

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-06-192**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Diane Beresford  
Mr. Neil Cohen

**APPEARANCES:** The Appellant, [text deleted], was represented by Ms Darlene Hnatyshyn of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

**HEARING DATE:** March 16, 2010

**ISSUE(S):** Entitlement to Personal Injury Protection Plan ("PIPP") benefits.

**RELEVANT SECTIONS:** Sections 81(1) and 136(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**

The Appellant, [text deleted], is appealing the Internal Review Decision dated September 29, 2006, with respect to her entitlement to PIPP benefits arising out of a motor vehicle accident on June 22, 2003.

The facts given rise to this appeal may be briefly summarized as follows:

1. On June 22, 2003, the Appellant was rear-ended while stopped on [text deleted], waiting to make a left turn onto [text deleted]. After the motor vehicle accident, the Appellant

complained of neck pain, lower back pain, right shoulder pain and right foot pain. The Appellant attended upon her family physician the following day. She was prescribed Vioxx/Flexiril for her pain and referred for physiotherapy treatments.

2. At the time of the motor vehicle accident, the Appellant was employed full-time as an [text deleted] for [text deleted].
3. The Appellant missed work on June 23, 2003 and then returned to work for a few days before leaving on a six week trip to [text deleted]. The Appellant travelled to [text deleted] from June 28, 2003 to August 12, 2003. Before leaving for [text deleted] on June 28, 2003, she attended for two physiotherapy sessions. She also saw a physiotherapist for treatment while in [text deleted].
4. When the Appellant returned from [text deleted], she complained mostly of ongoing neck, back and right shoulder pain. She continued to work and attend for physiotherapy treatments until December 16, 2003. She found that the ongoing physiotherapy treatments were not assisting her with the pain in her mid to low back. The physiotherapist suggested that she return to see her family doctor, as it appeared the physiotherapy wasn't helping her.
5. She saw her family doctor on December 13, 2003. She told him that she found it difficult to sleep due to the back pain that she was experiencing at the L5/S1 bilateral level.
6. On March 18, 2004 she continued to complain of lower back pain. She also had pain in her left shoulder and the left side of her neck. A CT Scan dated March 17, 2004 showed spinal stenosis at L5/S1 and osteoarthritis. The Appellant was referred to [Appellant's Physiatrist].
7. In his report to [Appellant's Doctor] dated June 21, 2004, [Appellant's Physiatrist] reported his opinion that he thought her back and neck pain were most probably muscular in origin.

8. In a report to [Appellant's Doctor] dated January 13, 2005, [Appellant's Physiatrist] reiterated his opinion that the Appellant's mid to low back and neck pain were muscular pain although he noted there was moderate spinal stenosis in her lumbar spine. [Appellant's Physiatrist] was unable to relate the Appellant's symptoms to the car accident of June 2003.
9. By March 2005, [Appellant's Physiatrist] was reporting that the Appellant was complaining of pain spreading in the back, resulting in chronic muscular pain. The Appellant was advised to work part-time. The Appellant commenced working four hours a day. The Appellant's back pain continued to get worse and [Appellant's Physiatrist] took her completely off work on May 16, 2005.
10. In a letter dated September 27, 2005, MPIC's case manager advised the Appellant that she was not entitled to receive IRI benefits, further therapeutic treatment interventions or any other PIPP benefits arising from the motor vehicle accident of June 22, 2003. Relying upon a medical review from MPIC's Health Care Services Team, the case manager determined that the information on the Appellant's file did not contain documentation indicating that she was objectively identified as having a physical impairment of function arising from the motor vehicle accident of June 22, 2003 that would prevent her from performing her pre-accident occupational duties on a full-time basis.
11. The Appellant sought an Internal Review of that decision. In a decision dated September 29, 2006, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer based his decision on the opinion of [MPIC's Doctor] of MPIC's Health Care Services Team. [MPIC's Doctor] noted that based on the mechanism of the accident, the clinical findings and the CT and MRI results, the Appellant's symptoms did not relate to any disc herniation, but were from longstanding arthritis.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to further PIPP benefits arising from the motor vehicle accident of June 22, 2003.

**Appellant's Submission:**

The Claimant Adviser, on behalf of the Appellant, submits that the most likely cause of the Appellant's back pain, which caused her to discontinue working, was the motor vehicle accident of June 22, 2003. She argues that the Appellant was a hard working wife, mother and part-time student prior to the motor vehicle accident. However, following the motor vehicle accident, the Appellant was never able to regain her full function. The Claimant Adviser notes that although the Appellant returned to work in late August 2003, she had not regained full function and continued to suffer from increasing levels of back pain. Eventually, she had to reduce her hours and discontinue working altogether.

The Claimant Adviser submits that the Appellant was a credible witness and her testimony was corroborated by the testimony of her husband. The Appellant's husband testified at the hearing that the Appellant began complaining of back pain on the day of the motor vehicle accident. Further, the Claimant Adviser notes that the Appellant had no previous history of back pain. She was asymptomatic prior to the motor vehicle accident and able to work full time and indeed was very active prior to the accident. However, following the motor vehicle accident, the Appellant's complaints of back pain were consistent and gradually increased to the point that she was no longer capable of working.

The Claimant Adviser maintains that the Appellant's symptoms are corroborated by her medical caregivers. In that respect, the Claimant Adviser relies upon the medical report of [Appellant's Physiatrist] dated October 4, 2005 wherein he notes that:

Because the new MR suggested a disc herniation, I'd like to change my mind in terms of this case being associated with a car accident that caused the herniation. It is possible now and I'd like to change my opinion from August 2005 in which I harmed the patients' insurance claim.

[Appellant's Physiatrist] reiterated his opinion in a report dated November 23, 2005, wherein he noted that:

I sense that this central disc herniation could well have been from the motor vehicle accident and was unknown previously, and with the combination of the hypertrophy of the ligaments and facet joint OA, has produced severe spinal stenosis.

Based upon [Appellant's Physiatrist's] opinion, the Claimant Adviser argues that there is a causal connection between the Appellant's back complaints and the motor vehicle accident of June 22, 2003.

The Claimant Adviser submits that the totality of the evidence on the Appellant's file suggests that the motor vehicle accident of June 22, 2003 is the cause of her back complaints. The Claimant Adviser maintains that the Appellant was a high functioning individual prior to the motor vehicle accident. Following the motor vehicle accident, the Appellant was in constant pain and could not work. Further, the Claimant Adviser claims that there is a strong temporal relationship between the motor vehicle accident and the Appellant's complaints of pain. She was completely asymptomatic prior to the motor vehicle accident, but following the motor vehicle accident she has continuously complained of back pain. Lastly, the Claimant Adviser relies on the opinion of [Appellant's Physiatrist], the Appellant's medical caregiver who supports a causal connection between the Appellant's back complaints and the motor vehicle accident. The

Claimant Adviser therefore submits that on the balance of probabilities, the Appellant has established a causal relationship between her back symptoms and the motor vehicle accident of June 22, 2003. Accordingly, the Claimant Adviser submits that the Appellant's appeal should be allowed and that the Appellant is entitled to PIPP benefits.

**MPIC's Submission:**

Counsel for MPIC submits that the Appellant has not established, on a balance of probabilities, that her back symptoms are related to the motor vehicle accident of June 22, 2003. Rather, counsel for MPIC argues that the medical evidence is clear that the cause of the Appellant's symptoms is not related to the motor vehicle accident. Counsel for MPIC maintains that the Appellant was able to work full-time for almost two years until she had to quit her employment.

Counsel for MPIC maintains that [Appellant's Physiatrist's] opinion regarding causation is not conclusive. She argues that [Appellant's Physiatrist] was not provided with all of the medical reports on the file in order to come to his conclusion. Further, she maintains that [Appellant's Physiatrist]:

1. is vague in his opinion about causation;
2. changed his opinion from his original opinion, wherein he concluded that the Appellant's symptoms were not related to the motor vehicle accident, without providing an adequate explanation for his change of opinion; and
3. never provided any explanation as to why the disc herniation was related to the motor vehicle accident.

For these reasons, counsel for MPIC contends that [Appellant's Physiatrist's] opinion is of no assistance in determining whether the Appellant's back problems are related to the motor vehicle

accident of June 22, 2003. Counsel for MPIC reasons that [MPIC's Doctor's] opinions should be preferred to those of [Appellant's Psychiatrist] since he had the opportunity to review all of the medical reports on the Appellant's file and is in a better position to evaluate the file.

Additionally, counsel for MPIC notes that the Appellant's argument that she never had any back pain prior to the motor vehicle accident is based solely upon the testimony of the Appellant and her husband. She maintains there is no medical evidence on the Appellant's file to confirm that testimony. Further, counsel for MPIC maintains that the Appellant did not mention her lower back pain to [Appellant's Doctor] when she initially saw him the day following the motor vehicle accident. Counsel for MPIC therefore submits that the Appellant's complaints of back pain were not temporally related to the motor vehicle accident, as argued by the Claimant Adviser.

In summary, counsel for MPIC submits that based upon the medical evidence, the Appellant's symptoms are most likely related to the pre-existing arthritic condition of her back. She maintains that [MPIC's Doctor] has concluded that based on the mechanism of the accident, the clinical findings and the CT and MRI results, the symptoms are most likely from long standing arthritis. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated September 29, 2006 should be confirmed.

**Decision:**

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant has not

established, on a balance of probabilities, that her back condition is attributable to motor vehicle accident of June 22, 2003.

**Reasons for Decision:**

The Commission finds that the Appellant has not established, on a balance of probabilities, that her current low back problems are causally related to the motor vehicle accident of June 22, 2003. While the Appellant has raised a possible connection, we find that the evidence on the Appellant's file does not meet the burden of proof required in the circumstances to establish that the progression of her symptoms was, on a balance of probabilities, related to the motor vehicle accident. Further, we find that [Appellant's Physiatrist's] reports and opinions regarding causation were not conclusive or determinative of the issue. Although [Appellant's Physiatrist] revised his opinion that the Appellant's symptoms were related to the accident, no further explanation setting out the reason for the connection was ever sought from [Appellant's Physiatrist]. As a result, the Commission finds that his opinion is not conclusive of the issue.

Rather, the Commission finds that the medical evidence on the Appellant's file supports that she had a pre-existing degenerative condition. We note [MPIC's Doctor's] opinion that the MRI results suggesting a disc herniation support his conclusion that the L5/S1 findings were longstanding. There was insufficient evidence to establish that the disc herniation was related to the motor vehicle accident or that the disc herniation itself was even the cause of the Appellant's lower back problems given the Appellant's other chronic conditions, including her osteoarthritis and spinal stenosis. We find that when all of the medical information is taken into consideration, it cannot be determined that the Appellant's motor vehicle accident of June 22, 2003 was the probable cause for her back problems which led to her discontinuing her employment. As a result, we find that there is no probable evidentiary basis upon which to establish a relationship



between the Appellant's chronic low back condition and the motor vehicle accident of June 22, 2003.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 29, 2006 is confirmed.

Dated at Winnipeg this 10<sup>th</sup> day of May, 2010.

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**YVONNE TAVARES**

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**DIANE BERESFORD**

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**NEIL COHEN**