

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-155**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Jacqueline Freedman
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: October 11, 2012

ISSUE(S): Entitlement to death benefits and funeral expenses.

RELEVANT SECTIONS: Section 70(1) of The Manitoba Public Insurance Corporation Act (the '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], as the Executrix and next-of-kin for [the Deceased], has filed this appeal to the Commission from a decision of the Internal Review Officer dated October 26, 2011.

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

1. On July 28, 2010, [the Deceased], aged [text deleted], was driving her vehicle down [text deleted], Manitoba.

2. According to the Application for Compensation, [the Deceased] had a heart attack while driving the car. She subsequently collided with two parked vehicles.
3. The Proof of Death Report, completed by [the Deceased's Doctor], indicates the cause of [the Deceased's] death as "hypoxemic ischemic encephalopathy, ventricular fibrillation cardiac arrest, coronary artery disease". The doctor went on to write that:

The patient had a low-velocity accident and hit a parked car. She was not responsive at the accident scene and was found to be in Ventricular Fibrillation by EMS.

The patient was given CPR and resuscitation and rushed to [Hospital] for urgent reopening of an occluded coronary artery.

4. The Death Summary states:

"...Despite aggressive management, the patient's neurological exam was nonreassuring and based on her living will provided by the family where she would not want to be maintained on life support if there was no chance of a reasonable recovery, care with (sic) withdrawn with the family at the bedside.

The patient passed away on 2 August 2010 at 0055 hours."

5. On May 30, 2011, the claim file was reviewed by a medical consultant with MPIC's Health Care Services in order to determine whether the motor vehicle collision and related injuries caused or contributed to [the Deceased's] death. The consultant found that:

A review of the patient's Manitoba Public Insurance bodily injury claim file, indicates that the probable cause of death was a cardiac arrest due to ventricular fibrillation while driving. It does not appear as if the driving related injuries were considered as the probable cause of death. The probable cause of death was cardiac, and it was this cardiac event which led to the subsequent motor vehicle collision in question.

6. On July 12, 2011, MPIC's case manager provided a decision indicating that there were no Personal Injury Protection Plan ("PIPP") benefits payable in connection with [the Deceased's] death, since the cause of death was not directly related to the motor vehicle accident.

7. The Appellant sought an Internal Review of that decision. In a decision dated October 26, 2011, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the probable cause of [the Deceased's] death was not related to the motor vehicle accident of July 28, 2010 and therefore the Estate of the late [Deceased] was not eligible to receive PIPP benefits as a result of her death.
8. As noted above, the Appellant, as the Executrix and next-of-kin for [the Deceased], appealed the Internal Review decision dated October 26, 2011 to this Commission.

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that [the Deceased's] death was caused by the motor vehicle accident of July 28, 2010.

In order to qualify for PIPP benefits, the Appellant must establish, on a balance of probabilities, that a bodily injury was caused by an automobile as outlined in Section 70(1) of the MPIC Act which provides as follows:

70(1) In this Part,

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

Based upon the totality of the evidence before us, the Commission is unable to conclude that [the Deceased's] death was caused by the use or operation of a motor vehicle. Rather, the weight of the evidence supports that [the Deceased's] death was the result of a heart attack, which was not related to the use or operation of a motor vehicle. Despite the Appellant's contention that something must have caused [the Deceased's] car to collide with the two parked vehicles, the Appellant has presented no evidence to establish that [the Deceased's] motor vehicle accident led to her heart attack which ultimately caused her death. Rather, the Commission finds that the evidence establishes, on a balance of probabilities, that the heart attack occurred first and then [the Deceased] had the motor vehicle accident. We find that there is no evidence to suggest that there were any other factors that caused the motor vehicle accident first and all indications are that it was the heart attack that precipitated the motor vehicle accident.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated October 26, 2011 is therefore confirmed.

Dated at Winnipeg this 25th day of October, 2012.

YVONNE TAVARES

JACQUELINE FREEDMAN

LES MARKS