in a motor vehicle accident on the 15th of November.

She had several issues going on which I think are unrelated:

1. TMD
2. Cervical sensitivity on tooth #27

I polished and put some desensitizing material and suggested that she should call in a week and let me know how she is doing. I would suggest that the long-term prognosis for 26 is poor as we discussed and eventually may necessitate implant placement. However, I don't believe it should have any impact from the motor vehicle accident.

6. December 1, 2004. Chart Note. *"Patient concerned about swelling/discomfort 26 – suggested that best long term tx would be EXO, implants 24, 25, 26.*

*Short term – pocket elim /allow for cleaning * Patient had appointment to see regarding MVA, dental implications."*

d) [Appellant's oral and maxillofacial surgeon]

1. May 27, 2003 (amended November 29, 2004).

[Appellant's oral and maxillofacial surgeon] reports that the first indication he had that the Appellant was involved in a motor vehicle accident was on April 7, 2003 when she requested an MRI scan to examine her temporomandibular joint.

> *My suggestion at that time was that she had very mild disc displacement with reduction. The disc displacement is relatively asymptomatic and an MRI scan is not indicated at this time. Her muscles and mastication were mildly tender but not significant enough to reduce mandibular function. I did not suggest any therapeutic treatment at that time . . .*
> *. . . .she may suffer from myofascial pain and a further report should be requested from her prosthodontist, [text deleted].*

Submission for the Appellant

It was submitted on behalf of the Appellant that the issue to be determined is whether the motor vehicle accident caused or contributed in a significant way to the injuries sustained by the Appellant, requiring treatment and possible future treatment to her teeth.

It was submitted that, although the Appellant had problems with her mouth and teeth prior to the motor vehicle accident, she underwent reconstruction and treatment, and her mouth and teeth were healing well. However, there was a distinct change for the worse which occurred following the motor vehicle accident, leading to a slow and steady deterioration since that time. Many of her caregivers have noted that since the motor vehicle accident her symptoms and discomfort had become noticeably consistent and persistent.

Counsel for the Appellant submitted case law and decisions in support of the position that, on a balance of probabilities, the Appellant has clearly met the onus upon her of demonstrating a causal relationship between the problems with her teeth and the motor vehicle accident. The Appellant has shown a substantial connection between the injury and the motor vehicle accident and it was sufficient that the accident was part of the cause of the injury. The insured cannot escape liability merely because there may be other factors that have affected the Appellant's teeth. (see re [text deleted] AC-03-02, *Athey v Leonati* [1996] 3 SCR 458 and *Lynne v McClarty* [2003] MJ No. 29, and re *Surface Corp v Hanke* [2007] SCJ No. 7)

Counsel for the Appellant also discounted reports and testimony from [text deleted], MPIC's dental care consultant. He noted that [MPIC's dental consultant] had never examined the Appellant, and that the evidence and opinion of her caregivers should be preferred to his evidence. He further noted that the assumption in one of his reports that the Appellant was now seeking implants possibly due to her understanding that MPIC would pay for them, was gratuitous and offensive as well as inaccurate, and detracted from [MPIC's dental consultant's] reliability as an expert witness.

Evidence and Submissions for MPIC

MPIC takes the position that there is insufficient evidence to support a causal relationship between the symptoms of the Appellant in tooth #26 and #27 and the motor vehicle accident. In MPIC's view, the problems with the Appellant's teeth are directly attributable to a pre-existing condition. Implants, as a preferred option for treatment, had been recommended to the Appellant by her caregivers prior to the motor vehicle accident. At that time, the Appellant knew that the

prognosis for tooth #26 was "poor".

Further, it was submitted, the reports do not support a causal relationship between the devitalization of tooth #27 and the motor vehicle accident. The reports do not provide sufficient detail to provide an etiological link with the motor vehicle accident. Some of the reports from the Appellant's caregivers are not consistent with information found in the clinical or chart notes. Therefore, counsel for MPIC submitted that the best evidence was that of [text deleted], MPIC's dental consultant, who had carefully reviewed all of these reports and clinical notes.

Medical Evidence

[MPIC's dental consultant] provided both narrative reports or memorandum and oral testimony at the hearing into the Appellant's appeal. The Commission was provided with the following reports or memorandum from [MPIC's dental consultant]:

1. September 8, 2003. [MPIC's dental consultant] reviewed the Appellant's MPIC medical package and a report from [Appellant's prosthodontist] dated July 24, 2003. He was asked to comment on the causation of the Appellant's TMD and tooth #26 dental symptoms in relation to the November 15, 2002 motor vehicle accident. He stated:

   > *Given the circumstances and history of the tooth it is my recommendation that we not cover any treatment associated with this tooth. All the symptoms are consistent with problems arising from pre existing dental disease and it is my opinion that the symptoms are not MVA caused.*

2. Following a review of [Appellant's endodontist's] report dated December 9, 2003, [MPIC's dental consultant] stated:

   > *All the symptoms are consistent with pre-existing dental disease not trauma. I do not see any evidence to support the devitalization of #27 being MVA related,*

therefore no coverage is recommended.

3. November 15, 2004. [MPIC's dental consultant] provided a memorandum to the Director of MPIC's legal services. He reviewed the issue of whether the symptoms in teeth #26 & 27 are causally related to the motor vehicle accident of November 15, 2002. He was of the view that while this was possible, it was more probable that the symptoms were due to other non-related dental procedures. He stated:

> *. . . I also am of the opinion that were these teeth to be lost in the future the primary cause is their guarded pre-MVA dental status not any trauma from the MVA.*

[MPIC's dental consultant] based his conclusion upon his review of the patient's history of extensive dental treatment including, just immediately prior to the motor vehicle accident, a dental extraction due to tooth decay in October 2002 and a hemisection of tooth #26 for periodontal reasons in November 2002, as well as the extensive crown and bridge work on her back teeth. In [MPIC's dental consultant's] view, the sensitivity of tooth #26 after the periodontal surgery of November 2, 2002 was likely the reason for the sensitivity attributed to the motor vehicle accident, as adequate healing of the surgery would not have likely occurred by that time, and the tooth that had surgery had been used to support a bridge in a weakened condition. He noted:

> *It would seem from the reports that both 26 and 27 had a guarded prognosis pre treatment and pre MVA due to the degree of bone loss and their pre MVA periodontal status. Therefore to attribute their projected demise to the MVA is unjustified because it is apparent that the MVA did not cause the bone loss, nor is it clear that the MVA played a role in devitalization of the #27.*

(Note: The evidence established that [MPIC's dental consultant's] reference to "a dental extraction due to tooth decay in October 2002", was the result of a previous reporting error, subsequently corrected, by [Appellant's oral and maxillofacial surgeon].)

4. April 25, 2005. Following receipt of requested clinical notes from [Appellant's periodontist], [Appellant's endodontist] and [Appellant's prothodontist], [MPIC's dental

consultant] undertook a "*chronology of chart review"* of the Appellant's file. He states:

> *Based on the clinical notes and my assessment of the chronology I am of the opinion that:*
>
> 1. *Tooth #26 has a definite history of severe periodontal problems and pain prior to the MVA. The clinical notes indicate the patient was informed prior to the MVA of the poor prognosis of tooth #26, and it was also recommended that an implant was the preferred long-term solution to replace 26. The surgery to remove a root further diminished the long-term prognosis of the tooth, again prior to the MVA. Of interest is that there was no mention of problems with the tooth after the surgery in Nov -02, until Aug -03, when the problem actually was with #27. Subsequent problems with #26 in Nov -04 were attributed to the former periodontal problem and surgery. In a memo from [Appellant's Prosthodontist], Oct 29, 2002, to [Appellant's periodontist], [Appellant's endodontist] and [Appellant's oral and maxillofacial surgeon], he states "I reviewed all of her treatment options, she wants to try and save #26, she knows the prognosis for 26 is poor. If 26 can't be saved it will have to be extracted and a bridge done from 23-27". In my opinion the condition of #26 is directly attributable to preexisting dental/periodontal problems. The MVA did not appear to cause any change in the status of the tooth. The prognosis for the tooth, poor, was not different before or after the MVA. The recommended long-term treatment for the tooth, an implant, was the same before and after the MVA. There is no evidence in the clinical records that the tooth was appreciably altered as a result of the MVA and the current status of the tooth is totally consistent with its pre-MVA prognosis. What has apparently changed is the patient choice of treatment, from a conventional bridge (pre-MVA) to implants (post-MVA), possibly due to the assumption that the treatment could receive approval through MPI coverage.*
>
> 2. *Tooth #27 underwent root canal therapy 10 months after the MVA. Of note is the history of the dental work associated with #27, the tooth had been previously crowned, it also had surgery adjacent to its roots when the root of #26 was removed. The tooth had also been apparently asymptomatic for 9 months after the MVA and did not appear to show any symptoms of direct trauma after the MVA. Although I cannot determine what the primary cause was for devitalization of the tooth #27, it is probable that an accumulation of stresses from previous dental work overcame the ability of the pulp to heal it self. I do not attribute the MVA as being a significant causal factor in the devitalization of tooth #27.*

5. April 12, 2005. Draft Memo. At the hearing, counsel for MPIC also submitted a draft version of the memorandum dated April 25, 2005. The draft memorandum also included references to whether the motor vehicle accident was a cause of the Appellant's discomfort in the left temporomandibular joint (TMJ). In this regard, [MPIC's dental

consultant] concluded that the motor vehicle accident was not the cause of the TM problem, although it may have contributed to an exacerbation of symptoms for a period of time. [MPIC's dental consultant] testified that MPIC's Director of Legal Services requested that he omit this portion of the draft memorandum, relating to TM problems, from the final memorandum dated April 25, 2005, when it became apparent that the issue in dispute between the parties related to dental treatment and not to TM problems.

[MPIC's dental consultant] also testified regarding the different spheres of dental specialization such as endodontics, periodontics and prosthodontics.

He reviewed the clinical notes of the Appellant's caregivers as well as their reports and explained how he had come to the conclusions contained in his reports and memorandum.

Based upon his review of the caregivers' clinical notes, he found there had been a lengthy delay between the motor vehicle accident and the Appellant's reporting of any tooth symptoms to her caregivers. In addition, the Appellant clearly had a history of problems to tooth #26 prior to the motor vehicle accident. She had previously had a root canal for this tooth and the tooth had a poor prognosis even prior to the motor vehicle accident. The motor vehicle accident clearly had no effect whatsoever upon the prognosis or the condition of this tooth.

The Appellant also had a history of problems with tooth #27. Since tooth #26 had already been endodontically treated, [MPIC's dental consultant] identified the problem for which she was referred to [Appellant's endodontist] and [Appellant's periodontist] in November 2002 and August 2003 as affecting the devitalization of tooth #27. Tooth #27

had surgery adjacent to its roots when the root of #26 was removed, as well as when the periodontal pocket and distal buccal root amputation were performed.

[MPIC's dental consultant] noted that the affected teeth had been asymptomatic for nine (9) months after the motor vehicle accident, and concluded that the cause of the problems with these teeth did not arise from the motor vehicle accident.

Submission for MPIC

Counsel for MPIC submitted that there was insufficient evidence to establish, on a balance of probabilities, that the Appellant was entitled to coverage for the dental treatments sought as a result of the motor vehicle accident of November 15, 2002.

He reviewed the reports and clinical notes provided by the Appellant's caregivers in detail. These reports, he submitted, highlighted the lengthy delay between the first mention, in April of 2003, by the Appellant of dental symptoms from the motor vehicle accident to her caregivers. Some of the reports of the caregivers conflicted with reports of others. Further, assertions made in some of the reports were not consistent with the information found upon examination of the clinical notes.

On the whole, these reports do not provide, he submitted, sufficient detail to support a scientific explanation of how the Appellant's dental problems could be linked to the motor vehicle accident.

He submitted that the motor vehicle accident in which the Appellant was rear-ended resulted in a

small amount of damage to the motor vehicle. The Appellant had been seatbelted with a padded, soft leather headrest, and had suffered no trauma to the face.

Counsel for the Appellant noted that the Appellant's dental reconstruction work, undertaken and completed twelve (12) years prior, had reached its average life expectancy, on the evidence of [MPIC's dental consultant].

Counsel urged the Commission to accept the testimony of [MPIC's dental consultant] which, he submitted, was forthright, thorough, objective and credible. His conclusion that the prognosis for tooth #26 had been poor even prior to the motor vehicle accident was consistent with the medical evidence on file regarding pre-accident examinations of the Appellant by her caregivers. There is no evidence that this tooth or its condition was appreciably altered by the motor vehicle accident. The current status of the tooth is totally consistent with its pre-motor vehicle accident prognosis.

Counsel also submitted that, due to the accumulation of stresses on tooth #27 prior to the motor vehicle accident, it was not possible to determine what the primary cause of the devitalization of that tooth had been. [Appellant's endodontist] could not say with certainty whether the motor vehicle accident had been the "straw that broke the camel's back" and "waffled" when he tried to put a label or causative factor upon the devitalization of that tooth.

Nor did [MPIC's dental consultant] agree with [Appellant's Prosthodontist's] assessment that the

motor vehicle accident had caused the devitalization of both teeth, particularly when the inconsistencies between [Appellant's Prosthodontist's] reports and his own clinical notes were examined.

Counsel for the Appellant emphasized case law, such as the Manitoba Court of Queen's Bench decision in *Zimmerman v Leckie*, (2002) 165 Man. R. 47, which held that a "paper" review by a physician could be advantageous in its objectivity, when compared with the opinion of a physician who has been treating a patient for an extended period of time.

Counsel for MPIC summarized the Appellant's theory that the motor vehicle accident had affected the Appellant's jaw or the occlusion of her teeth and this had affected the health of tooth #26 and tooth #27. He emphasized that there is no evidence to support this theory in the reports.

It was his submission that the corporation had fulfilled its obligations to the Appellant in a fair manner. The information from her doctors is so lacking in detail that it falls short of the requirements for establishing causation in this case. Accordingly, he urged the Commission to confirm the decision of the Internal Review Officer that the Appellant is not entitled to coverage for dental treatment to tooth #26 and 27 as a result of the motor vehicle accident.

Discussion

The onus is on the Appellant to show, on a balance of probabilities, that the treatment sought is medically required due to an injury sustained in the motor vehicle accident.

> **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:
(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
(b) the purchase of prostheses or orthopedic devices;
(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
(d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94:

Medical or paramedical care
5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
(b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The panel has reviewed the extensive evidence before us as well as the submissions presented on behalf of the parties. We have analyzed the evidence regarding the condition of each tooth, both prior to and following the motor vehicle accident of November 15, 2002.

Prior to the motor vehicle accident, it is clear that the Appellant had significant problems with tooth #26. Prior to the motor vehicle accident, tooth #26 had been treated endodontically, with a root canal. The patient had been informed that the prognosis for that tooth was poor and an implant had been recommended as the preferred long term solution to replace tooth #26.

In August of 2002, prior to the motor vehicle accident, [Appellant's periodontist] noted:

> *I elevated a flap and noted the following:*
> - *Class 11 distal furca #26*
> - *Severe vertical defect on the distobuccal of #26*
> - *#26 bridge abutment*
>
> *Diagnosis: Vertical root fracture or localized severe periodontitis*
>
> *Prognosis: Poor*

In October of 2002, [Appellant's prosthodontist] noted *"She knows the prognosis for 26 is poor. [Appellant's periodontist]: please see [the Appellant] to discuss and tx #26. If the roots are fused – then [the Appellant] is prepared to have it extracted and to do a bridge 23 → 27."*

There was also a severe periodontal problem between tooth #26 and #27 which was treated prior to the accident, in October/November 2002.

The Appellant's previous history and the pre-motor vehicle accident condition of tooth #26 lead us to conclude that tooth #26, although continuing to be affected by periodontal problems and having a poor prognosis, was not further affected by the accident. It's condition and prognosis remained the same (poor), both before and after the motor vehicle accident.

Accordingly, the Commission finds that the evidence before us establishes, on a balance of probabilities, that the dental problems experienced by the Appellant with regard to tooth #26 were not caused by the motor vehicle accident, but rather, were due to this pre-existing condition.

On the other hand, the Appellant did not have root symptoms relative to tooth #27, and had not

received endodontic treatment to #27 prior to the motor vehicle accident.

The panel finds that the Appellant did not have overt symptoms relative to tooth #27 prior to the motor vehicle accident. The Appellant's pain in tooth #27 did not arise until after the motor vehicle accident.

Although [MPIC's dental consultant] was of the view that tooth #27 had been *"asymptomatic for nine (9) months after the motor vehicle accident"* evidence was submitted to establish that, in December 2002 (approximately one (1) month following the motor vehicle accident), the Appellant had complained to [Appellant's periodontist] of pain and signs of possible infection in the affected area. She further complained of jaw pain to her case manager, [text deleted], on March 26, 2003.

We note that in his draft memorandum dated April 22, 2005, [MPIC's dental consultant] stated:

> *I would not however attribute the MVA as being the only or primary causal factor in the devitalization of number 27.*

In his later memorandum, dated April 25, 2005, [MPIC's dental consultant] instead states:

> *I do not attribute the MVA as being a significant causal factor in the devitalization of tooth #27.*

It appears that at some point, [MPIC's dental consultant] was prepared to accept the motor

vehicle accident as a causal factor in the problems with tooth #27 (although he consistently maintained that the motor vehicle accident had not caused any change to the condition of tooth #26).

[Appellant's endodontist], while noting that tooth #26 had previously been endontically treated, was prepared to consider the role of the motor vehicle accident in the inflammation and degeneration of the pulp tissue of tooth #27.

> *I advised and explained to her that it is possible that the trauma received at the time of the accident could be in part responsible for the demise of the pulp tissue. I further explained that this tooth was previously restored with a full crown and that during the preparation of the crown, all the steps that lead to the development and placement of the crown can result in a certain level of inflammation within the pulp tissue.*
>
> *The pulp of #27 potentially already had a certain level of sub-clinical inflammation prior to the accident and the events of the accident and the trauma received by #27 would have added further inflammation to an already inflamed tooth.*
>
> *I can not say for certain if "this is the straw that broke the camel's back?", however this event most likely had some effect on the pulpal tissue.*

[Appellant's Prosthodontist] supported [Appellant's endodontist's] view, although he was not specific in his comments regarding tooth #26 or tooth #27. He simply noted:

> *Since her last car accident on November 15, 2002, her symptoms of discomfort in the maxillary left quadrant and left TMJ have been noticeably consistent and persistent. Comparing and contrasting the post-accident symptoms with pre-accident check-ups, it is readily apparent that the accident, with a high degree of probability, was a causative factor in the display of oro-facial symptoms.*

Following a careful review of all the evidence and the opinions of the expert treating specialists, the panel finds that the Appellant's post-motor vehicle accident symptoms (including temperature pain and tooth pulp deterioration) of #27, showed a change in the condition of tooth #27 following the motor vehicle accident.

Following the motor vehicle accident of November 15, 2002, the Appellant complained of pain in the maxillary left quadrant. Tooth #26 had already been endodontically treated and would not have been the source of the pain and temperature sensitivity. Following the accident, the Appellant began to suffer problems with tooth #27, which had been symptom free until that point. It is our view that the evidence of the Appellant and the dental experts has established, on a balance of probabilities, that the motor vehicle accident was the cause of the dileterious changes in the condition of the Appellant's tooth #27.

Accordingly, we conclude that the Appellant has failed to establish, on a balance of probabilities, that the difficulties with tooth #26 were caused by the motor vehicle accident. We hereby dismiss the Appellant's appeal and confirm the Internal Review decision dated March 10, 2004 in regard to the finding that the Appellant is not entitled to PIPP benefits for dental care of tooth #26.

However, we conclude that the Appellant has established, on a balance of probabilities, that the motor vehicle accident caused and/or exacerbated the Appellant's problems with tooth #27. Accordingly, the panel finds that the Internal Review Officer erred in her decision dated March 10, 2004 in regard to the finding that the Appellant is not entitled to PIPP benefits for dental care of tooth #27.

Accordingly, the Appellant shall be entitled to coverage for or the reimbursement of dental expenses in regard to medically required treatment for tooth #27.

Dated at Winnipeg this 12th day of June, 2007.

LAURA DIAMOND

MARY LYNN BROOKS

DR. F. PATRICK DOYLE