

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-137**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms Diane Beresford

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

HEARING DATE: February 19, 2009

ISSUE(S): Whether medical report is new information within the
meaning of Section 171(1) of the MPIC Act

RELEVANT SECTIONS: Section 171(1) of *The Manitoba Public Insurance Corporation
Act* ('MPIC Act')

**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], has appealed to this Commission from the Internal Review Decision dated December 3, 2007. The Internal Review Decision of December 3, 2007 determined that the June 7, 2004 report from [Appellant's doctor #1] was not "new information" within the meaning of Section 171(1) of the MPIC Act. The issue which requires determination in this appeal is whether the June 7, 2004 report from [Appellant's doctor #1] constitutes new information within the meaning of Section 171(1) of the MPIC Act.

The Legislation

Section 171(1) of the MPIC Act provides that:

Corporation may reconsider new information

[171\(1\)](#) The corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

Decision

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the information and opinions contained in [Appellant's doctor #1's] report of June 7, 2004 coincide with the information provided by several other medical professionals, including [Appellant's doctor #2], [Appellant's doctor #3] and [Appellant's doctor #4]. Therefore, the Commission finds that [Appellant's doctor #1's] report is not new information, but rather is information which has previously been considered by MPIC in the management of [the Appellant's] case.

Reasons for Decision

[Appellant's doctor #1's] report of June 7, 2004 advises as follows:

Note that I consider the correct diagnosis of [the Appellant's] pain disorder to be Myofascial Pain Syndrome, which follows an injury which is the causal event. I believe the DSM-IV equivalent of this is Pain Disorder Associated With a General Medical Condition, which is not considered to be a mental disorder but is included in DSM-IV to facilitate differential diagnosis. As myofascial pain can become a chronic problem, it seems to me that, if [the Appellant's] pain followed a motor vehicle injury and became persistent, the motor vehicle accident was the cause of his pain disorder.

When MPIC failed to compensate [the Appellant] for his injury, his reaction involved becoming obsessed or preoccupied with correcting this injustice. It might be argued that, on the basis of [the Appellant's] reaction, he satisfies the DSM-IV criteria for 307.89

Pain Disorder Associated With Both Psychological Factors and a General Medical Condition, which requires that “both psychological factors and a general medical condition are judged to have important roles in the onset, severity, exacerbation, or maintenance of the pain” (DSM-IV p. 462). In this instance, note that, while the general medical condition (the injury) had an important role in the onset, severity, and possibly maintenance of the pain, [the Appellant’s] psychological factors may have played a role in the severity, exacerbation, and/or maintenance, but not the onset of his pain. The motor vehicle accident caused the pain; the psychological factors did not. It is quite conceivable, even probable, that had the aforementioned injustice not occurred, the psychological factors would have had little or no effect.

[Appellant’s orthopaedic surgeon #1], in his letter to [text deleted] (Claims Adjuster, Manitoba Public Insurance Corporation) on May 8, 1995, concluded that [the Appellant’s] “present complaints [“his shoulders feel tired...he notes soreness at the right side of his neck and in both shoulders...it hurts in his posterior neck and mid-back, and his neck hurts when he leans forwards while driving his car”] are not related to the vehicle accident. Pre-existing conditions [“Degenerative changes are present in the lumbosacral spine with poor formation of the vertebral bodies. There is sclerosis and marked narrowing at the discs L4-5-S1”] have been noted, and I believe are the cause of his present complaints.”

But, clearly, lumbosacral degenerative changes cause lower-back pain, not neck, shoulder, and mid-back pain. [Appellant’s orthopaedic surgeon #1] made a logical error. The motor vehicle accident of November 20, 1994, explains [the Appellant’s] pain; the pre-existing degenerative changes do not.

In a letter to [Appellant’s doctor #5] on January 16, 1996, [Appellant’s orthopaedic surgeon #2], noted “shoulder motion restriction on the right side. Internal rotation 10-15 degrees at best. Right levator scapulae is tender with minor spasm...residual restriction of motion as has been described at the shoulder most likely due to soft tissue involvement...the patient does have residual effects...and should be treated symptomatically.”

In a report dated December 13, 2004, [MPIC’s doctor #1], Medical Consultant to MPIC’s Health Care Services Team found that the Appellant’s physical condition/presentation addressed by [Appellant’s doctor #1] in his report had been previously considered by [MPIC’s doctor #2] in his Health Care Services Memorandum of December 11, 2001. [MPIC’s doctor #1] advised that, in preparing that Memorandum, [MPIC’s doctor #2] considered the assessments and findings of multiple physical medicine and orthopaedic practitioners. The Commission therefore finds that the information provided by the Appellant’s musculoskeletal caregivers was previously

considered by MPIC and the comments provided by [Appellant's doctor #1] in his report of June 7, 2004 do not provide any new information which had not previously been considered by MPIC in the assessment of the Appellant's claim.

With respect to the Appellant's psychological condition, a review of the Appellant's file was undertaken by [MPIC's psychologist], Psychological Consultant with MPIC's Health Care Services Team. In his Inter-departmental Memorandum dated July 6, 2007, [MPIC's psychologist] reviewed the relevant psychological reports on the Appellant's file and discussed [Appellant's doctor #1's] report of June 7, 2004. Based upon his review of all of the medical documentation, [MPIC's psychologist] concluded that the Appellant's psychological condition was not causally related to any of his motor vehicle accidents. [MPIC's psychologist] also determined that [Appellant's doctor #1's] 2004 report would not be considered new information.

Taking into consideration [MPIC's psychologist's] Inter-departmental Memorandum dated July 6, 2007, the Commission finds that the Appellant's psychological condition has been extensively reviewed and assessed by a number of healthcare practitioners. The Commission also finds that the information contained in [Appellant's doctor #1's] report, with respect to the Appellant's psychological condition, has been previously considered by MPIC in the management of the Appellant's claim.

At the appeal hearing, the Appellant also raised the issue of his perceived bias on the part of the Internal Review Officer against him personally. The Appellant raised the issue of bias at the conclusion of the hearing. The Appellant did not present any evidence at the appeal hearing with regards to this issue. The Commission refused to grant the Appellant an adjournment in order for the Appellant to present evidence of bias on the part of the Internal Review Officer. The Commission determined that the Appellant had ample notice of the hearing and sufficient

opportunity to present and raise all of the issues at the appeal hearing which he felt needed to be addressed by the Commission.

The Commission also finds that the Appellant's perception of bias on the part of the Internal Review Officer is irrelevant to its deliberations and assessment of the Appellant's appeal of the Internal Review Decision of December 3, 2007. The issue on this appeal concerned a determination of whether [Appellant's doctor #1's] report constituted new information within the meaning of Section 171(1). The Commission, in its capacity as an independent tribunal, has reviewed and considered the issues raised by this appeal and has come to its findings separate and apart from any findings made by the Internal Review Officer. The Appellant has received a brand new hearing in regards to the issue under appeal, completely independent from the assessments and findings made by the Internal Review Officer. Accordingly, the Appellant has had his appeal adjudicated by an independent arbiter, based solely on the evidence presented to the Commission. In these circumstances, the issue of whether the Internal Review Officer was biased had no bearing on the decision arrived at by the Commission and is irrelevant to the issue considered by the Commission.

As a result, the Appellant's appeal is dismissed and the Internal Review dated December 3, 2007 is hereby confirmed.

Dated at Winnipeg this 16th day of April, 2009.

MS YVONNE TAVARES

DR. PATRICK DOYLE

MS DIANE BERESFORD