

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-144

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Ken Kalturnyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: September 30, 2013

ISSUE(S): 1. Entitlement to permanent impairment benefits.
2. Jurisdiction of Commission to consider appeal.

RELEVANT SECTIONS: Sections 172 and 182(3) 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.

Decision

1. MPIC's Internal Review Officer issued a decision dated August 7, 2009 which determined that the Appellant did not develop ankylosing spondylitis as a result of injuries sustained in his motor vehicle accidents of September 14, 1997, August 25, 2000 and/or November 5, 2002.
2. The Appellant filed an appeal of that Internal Review decision with this Commission on November 3, 2009.
3. On July 31, 2013, MPIC's case manager issued a fresh decision respecting the Appellant's entitlement to permanent impairment benefits. The decision states that:

This letter will confirm that an enhancement of your pre-existing condition of ankylosing spondylitis in relation to the cervical spine only as been accepted

as related to your motor vehicle accident of September 14, 1997. As a result, you are entitled to a permanent impairment payment in the amount of \$36,185.86.

4. A Case Conference Hearing was held on September 30, 2013. The Appellant advised that he has sought an Internal Review of that case manager's decision. The Appellant also refused to provide a Notice of Withdrawal with respect to his appeal of the Internal Review decision of August 7, 2009.
5. At the Case Conference Hearing of September 30, 2013, counsel for MPIC made a motion that the Commission has no further jurisdiction with respect to the Internal Review decision of August 7, 2009 since that Internal Review decision has now been replaced by the case manager's decision of July 31, 2013. Further, counsel for MPIC submits that the Appellant has sought an Internal Review of the July 31, 2013 decision and has all rights of appeal open to him with respect to any future Internal Review decision. Counsel for MPIC argues that there are no further outstanding issues arising from the August 7, 2009 Internal Review decision and therefore the Commission should dismiss the Appellant's appeal from that decision.
6. The Claimant Adviser, on behalf of the Appellant, had no submissions to make with respect to dismissing the Appellant's appeal, except for the fact that [the Appellant] does not agree that his appeal should be dismissed.

Upon a careful review of the documentary evidence made available to the Commission, and upon hearing the submissions of counsel for MPIC and of the Claimant Adviser on behalf of the Appellant, the Commission finds that:

1. The case manager's decision of July 31, 2013 is a fresh decision made by the corporation based upon the receipt of new medical information since the decision rendered by the Internal Review Officer of August 7, 2009. The case manager's

decision of July 31, 2013 has replaced the Internal Review decision of August 7, 2009 and rendered that decision moot.

2. MPIC has now accepted responsibility for the Appellant's ankylosing spondylitis as set out in the July 31, 2013 decision. The Appellant has sought an Internal Review of that decision. If he is not satisfied with the Internal Review decision, a further appeal to the Commission can be made.
3. There is no outstanding issue arising from the August 7, 2009 Internal Review decision to be adjudicated. As a result, the Commission has no further jurisdiction regarding the Appellant's appeal of the Internal Review decision of August 7, 2009.

Therefore, by the authority of Section 184(1) of the Manitoba Public Insurance Corporation Act, the Commission orders that the Appellant's appeal be dismissed.

Dated at Winnipeg this 8th day of October, 2013.

YVONNE TAVARES

* **Please see attached Notice.**

Notice

Appeal to Court of Appeal on Question of Law or Jurisdiction

Appeal to Court of Appeal

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

Appeal with Leave

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

Application for Leave to Appeal

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

Commission Entitled to be Heard

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

Order of Commission Stayed

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

Powers of Court on Appeal

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

Decision Not Subject to Appeal to Court

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.