

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [text deleted]
AICAC File No.: AC-08-062**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: January 29, 2013

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

RELEVANT SECTIONS: Section 70(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], was involved in a motor vehicle accident on April 2, 2007. The Appellant is appealing the Internal Review decision dated March 26, 2008, with regards to his entitlement to Personal Injury Protection Plan ("PIPP") benefits arising from that motor vehicle accident.

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

1. On April 2, 2007, the Appellant was driving a [vehicle #1] westbound on [text deleted], when he lost control of his vehicle and struck a [vehicle #2]. His vehicle continued on [text deleted] for a short distance, then went over the North curb, crossed over the sidewalk and hit a tree located in the front property of the [rehab facility #1].
2. A bystander and two nurses from [rehab facility #1] attended the scene and removed the Appellant from his vehicle. They were about to start CPR when paramedics arrived and took over. The paramedics performed CPR as the Appellant was unconscious. He was revived and taken to [hospital #1] where it was concluded that the Appellant had had a cardiac arrest while driving. The Appellant was then transferred to [hospital #2] to rule out neck and head trauma. At the time of the accident the Appellant was [text deleted] years old.
3. The Appellant subsequently went on to have a coronary angiography which confirmed the presence of significant coronary disease. [The Appellant] was subsequently transferred from [hospital #2] to [rehab facility #2] where he underwent rehabilitation. He was subsequently discharged from [rehab facility #2].
4. The Appellant has no recollection of the event. However, there were several witness statements regarding the event.
5. The driver of the [vehicle #2], [text deleted], stated in a traffic accident report that she was driving [text deleted] and that the Appellant's vehicle suddenly hit hers on her driver side. This caused her vehicle to spin out of control. [Driver of vehicle #2] had vehicle damage consisting of a scrape on her rear bumper, a scrape along the left side door, as well as a dent in the left rear fender, according to the traffic accident report.
6. Another witness, [witness #1], stated to the police that he was driving behind the Appellant's vehicle on [text deleted] when the Appellant rear-ended [vehicle #2], causing

it to spin, and then the Appellant continued on [text deleted], over a curb and into a tree in front of the [rehab facility #1].

7. Another witness, [witness #2], stated that he was driving in the lane next to [vehicle #2] when the Appellant's car veered into [vehicle #2], then went through a red light and into a tree. He also stated that [vehicle #2] spun around and then faced eastward.
8. Following the accident, the Appellant sustained rib fractures, a fractured sternum and a laceration to the liver, all likely secondary to the CPR performed at the scene of the accident. The Appellant also sustained some mild traumatic brain injury consisting mostly of some memory loss and some mild impairment in language. He also had soft tissue injuries and some dental injuries.
9. The Appellant sought PIPP benefits from MPIC due to the accident of April 2, 2007.

On November 26, 2007, the case manager issued a decision which provided as follows:

In order for you to be determined to receive benefits under PIPP I refer to Manitoba Public Insurance Corporation Act, Section 70(1), definition of "bodily injury caused by automobile", attached for your review.

The health care information on file indicates that your motor vehicle accident was a result of cardio dysrhythmia which is a result of a non ST segment elevation myocardial infarction. The medical evidence does not indicate the myocardial infarction was a consequence of the motor vehicle accident.

The medical information on file indicates that you did sustain a brain injury as a result of the myocardial infarction which is secondary to the prolonged cardio pulmonary resuscitation you underwent during your essential cardiac arrest of 25 minutes. It is not the type of traumatic brain injury caused by motor vehicle accidents.

Your cognitive condition is a result of the myocardial infarction and prolonged abnormality in your cardiac output as a result of the significant cardiac dysrhythmia.

It is difficult to identify any particular injuries which have been sustained as a result of the motor vehicle accident. Your rib fractures, sterna fracture and liver laceration were described as being secondary to your CPR which would have been secondary to your myocardial infarction and cardiac dysrhythmia. There is no medical information on file to support that you sustained a head injury on a traumatic basis.

There is no medical information on file that would support that any motor vehicle accident related injuries which would prohibit you from returning to your employment as a [text deleted] operator. The health care issues that you would have that prevent you from performing your duties as a [text deleted] operator would be related to your underlying cardiac status and your current cognitive status which is a direct consequence of the cardiac status.

As such there is no entitlement to benefits under the Personal Injury Protection Plan (PIPP) with the exception of the dental and chiropractic treatment to date.

10. The Appellant sought an Internal Review of that decision. The Internal Review Officer, in a decision dated March 26, 2008, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the evidence on the file supported the conclusion that the Appellant's injuries were not caused by the motor vehicle accident of April 2, 2007.

The Appellant has now appealed that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to PIPP benefits as a result of the accident of April 2, 2007.

Appellant's Submission:

The Appellant's representative submits that the Appellant's cardiac arrest occurred after his vehicle hit the tree. The Appellant's representative claims that the Appellant was driving westbound on [text deleted] when [vehicle #2] cut him off, thereby causing [vehicle #2] to spin. The Appellant's representative argues that the witnesses to the accident did not state that the Appellant was driving erratically prior to his collision with [vehicle #2]. He maintains that the witnesses stated that the Appellant hit/rear-ended the [vehicle #2]. However, the Appellant's representative argues that there was no damage to [driver of vehicle #2's] bumper. Rather the damage was to the left side of her vehicle. He therefore contends that it was the [vehicle #2] that

cut off the Appellant's vehicle, causing the chain of events which led the Appellant's vehicle to land in front of the tree on the [rehab facility #2] property.

The Appellant's representative also submits that if the Appellant had had a cardiac arrest prior to hitting the tree, it would have been extremely difficult for the Appellant to have steered around all of the other trees, planters, etc. on the [rehab facility #2] property prior to ending up where his vehicle did, when he was supposedly unconscious. He submits that it is more likely that the Appellant steered into the tree and managed to avoid hitting any other vehicle, pedestrian, tree, etc. The Appellant's representative also claims that the evidence of a bent steering wheel was not consistent with the Appellant being unconscious and totally relaxed at the moment of impact.

As a result, the Appellant's representative submits that the Appellant's injuries, including his heart attack, were caused by the motor vehicle accident and therefore he is entitled to PIPP benefits as a result of that accident. He submits that the Appellant's appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that the preponderance of the evidence on the Appellant's file demonstrates that the Appellant likely suffered a heart attack while he was driving down [text deleted], prior to colliding with [vehicle #2] and then coming to rest at a tree in front of the [rehab facility #2]. In support of his position, counsel for MPIC relies upon the Accident Reconstruction Report dated August 17, 2011 from [text deleted], consultant. In this report, [consultant] notes that:

INVESTIGATION:

All of the information was reviewed and the scene was attended. According to the police sketch, from the initial location of the collision to the point of rest for the [vehicle #1] at a tree in front of the hospital was almost two city blocks. There is no evidence of brake

marks left by the [vehicle #1]. The impact with the tree is significant. The frontal damage indicates that there was little or no braking from the location of the two vehicle collision until the impact with the tree. Under hard braking the stopping distance would be approximately 23.58 meters or 77.3 ft. It is my opinion there was no braking. This would indicate [the Appellant] was more than likely having medical problems prior to or at the time of the initial collision.

CONCLUSION:

I can not support the theory that [the Appellant] suffered his heart attack after running into the tree. Some of his chest injuries may have been caused by the cross strap of his seat belt system when he struck the tree as well as the administration of CPR. The lack of any other injuries is supported by the fact that he was totally relaxed and held only by his seat belt when he impacted the tree.

Counsel for MPIC also relies upon the Interdepartmental memorandum of [MPIC's doctor] dated November 13, 2007, wherein [MPIC's doctor] concludes that:

CONCLUSION AND RESPONSE TO QUESTIONS

1. In my opinion, essentially all of the healthcare information in this patient's Manitoba Public Insurance bodily injury claim file indicates that the patient's motor vehicle accident was a result of cardiac dysrhythmia, which was a result of a non-ST segment elevation myocardial infarction. The evidence does not indicate the myocardial infarction was a consequence of the motor vehicle accident.
2. The majority of medical information indicates that [the Appellant] did sustain a brain injury as a result of the myocardial infarction. This can be referred to as anoxic brain injury, which is secondary to the prolonged cardiopulmonary resuscitation he underwent during his essential cardiac arrest period of 25 minutes. It is not the type of traumatic brain injury caused by car crashes.
3. The patient's cognitive condition is a result of the myocardial infarction, and the prolonged abnormality in his cardiac output as a result of his significant cardiac dysrhythmia.
4. It is difficult to identify any particular injuries which have been sustained by the patient as a result of the collision in question. Even the patient's rib fractures, sterna fracture, and liver laceration were described as being secondary to his CPR which would have been secondary to his myocardial infarction and cardiac dysrhythmia. I do not think that [the Appellant] sustained a head injury on a traumatic basis based on the evidence at my disposal in his Manitoba Public Insurance bodily injury claim file. It is difficult to identify any motor vehicle collision-related injuries which would prohibit this patient from returning to his employment as a [text deleted] Operator, however he does have probable healthcare issues which would prevent him from performing this function. These would be related to his underlying cardiac status and his current cognitive status, which is a direct consequence of his cardiac status.

Further in support of his position, counsel for MPIC cites the report of [independent doctor] dated December 4, 2012, wherein [independent doctor] opines as follows:

Based on my review of the file provided to me, the eye witness accounts of the events that occurred around the time of the accident and based on the totality of medical evidence provided by the various specialists who cared for [the Appellant] at the [hospital #1] and the [hospital #2], I think it is most likely that [the Appellant's] heart attack and subsequent cardiac arrest occurred first followed by the erratic driving and the ultimate collision between [the Appellant's] car and the tree. I do not believe the evidence supports that [the Appellant's] heart attack and subsequent cardiac arrest were caused by the motor vehicle accident.

Based upon the foregoing, counsel for MPIC submits that the preponderance of the evidence on the file supports the conclusion that the Appellant most likely had his heart attack while he was driving down [text deleted] prior to hitting the tree on the [rehab facility #1] property. He submits that the Appellant has not discharged the onus of proof required in the circumstances to overturn the Internal Review decision and to establish that the motor vehicle accident caused the cardiac arrest. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated March 26, 2008 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical, and other reports and documentary evidenced filed in connection with this appeal, and after hearing the submissions of the Appellant's representative and of counsel for MPIC, the Commission finds that the Appellant is not entitled to PIPP benefits as a result of the injuries caused by the cardiac event (the Appellant is only entitled to benefits for those injuries caused by the accident pursuant to Section 70(1) of the MPIC Act and not for those injuries caused by the cardiac event).

Reasons for Decision:

Upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that his injuries, including the cardiac arrest, were caused by the motor vehicle accident of April 2, 2007. Rather, based upon

the following evidence, the Commission finds that the preponderance of evidence on the Appellant's file supports the conclusion that he had a cardiac arrest while driving, which caused him to swerve, hit the [vehicle #2], proceed through the red light and onto the [rehab facility #1] property before hitting the tree:

- The witness evidence, including [driver of vehicle #2's], [witness #1's], and [witness #2's] witness statements.
- [Consultant's] report of August 17, 2011, which concluded that [the Appellant] was more than likely having medical problems prior to or at the time of the initial collision.
- [MPIC's doctor's] interdepartmental memorandum dated November 13, 2007 wherein he opined that he did not think that [the Appellant] sustained a head injury on a traumatic basis based on the evidence in the Manitoba Public Insurance Bodily Injury Claim File. Additionally, [MPIC's doctor] noted that it was difficult to identify any motor vehicle collision related injuries which would prohibit the Appellant from returning to his employment as a [text deleted] operator.
- [independent doctor's] report of December 4, 2012 wherein he states that it is most likely that [the Appellant's] heart attack and subsequent cardiac arrest occurred first followed by the erratic driving and the ultimate collision between [the Appellant's] car and the tree.

The Commission finds that this evidence is consistent with the Appellant having suffered a cardiac arrest while driving rather than the Appellant's theory that he sustained the cardiac arrest after hitting the tree. As a result, the Commission finds that the Appellant's subsequent injuries resulting from the attempt to save his life due to the CPR do not relate to the motor vehicle

accident. The Appellant is only entitled to benefits for those injuries caused by the accident pursuant to Section 70(1) of the MPIC Act and not for those injuries caused by the cardiac event.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated March 26, 2008 is confirmed.

Dated at Winnipeg this 13th day of March, 2013.

YVONNE TAVARES

PAUL JOHNSTON

LES MARKS