

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-135

PANEL: Ms Laura Diamond, Chairperson
Ms Deborah Stewart
Ms Linda Newton

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

HEARING DATE: May 26, 2011

ISSUE(S): Entitlement to Income Replacement Indemnity benefits, Permanent Impairment benefits and reimbursement for medical expenses.

RELEVANT SECTIONS: Sections 81(1), 127, 136(1)(a) 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 was involved in motor vehicle accidents on September 7, 1996, September 30, 1999, October 14, 2004 and March 6, 2006.

Following the March 6, 2006 accident the Appellant contacted MPIC, in April of 2008, seeking a settlement for his injuries in the accident (including cataracts and glaucoma). The Appellant's case manager obtained documentation which was reviewed by [MPIC's Doctor], medical consultant with MPIC's Health Care Services Team, who concluded that due to a long history of

pre-existing medical conditions, the Appellant's current symptoms were not causally related to the motor vehicle accident.

The Appellant's case manager, in a decision dated June 1, 2009, advised that the Appellant was not entitled to Income Replacement Indemnity ("IRI"), Permanent Impairment or medical expense benefits as the medical information indicated that a cause/effect relationship did not exist between his present symptoms and the incident in question.

The Appellant sought an Internal Review of this decision and on October 20, 2009, an Internal Review Officer for MPIC upheld the case manager's decision. He reviewed reports from [Appellant's Doctor #1], [Appellant's Doctor #2] and [MPIC's Doctor] and concluded that a cause/effect relationship could not be established between the motor vehicle accident and the Appellant's eye condition or other symptoms.

The Appellant also sought IRI benefits, Permanent Impairment and medical expense benefits as a result of the cumulative effects of all his motor vehicle accidents.

On February 11, 2010, the Appellant's case manager provided him with a decision indicating that the medical evidence did not show that he developed a medical condition as a result of the cumulative effects of all the incidents in question and that he was not entitled to the benefits requested. The Appellant sought an Internal Review of this decision.

On February 24, 2010, an Internal Review Officer for MPIC reviewed the Appellant's file and concluded that he had not developed a medical condition as a result of any of the motor vehicle accidents from 1996 and onward, which would entitle the Appellant to IRI benefits.

Accordingly, the Internal Review Officer found he was not entitled to Permanent Impairment or medical expenses, since the medical evidence clearly showed that his numerous complaints predated and did not result from the accidents.

It is from these decisions of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He noted that he had initially received assistance from the Claimant Adviser's Office in filing his appeals, but they had withdrawn their representation and he was now at a disadvantage in having to represent himself.

The Appellant advised that his doctors agreed that he was suffering, that he had a lot of problems and could not function normally since the last motor vehicle accident. He had received medical treatment and physiotherapy. The Appellant had been diagnosed with cataracts and glaucoma, which had not troubled him before the motor vehicle accident. As a result, he was unable to make a living and support his family, yet MPIC did not want to help him.

The Appellant advised that since the motor vehicle accident he had been diagnosed with back pain, neck issues and whiplash as well as glaucoma and cataracts. He had not had any of these problems, including problems with his eyes, until after the motor vehicle accident in 2004.

As a result of these injuries he has limitations, cannot sit or stand for long and he needs compensation from MPIC. He has difficulty with his stomach due to the long-time use of expensive painkillers, and has received no rehabilitation from MPIC to help him adjust. His only source of living has been Provincial assistance.

The Appellant submitted that he did not have these conditions before the motor vehicle accident and he did after, so he should be entitled to compensation from MPIC.

Evidence and Submission for MPIC:

Counsel for MPIC submitted that the Appellant's problems had started in the early 1980's, well before the motor vehicle accidents, and that he had not really worked since that time. This was not as a result of motor vehicle accident impairments. She submitted that the motor vehicle accidents had not resulted in cumulative effects which would entitle the Appellant to IRI benefits, Permanent Impairment or reimbursement of medical expense benefits. Nor was the Appellant entitled to benefits as a result of the motor vehicle accident of March 6, 2006.

Counsel reviewed many documents contained in the Appellant's Indexed file to support MPIC's position. She noted a letter from [Appellant's Doctor #3] dated September 12, 1994 to the Appellant's health and welfare claims worker, indicating that the Appellant was unable to work as a janitor due to a [text deleted] wound to his left hand and a motor vehicle accident in December 1989, as well as trauma resulting from a motor vehicle accident of May 1993. All these incidents occurred before the Personal Injury Protection Plan ("PIPP") came into effect.

Counsel also reviewed a letter from [Appellant's Doctor #4] dated January 7, 1995 which indicated that most of the Appellant's symptoms and findings could not be explained on the basis of any motor vehicle accident but rather were caused by chronic pain behaviour syndrome. While the motor vehicle accidents may have caused transitory symptoms, they did not result in disability.

Counsel submitted that this demonstrates that the Appellant had pre-existing problems which had already resulted in him reporting a complete disability prior to the motor vehicle accidents.

The first motor vehicle accident which fell under the PIPP scheme occurred in 1996. However, at that time the medical evidence showed that the Appellant was still able to work and also that there was not adequate evidence to support the Appellant's claims regarding a business venture.

The second motor vehicle accident, in 1999, led to a report from [Appellant's Doctor #3], dated June 28, 2002, which indicated that the Appellant had suffered from chronic low back pain since 1993, as well as chronic thoracic strain. The prognosis showed that the Appellant would be able to return to his pre-motor vehicle status and had shown noticeable improvement for the past three or four months.

In a report dated September 10, 2004, [Appellant's Doctor #3] indicated that he did not understand what injuries could be attributed to the 1999 motor vehicle accident.

[MPIC's Doctor], in a memo dated October 7, 2004 indicated that the medical reports from the Appellant's health care professionals had provided no information that the Appellant developed a medical condition secondary to the motor vehicle accident that resulted in an occupational disability that requiring treatment intervention.

Following the Appellant's third motor vehicle accident, his case manager concluded, on October 22, 2004, that there was nothing which had resulted from the motor vehicle accident which would prevent him from working or would require ongoing treatment. MPIC's denial of PIPP

benefits to the Appellant as a result of this accident was upheld by the Commission in a decision dated January 15, 2008.

The fourth motor vehicle accident occurred on March 6, 2006. The first record of the Appellant seeing a caregiver was on July 26, 2006, but the Appellant attended at that time in regard to nosebleeds. [MPIC's Doctor's] review of the Appellant's condition following this accident indicated that there was not a cause/effect relationship between the Appellant's present symptoms and the incident in question as there was no indication that the Appellant had developed a medical condition or permanent impairment as a result of the motor vehicle accident. On October 6, 2009, after summarizing the medical information on file, [MPIC's Doctor] also concluded that the Appellant's cataracts, glaucoma and back pain were not related to the motor vehicle accident.

Counsel for MPIC addressed the Appellant's contention that the cumulative effects of all four of these motor vehicle accidents resulted in entitlement to PIPP benefits. In that regard she noted a report from [Appellant's Doctor #3] dated December 11, 2009 which reviewed all of the motor vehicle accidents in which the Appellant had been involved and noted that his complaints during the past months were similar to the complaints he had had for the past 20 years. She submitted that investigation revealed that the Appellant's disc spaces were well maintained and that any motor vehicle accidents after 2000 did not contribute to his pain. Narrowing of the discs had been found in 1993 and there had been no progression in this condition since 2000.

Counsel reviewed [Appellant's Doctor #1's] notation in a report dated January 13, 2010 regarding the possible cumulative effects of the motor vehicle accidents. But [Appellant's Doctor #1] had only begun to see the Appellant as a patient in July of 2008, and could not

comment on the relationship of his symptoms to even the 2006 motor vehicle accident. The Appellant had received a diagnosis of non-specific low back pain with multi-factoral causation and counsel noted that a definite and probable relationship to the motor vehicle accident could not be established.

[Appellant's Doctor #5] also reported on January 14, 2010 describing the Appellant's pre-existing medical conditions and noting that the motor vehicle accidents did not result in serious injuries.

Counsel submitted that [MPIC's Doctor] looked at all this information and, in a report dated February 2, 2010 concluded that the Appellant suffered from pre-existing conditions and that no condition resulting from the motor vehicle accident had caused a physical impairment or resulted in the Appellant being physically incapable of holding employment. The medical evidence did not indicate that the accidents had caused a cumulative physical condition which resulted in a disability, permanent impairment or requirement for medical treatment.

As a result, counsel submitted that the Appellant's appeal from the Internal Review decisions should be dismissed.

Discussion:

The MPIC Act provides:

Entitlement to I.R.I.

[81\(1\)](#) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

(b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;

(c) the full-time earner is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

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;

The onus is on the Appellant to show, on a balance of probabilities, that the symptoms of which he complains, and which he maintains entitle him to IRI, Permanent Impairment and medical expense benefits, were caused by the motor vehicle accident of March 6, 2006 and/or the cumulative effect of the motor vehicle accidents of September 7, 1996, September 30, 1999, and October 14, 2004, and March 6, 2006.

The panel has reviewed the evidence on the Appellant's file, the testimony of the Appellant and the submissions of the Appellant and counsel for MPIC.

The Appellant took the position that he did not suffer from these conditions or symptoms prior to the motor vehicle accident and relied upon a letter from [Appellant's Doctor #6] dated December 16, 1996 which stated:

“He may have irritated his muscles of his neck and back after this motor vehicle accident...”

On March 20, 1995, [Appellant’s Doctor #6] stated:

“This man still likely has some evidence of a whiplash injury to the neck and some mechanical low back pain...”

The Appellant also submitted that as he did not have a lawyer, because the Claimant Adviser’s Office had withdrawn representation, he had been placed at a disadvantage at the appeal hearing.

The panel finds that even in the absence of an advocate, the medical evidence on the Appellant’s Indexed file speaks for itself. Based upon this evidence, the Appellant has failed to meet the onus upon him of showing that his symptoms were a result of any of the motor vehicle accidents noted above.

In particular, the panel has noted comments from the Appellant’s caregivers.

On January 7, 1995, [Appellant’s Doctor #4]:

“Most of his findings are not explainable on the basis of any motor car accident nor on the basis of his past hand injury. I believe his is a very clearcut case of chronic pain behaviour syndrome which is in fact motivated by his social situation but it is not caused by organic abnormalities. As far as the motor vehicle accident is concerned, he is capable of work. Note that he was claiming total disability even prior to the present motor vehicle accident and it may have caused some transitory symptoms but did not cause additional disability.”

On March 2, 2009, [Appellant’s Doctor #5] reported:

“He kept coming back few times a year with complaints of sore throat, cough, sore neck/sore left shoulder and sore back and was given Antibiotics and Tylenol ES, which I do not think related to MVA, (last and recent X Rays on lumbar spine and left shoulder included).

[The Appellant's] diagnosis was old sprain injuries to neck and lower back for this he was taking Tylenol ES from time to time. If he still feel the pain to his neck and shoulder or back he may benefit from a program of Physiotherapy probably few weeks to few months but I do not think that he will be left with any permanent functional impairments resulting from the injuries sustained in this accident."

On March 17, 2009, [Appellant's Doctor #3] wrote:

"With regards to the accident and its effect on the pre-existing (sic) conditions, I am not able to indicate how the March 6, 2006 accident had affected his ongoing musculoskeletal symptoms. In fact, I am not totally aware of the types of injuries that this patient sustained during the March 6, 2006 accident. However, having seen the patient before March 6, 2006 and after this date, I can say that there was not much change in his musculoskeletal symptoms and findings during the pre-accident assessments as compared to post-accident assessments. As well, there was no difference in treatment administered before the accident compare to after."

On December 11, 2009 [Appellant's Doctor #3] listed and reviewed the Appellant's accidents and his injuries and noted:

"Over the past number of months, the patient complained of back pain, neck pain, left shoulder pain, left hand pain, and bilateral knee pains. These were essentially the same symptoms that he has had to various magnitudes over the past 20 years..."

In terms of prognosis, the patient is likely to continue to complain of back and neck pains indefinitely, considering that he has been symptomatic for 20 years.

Now, I will address the specific questions that you asked:

1. In my opinion, there is no casual (sic) relationship between the medical conditions that prevented [the Appellant] from working and the injuries sustained in the March 6, 2006 accident.
2. I (sic) my opinion, [the Appellant] did not develop a permanent impairment as a result of the injuries sustained in the March 6, 2006 accident.
3. In my opinion, there are no ongoing medical expenses directly related to the injuries sustained in the March 6, 2006 accident.
4. You inquired about [the Appellant's] ongoing symptoms and disability, and their relationship to the multiple accidents that he has had:

With regards to the neck pain, the patient had some mild cervical disc disease which was first objectively reported in 1993 on xrays. Xrays done in 1990 and 1991 specifically stated that the disc space were well maintained. The 1993 accident would be after the patient's 5th accident and he was only [text deleted] years old at the time. Considering that the patient had 5 accidents by age [text deleted], it is likely that these accidents at least partly contributed to premature cervical disc narrowing. Based on xray reports, there had been no progression since 2000, I would suggest that any

accidents after 2000 did not contribute to any further disc narrowing. I would like to also note that the changes were reportedly to be minor such that the cervical disc disease is minimally contributing or not contributing to the patient's neck pain.

With regards to the non-specific low back pain, its diagnosis is based on subjective findings. However, considering that the patient did have at least 9 accidents some of which involved the lower back, and considering that the temporary abnormal curvature of the thoracolumbar spine could be evidence of muscle trauma, one must speculate on whether the cumulative effects of the accidents are at least partly contributing to the patients (sic) low back symptoms. Unfortunately, it is beyond the scope of my practice to provide an opinion concerning the effects of repetitive soft tissue injuries on permanent disabilities."

On January 14, 2010, [Appellant's Doctor #5] provided a report. He indicated:

"It is also in my opinion that there is no casual (sic) relationship between the medical conditions that he claimed to prevent him from working and the injuries sustained in the October 2004 and March 2006 motor vehicle accidents, no permanent impairment resulting from the injuries and therefore no ongoing medical treatment for this problem."

[Appellant's Doctor #2] opined, on September 22, 2010 that:

"Specially, there is no evidence of ocular trauma that might have occurred during the accidents.

Therefore, on a balance of probabilities the motor vehicle accident in 2004 did not contribute to the cataract and glaucoma."

Following our review of all of these reports, and of [MPIC's Doctor's] report dated February 2, 2010, the panel agrees with the Internal Review Officer in his decisions of October 20, 2009 and February 24, 2010. We find that the Appellant has failed to show, on a balance of probabilities, that the injuries and symptoms of which he complains have a cause and effect relationship to the motor vehicle accident of March 6, 2006 or to the cumulative effects of his numerous car accidents, which would entitle him to PIPP benefits.

As a result the decisions of the Internal Review Officer are upheld and the Appellant's appeal dismissed.

Dated at Winnipeg this 29th day of June, 2011.

LAURA DIAMOND

DEBORAH STEWART

LINDA NEWTON