

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by THE ESTATE OF [text deleted]
AICAC File No.: AC-09-38**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Neil Cohen

APPEARANCES: The Appellant, The Estate of [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: May 30 and May 31, 2011

ISSUE(S): 1. Entitlement to Personal Injury Protection Plan benefits for the several aneurysms following the motor vehicle accident;
2. Entitlement to Personal Injury Protection Plan benefits beyond October 22, 2007 for the musculoskeletal condition.

RELEVANT SECTIONS: Section 136 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

A hearing was held on May 30 and May 31, 2011 regarding an appeal filed on behalf of the Appellant, now deceased, from an Internal Review Decision dated March 31, 2009.

The Appellant was injured in a motor vehicle accident in Florida on October 15, 2007. She was transported to the Emergency Room at a hospital in Florida and admitted. Investigations conducted in the hospital revealed that the Appellant had a basilar artery aneurysm and an internal carotid aneurysm. Later, an abdominal aortic aneurysm was also discovered.

The Appellant returned to [Manitoba] where she underwent surgery for her aneurysms with [Appellant's Neurosurgeon #1] on November 9, 2007. She then returned to Florida where she was later admitted to hospital suffering from dizziness, headaches and shortness of breath. These complications were ultimately determined to be due to the treatment of the aneurysms. The Appellant sought compensation for medical expenses connected with these symptoms.

On February 11, 2009, the Appellant's case manager wrote to her indicating that the medical evidence did not support a causal relationship between the surgery required for her aneurysms and her current signs and symptoms, and the motor vehicle accident of August 15, 2007. The case manager indicated that any treatment being directed at the musculoskeletal condition relating to the whiplash injury suffered in the motor vehicle accident would be considered, but that any treatment resulting from the diagnosis of the aneurysms would not be funded by MPIC.

The Appellant sought an Internal Review of this decision and on March 31, 2009, an Internal Review Officer for MPIC considered the extensive medical evidence on the Appellant's file, along with a review conducted by [MPIC's Doctor] on January 21, 2009. The Internal Review Officer indicated that:

“...There is a clear line to be drawn between the motor vehicle accident injuries (which are not at issue in this review) and the requirement for her surgery with all of the subsequent complications therefrom.

The medical evidence affirms [MPIC's Doctor's] view (with which I concur) that the discovery of the aneurysm was merely incidental to the motor vehicle accident and that there is no causal relationship between the two. I am therefore dismissing your Application for Review and upholding the Case Manager's decision of February 11, 2009.”

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

Preliminary Issue:

A few days before the hearing of the Appellant's appeal, the Appellant's representative submitted a medical report from [Appellant's Doctor] dated April 18, 2011. Counsel for MPIC objected to the late filing of this report. The panel heard submissions from the parties regarding the admissibility and timeliness of the submitted report. Following a discussion between the parties and the panel, counsel for MPIC agreed that the medical report would be allowed into evidence, as long as counsel for MPIC be allowed to address the contents of that document with [MPIC's Doctor], in her testimony at the hearing.

Evidence and Submission for the Appellant:

The Appellant's husband testified at the hearing into the appeal. He explained that his wife did not have a known pre-existing condition prior to the motor vehicle accident. He emphasized reports provided by [Appellant's Neurosurgeon #2] in [Florida], who he described as a renowned neurosurgeon. [Appellant's Neurosurgeon #2] stated that if the motor vehicle accident had not occurred, the aneurysm may never have been discovered and the Appellant may have lived her life without having to worry anything about it.

[Appellant's Neurosurgeon #2] in a letter dated December 27, 2007 stated:

“I am writing to advise that since the patient's aneurysm was discovered during treatment for her October 15th 2007 motor vehicle accident and since the complications that led to the hospitalization in question were due to the treatment of that aneurysm, my conclusion is that the accident resulted in her hospitalization.

If the accident didn't occur, the aneurysm may have never been discovered, and [the Appellant] would have potentially lived her life without having to worry about that aneurysm.”

[The Appellant's representative] submitted that Manitoba Health and insurers and courts in Florida have all acknowledged the fact that the Appellant's difficulties resulting from the

aneurysms were connected and associated with the motor vehicle accident, and had paid bills for her treatment. He referred to letters which his lawyer in the U.S.A. had written to American insurance companies in support of this submission.

[The Appellant's representative] also referred to a letter from [Appellant's Neurosurgeon #3] dated September 18, 2008, a neurosurgeon in [Manitoba], who stated:

“The main reason for today's visit is to discuss the problems she is having with Manitoba Public Insurance. They have suffered a significant financial loss and in their opinion, this relates to the accident that occurred in the United States. I understand that there is opposition from MPI to covering these costs. The only comment I can make is that she would likely not be in her current medical condition, if she was not involved in the accident. Having said that, it was her choice to have her incidental basilar bifurcation aneurysm coiled and the risks of this treatment would have been outlined to her prior to proceeding.”

The Appellant's husband also referred to [Appellant's Doctor's] letter of April 18, 2011, which confirmed that although the Appellant had presented for regular physicals, a review of her chart showed no indication that she had either an inter-cranial or abdominal aneurysms, and as such, she did not have a known pre-existing condition prior to the motor vehicle accident.

The Appellant's husband, following testimony from [MPIC's Doctor] at the appeal hearing, submitted that [MPIC's Doctor] was not a neurologist and he questioned some of the neurological points she made. He submitted that in his view, following his research, aneurysms are hereditary and can also be caused by trauma and head injury.

He noted [Appellant's Doctor's] report of April 18, 2011 which confirmed that the Appellant had no known pre-existing condition. It was submitted that had the aneurysms not been detected following the motor vehicle accident, the Appellant could have had a normal life. He also noted

the comments of [Appellant's Physiotherapist] in a letter dated September 24, 2008, who had treated the Appellant and noted:

"I believe there has been some controversy about the origin of her problems at the time. As I stated earlier, BPPV and positive vertebral artery signs can both cause dizziness and balance problems, and can both be caused by the force sustained in whiplash. [The Appellant's] subsequent health problems (the aneurysm and the coiling done) have clouded these issues, but since she did not have these symptoms after the accident and prior to the aneurysm surgery, we can say that these symptoms originated at the time of the accident. Her other medical problems since have certainly not helped and may have added to her disabilities but the underlying injuries date back to October of 2007."

Accordingly, the Appellant's husband took the position that had it not been for the motor vehicle accident his wife would not have suffered from complications from the coiling surgery and would still be alive today.

Evidence and Submission for MPIC:

The panel heard evidence from [MPIC's Doctor], MPIC's Health Care Services Consultant. After explaining her education, experience and background in conducting forensic file reviews for MPIC and Workers' Compensation, [MPIC's Doctor] explained the approach which she followed in reviewing the Appellant's file in order to make a determination regarding causation.

[MPIC's Doctor] explained what an aneurysm is. When asked what symptoms are commonly associated with an aneurysm, she explained that for many patients, an aneurysm can be asymptomatic. It is only when the regional bulging of the weakened artery wall begins to show leaking or pressure on other structures that the patient may begin to feel symptoms. These symptoms may include headache, dizziness, visual changes or nausea, and in the case of an abdominal aneurysm, back pain or acute abdominal pain.

[MPIC's Doctor] also reviewed the unfortunate events which occurred following the identification of the Appellant's aneurysms after the motor vehicle accident in Florida. Medical investigation followed, and included a consultation with [Appellant's Neurosurgeon #1], a neurosurgeon in [Manitoba], who performed a coiling procedure to address the aneurysms on November 9, 2007.

[Appellant's Neurosurgeon #1] described the aneurysms and the procedures in letters dated October 29, 2007 and November 23, 2007.

The letter of November 23, 2007 indicated that:

“This patient was recently under my care for neurosurgical therapy. I did not treat her for the injuries that were sustained in the motor vehicle accident that you refer to.

The aneurysms that were identified on subsequent imaging studies of the brain did not result from the October 15th, 2007 motor vehicle accident.”

Following her return to Florida, the Appellant continued to suffer from neck, back, shoulder, chest, and right ankle pain and pursued muscular rehabilitation. However, she was then admitted to hospital in late November and December of 2007, with a lung condition and severe headaches and dizziness.

An MRI was undertaken and a possible reaction to the coiling procedure, resulting in swelling, was identified.

[MPIC's Doctor] reviewed [Appellant's Neurosurgeon #2's] letters wherein he opined that since the complication that led to her hospitalization was due to the treatment of the aneurysms, and

the aneurysms may never have been discovered if the accident hadn't occurred, the accident resulted in her hospitalization.

However, [MPIC's Doctor] pointed out that the Appellant's aneurysms could have ruptured at any time, even on its own, spontaneously. She did not agree with [Appellant's Neurosurgeon #2's] statement equating causation with the presentation of the aneurysms at the time of the motor vehicle accident.

[MPIC's Doctor] also reviewed [Appellant's Neurosurgeon #3's] letter of September 18, 2008 where he noted that the Appellant would very likely not be in her current medical condition if she had not been involved in the accident. However, she pointed out that [Appellant's Neurosurgeon #3] added the comment that:

“...Having said that, it was her choice to have her incidental basilar bifurcation aneurysm coiled and the risks of this treatment would have been outlined to her prior to proceeding.”

In [MPIC's Doctor's] view, this is not a description of causation; rather it was a description of a sequence of unfortunate events. As she had noted in her report dated January 17, 2008, the incidental finding of the aneurysms did not reflect an injury sustained at the time of the collision, but rather, presented as a previously undiagnosed pre-existing condition.

[MPIC's Doctor] confirmed that any musculoskeletal symptoms from which the Appellant suffered were connected to the motor vehicle accident. However, in her opinion, while the hospital work-up in Florida discovered aneurysms, that was merely an incidental finding and not causally related to either the motor vehicle accident or the investigations that were done.

Counsel for MPIC noted that there had been much discussion as to whether the Appellant's aneurysms were a known pre-existing condition. She emphasized that MPIC agreed that the aneurysms were not discovered until after the motor vehicle accident. Confusion arises, she submitted, as to whether the discovery of the aneurysms equals causation. In her submission, based upon the evidence on the file, it does not.

Counsel submitted that weight must be given to the comments of [Appellant's Neurosurgeon #1], the treating neurosurgeon in this case. In his opinion, he unequivocally stated (in his report of November 23, 2007) that the aneurysms identified on the imaging studies of the brain conducted subsequent to the motor vehicle accident did not result from the accident.

Counsel acknowledged that [Appellant's Neurosurgeon #2] had concluded that because the aneurysm was discovered during treatment for the motor vehicle accident and the complications that led to hospitalization were a result of treatment of the aneurysm the accident therefore resulted in her hospitalization. However, he did not say that there was a causal link between the motor vehicle accident and the aneurysm; rather, he simply talked about discovery.

Counsel did not dispute that had the motor vehicle accident not occurred the aneurysm may never have been discovered. However, she pointed out that that is a question of discovery and not causation. As [MPIC's Doctor] testified, the bursting of an aneurysm is unpredictable, and could occur at any time.

Further, [Appellant's Neurosurgeon #3's] comment on September 18, 2008 that the Appellant would "likely not be in her current medical condition if she was not involved in the accident" is really a general statement. MPIC did not dispute the fact that the Appellant suffered injuries in

the motor vehicle accident and that the aneurysms were discovered as a result of investigation following those injuries. But, [Appellant's Neurosurgeon #3] did not draw the link. He recognized that it was the Appellant's choice to accept the risks of the coil treatment and that the symptoms of the aneurysms were not a result of the motor vehicle accident.

Counsel for MPIC did not put much weight on whether there were payments made for the Appellant's treatments by Manitoba Health or other insurers. We do not have information before us, she submitted, regarding what various insurance policies were paying for in the U.S. and which expenses paid for by Manitoba Health were then forwarded to MPIC, travel insurance or under the tort system in the United States.

Counsel reviewed [MPIC's Doctor's] testimony which followed her expert forensic review of the Appellant's file. Ultimately, after considering in detail the comments provided by [Appellant's Neurosurgeon #2] and [Appellant's Neurosurgeon #1], [MPIC's Doctor] looked at the whole gamut of information and came to the conclusion that the discovery of the aneurysms was an incidental finding to the motor vehicle accident, but that these incidental findings did not reflect injuries sustained at the time of the collision. Rather, they presented as a previously undiagnosed pre-existing condition. MPIC did not deny that the Appellant suffered from aneurysms and that there were difficulties following the surgical treatment of it, but there was no medical evidence on the file to show that this was causally connected to the motor vehicle accident. It was merely an incidental discovery which followed investigations for other motor vehicle accident related injuries. There was no indication that the Appellant lacked informed consent regarding the risks of the coiling surgery, which had been outlined to her prior to proceeding with the surgery.

Counsel submitted the Appellant had failed to show, on a balance of probabilities, that the symptoms and condition of the Appellant following treatment of the aneurysms were connected to the motor vehicle accident, and submitted that as a result, the Appellant's appeal should be dismissed.

Discussion:

The MPIC Act provides:

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.

The onus is on the Appellant to show, on a balance of probabilities, that the symptoms and condition at issue were caused by the motor vehicle accident.

The panel has reviewed the evidence on the Appellant's file, the testimony of her husband and [MPIC's Doctor], as well as the submissions of [Appellant's representative] and counsel for MPIC.

The panel notes the view of [MPIC's Doctor] and counsel for MPIC that the musculoskeletal symptoms and injuries suffered by the Appellant were caused by the motor vehicle accident. The issue of compensation for any treatment directed at the musculoskeletal condition relating to whiplash injury will be referred back to the Appellant's case manager for determination.

In regard to the complications which arose from the treatment of the Appellant's aneurysms, MPIC took the position that the discovery of the aneurysms was not the same as causation of the aneurysms. The Appellant confirmed in his submission that he did not take the position that the motor vehicle accident caused the accident. This was confirmed by [Appellant's Neurosurgeon #1] when he stated:

“The aneurysms that were identified on subsequent imaging studies of the brain did not result from the October 15, 2007 motor vehicle accident.”

However, the Appellant submitted that the aneurysms were an unknown pre-existing condition and that the motor vehicle accident led to hospitalization and investigations which caused the aneurysms to be discovered and then treated. This led to complications that would not have occurred if the motor vehicle accident had not occurred.

[Appellant's Neurosurgeon #2] took the view that indeed “if the accident didn't occur, the aneurysm may never have been discovered, and [the Appellant] would have potentially lived her life without having to worry about that aneurysm.”

MPIC took the position that this was an argument centering around *discovery* as distinct from *causation* and that the medical evidence was clear that the motor vehicle accident had not caused the aneurysms. Rather, the aneurysms were a pre-existing condition (albeit not known to the

Appellant) and the chosen treatment for the aneurysms, the coiling procedure, led to complications which caused the Appellant's neurological symptoms and resulting condition.

[MPIC's Doctor's] evidence regarding causation made an analogy to a lung tumor being discovered during investigations following a motor vehicle accident. The lung tumor may have been discovered as a result of the motor vehicle accident, but it could not be said to have been caused by the motor vehicle accident. [MPIC's Doctor] also gave evidence regarding the difficulty of predicting when an aneurysm may become symptomatic. She noted that it could have taken ten minutes or 20 years for the aneurysm to have ruptured, anywhere, anytime, even without being discovered or being the subject of any neurological treatment.

The panel agrees with the comments of [MPIC's Doctor] and with the submission of counsel for MPIC that the discovery of the aneurysms cannot be equated with causation. On a balance of probabilities, there is no evidence to suggest what course the aneurysms might have taken whether treated or untreated. We note that the onus is on the Appellant in this case and we are not satisfied that the Appellant's representative has been able to demonstrate that the motor vehicle accident caused the Appellant's neurological condition leading to her symptoms, or to her death. As [Appellant's Neurosurgeon #3] noted, it was the Appellant's "choice to have her incidental basilar bifurcation aneurysm coiled and the risks of this treatment would have been outlined to her prior to proceeding." The evidence on the file and at the hearing did not establish that the resulting condition was caused by the motor vehicle accident.

Accordingly, the Internal Review Decision of March 21, 2009 is upheld and the Appellant's appeal is dismissed, with the issue of compensation for any treatment directed at the

musculoskeletal condition relating to the Appellant's whiplash injury to be referred back to the Appellant's case manager for consideration.

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

LAURA DIAMOND

MARY LYNN BROOKS

NEIL COHEN