

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File Nos.: AC-10-177, AC-11-017, AC-12-003**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Pat Heuchert
Mr. Les Marks

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

HEARING DATE: May 22, 2013

ISSUE(S): Entitlement to reimbursement of various expenses.

RELEVANT SECTIONS: Sections 131 and 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 2, 5, 19 and Schedule C and D of Manitoba Regulation 40/94.

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] was involved in a motor vehicle accident on April 16, 2001 when he was struck by a vehicle while crossing the street. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant has appealed to this Commission from the following Internal Review decisions, respecting the following issues:

1. Internal Review decision dated September 15, 2010 – re: entitlement to funding for replacement denture, personal care assistance and travel expenses pertaining to dental and vision claims.
2. Internal Review decision dated November 18, 2010 – re: entitlement to reimbursement of medical and travel expenses associated with a replacement denture and vision care.
3. Internal Review decision dated October 14, 2011 – re: entitlement to reimbursement of expenses for Vitamin B12.

1. **Entitlement to funding for replacement denture, personal care assistance and travel expenses pertaining to dental and vision claims:**

The Internal Review decision of September 15, 2010 confirmed the case manager's decision of June 4, 2010 and dismissed the Appellant's Application for Review. The Internal Review Officer found that the Appellant's claims for a replacement denture and for personal care assistance were not related to the motor vehicle accident of April 16, 2001. With respect to the Appellant's claim for travel expenses, the Internal Review Officer confirmed that the Appellant had been paid for all of his travel expenses, except those pertaining to dental claims and vision claims. She denied the Appellant's claim for dental and vision travel expenses due to her finding that these claims were not related to the motor vehicle accident and therefore he was not entitled to reimbursement of the accompanying travel expenses.

The Appellant has appealed that decision to this Commission. The issues which require determination on this appeal are whether the Appellant is entitled to funding for his replacement denture, personal care assistance and travel expenses.

At the hearing of this matter, the Claimant Adviser, on behalf of the Appellant, submitted that since the motor vehicle accident, the Appellant has suffered with accident-related dizziness and imbalance. The Claimant Adviser argues that since the motor vehicle accident of April 16, 2001, the Appellant has lost his balance several times. He contends that the Appellant lost his lower dentures due to such a fall.

According to the Appellant's testimony, on April 14, 2010, he fell and hit his head on a light standard. The Appellant relates the dizziness/imbalance which caused him to fall on this occasion to the April 16, 2001 motor vehicle accident. On that day, the Appellant also had a discussion with his case manager at MPIC in which he said that he was "out of control" and that he felt pushed to suicide by MPIC. The Claimant Adviser notes that on April 15, 2010 the police attended the Appellant's residence and escorted him to the hospital due to concerns of depression, suicide and self-harm. The Appellant's evidence was that upon returning home from the hospital he noticed that his lower denture was missing. The Appellant testified that at some point after his release from the hospital, he became aware that he had lost his lower partial denture.

The Claimant Adviser submits that the Appellant had a cognitive impairment at the time that he was admitted to the hospital in April 2010. The Claimant Adviser argues that this explains why the Appellant did not notice the loss of his denture immediately. The Claimant Adviser maintains that it is reasonable to assume that the incident in which the Appellant lost his dentures was on April 14, 2010, was connected to his fall on that day, and therefore was related to the motor vehicle accident.

With respect to the Appellant's requirement for personal care assistance benefits, the Claimant Adviser submits that, initially the Appellant did receive reimbursement for personal care assistance expenses for the first six months following the motor vehicle accident. The Claimant Adviser argues that due to the Appellant's loss of balance, loss of taste and smell, inability to distinguish between hot and cold and poor concentration and memory, he is not able to do a number of activities on his own. The Appellant attributes all of these conditions to the motor vehicle accident and therefore he is entitled to personal care assistance expenses since he is unable to look after his personal care needs as a result of injuries which resulted from the accident of April 16, 2001.

With respect to his outstanding travel expenses, the Claimant Adviser submits that the Appellant's dental treatment and vision treatment are related to the motor vehicle accident and accordingly his travel expenses for those medical attendances should be reimbursed in accordance with the Regulation.

Counsel for MPIC argues that the Appellant has not established that his denture was damaged because of an accident-related dizziness or imbalance or that his requirement for personal care assistance relates to the motor vehicle accident of April 16, 2001.

With respect to the Appellant's claim for a replacement denture, counsel for MPIC submits that the Appellant has not established that his loss of denture was related to the motor vehicle accident. Counsel for MPIC argues that the only evidence, in addition to the Appellant's testimony, is the report of [Appellant's Doctor #1] dated May 5, 2010. [Appellant's Doctor #1's] report however, only relates the subjective reporting of the Appellant who believes that he lost his denture due to a fall on April 14, 2010. Counsel for MPIC notes that prior to May 5, 2010,

the Appellant was seen by a variety of people, including hospital personnel and police. The Appellant also talked to [text deleted] and [text deleted] at MPIC. However, during this time he never mentioned the loss of the denture. Counsel for MPIC submits that if the Appellant had a problem with his denture, he would have reported it to his case manager at MPIC immediately.

Further, counsel for MPIC maintains that there is no evidence of an injury as a result of a fall on April 14, 2010. He submits that on the basis of a lack of evidence of a fall on April 14, 2010, the Appellant has not established that he lost his denture due to an accident-related dizziness/imbalance. Counsel for MPIC contends that the Appellant's lower denture could have gone missing for a variety of reasons, not connected to the motor vehicle accident. Due to the Appellant's poor memory and poor concentration, he could have lost his lower denture at any time and not remembered it. As a result, counsel for MPIC argues that the Appellant has not established that the loss of the lower denture was related to an injury from the motor vehicle accident.

With regards to the Appellant's requirement for personal care assistance in 2010, counsel for MPIC submits that the Appellant has not established that he was in need of personal care assistance due to accident-related injuries. Rather, counsel for MPIC submits that the Appellant had a number of issues at that time, [text deleted] which could account for his inability to properly care for himself. Counsel for MPIC claims that there is no objective evidence to establish that the Appellant's problems in 2010 were connected to the motor vehicle accident. He argues that the Appellant underwent a personal care assistance evaluation in 2004 and he did not require personal care assistance at that time. Counsel for MPIC insists that in 2010 there were other factors, not related to the motor vehicle accident, [text deleted] which account for any requirement for personal care assistance and are not related to the motor vehicle accident.

Accordingly, counsel for MPIC submits that the Appellant has not established that his requirement in 2010 for personal care assistance was related to the motor vehicle accident of April 16, 2001. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision of September 15, 2010 should be confirmed.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Claimant Adviser on behalf of the Appellant and by counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities:

1. that he lost his lower denture due to a reason resulting from the motor vehicle accident.
As a result, the Commission finds that the Appellant is not entitled to funding for a replacement lower denture; and
2. that the Appellant's requirement for personal care assistance in 2010 is related to the motor vehicle accident on April 16, 2001. Accordingly, the Appellant is not entitled to reimbursement of personal care assistance expenses.

Upon a careful review of all of the information before it, the Commission finds that the evidence is insufficient to establish that the Appellant lost his denture due to a reason connected to the motor vehicle accident of April 16, 2001. The evidence before the Commission was that the Appellant really did not know how he lost his lower denture and he only noticed the loss sometime after April 15, 2010. The Commission finds that the evidence does not establish that the Appellant's loss of his denture was due to a fall which resulted from imbalance or dizziness issues related to the motor vehicle accident. Accordingly, the Commission finds that the Appellant has not established an entitlement to reimbursement of the expenses for the replacement of his lower denture.

With regards to the Appellant's requirement for personal care assistance in 2010, the Commission finds that there are a variety of factors which account for the Appellant's need for personal care assistance at that time, which factors are not related to the motor vehicle accident of April 16, 2001. The Appellant had a number of personal issues in April 2010, [text deleted] which affected his ability to look after himself. The Commission finds that the Appellant has not established that his requirement for personal care assistance related to the motor vehicle accident of April 16, 2001. As a result, the Appellant's appeal is dismissed and the Internal Review decision of September 15, 2010 is confirmed.

2. **Whether the Appellant is entitled to funding for medical and travel expenses associated with his replacement denture and vision care:**

The Internal Review decision of November 18, 2010 confirmed the case manager's decision of August 23, 2010 and dismissed the Appellant's Application for Review. The Internal Review Officer found that the Appellant's claim for medical and travel expenses for vision and dental care were not related to the motor vehicle accident of April 16, 2001.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant's claim for medical and travel expenses associated with his replacement denture and vision care are related to the motor vehicle accident.

The Appellant's position is that his denture was damaged because of accident-related dizziness/imbalance. The Appellant maintains that he damaged his denture during a fall on April 14, 2010 and that his denture was subsequently lost due to his hospital attendance on April 15, 2010. The Appellant attributes his fall to his imbalance and dizziness which he maintains resulted from the motor vehicle accident of April 16, 2001. Accordingly, the Appellant submits

that he is entitled to reimbursement of travel expenses related to replacement of his denture since the denture was lost due to the fall which resulted from an accident-related condition.

With respect to his claim for expenses related to vision care, the Claimant Adviser submits that the Appellant's vision worsened after the motor vehicle accident. The Claimant Adviser argues that the Appellant's vision problems stem from the fracture of the right orbital socket and the head injury which the Appellant sustained as a result of the motor vehicle accident. Accordingly, the Claimant Adviser submits that MPIC should reimburse the Appellant's travel expenses for his vision care since those are related to the motor vehicle accident.

Counsel for MPIC submits that the Appellant has not established that his dental care or vision care was required as a result of the motor vehicle accident of April 16, 2001. Counsel for MPIC reiterates that the Appellant's loss of denture was not related to the motor vehicle accident or to a condition caused by the motor vehicle accident and therefore the Appellant is not entitled to travel expenses associated with denture care. With respect to the Appellant's eye condition, counsel for MPIC relies upon the report of [Appellant's Doctor #2] dated February 10, 2009 wherein [Appellant's Doctor #2] notes that the Appellant's visual field loss in both eyes is more consistent with untreated glaucoma rather than due to an injury. [Appellant's Doctor #2] notes that the Appellant's glaucoma has no relation to his injury and he cannot correlate his injury to his present eye problem. Relying upon [Appellant's Doctor #2's] report, counsel for MPIC submits that the Appellant's requirement for prescription eyeglasses and his claim for reimbursement of travel expenses related to vision care do not qualify for reimbursement under PIPP. As a result, counsel for MPIC submits that the Appellant is not entitled to reimbursement of those expenses, and that the Internal Review decision dated November 18, 2010 should be confirmed.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Claimant Adviser on behalf of the Appellant and by counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that his dental care or vision care were required as a result of the motor vehicle accident of April 16, 2001. As a result, the Commission finds that the Appellant is not entitled to funding for medical and travel expenses associated with the Appellant's replacement denture and vision care, including reimbursement of prescription eyeglasses.

As noted previously, the Commission finds that the Appellant's loss of his denture was not related to the motor vehicle accident or to a condition caused by the motor vehicle accident of April 16, 2001. Accordingly, the Commission finds that the Appellant is not entitled to travel expenses associated with denture care. With respect to the Appellant's eye condition, the Commission accepts the opinion of [Appellant's Doctor #2], that the Appellant's visual field loss in both eyes is more consistent with untreated glaucoma, rather than due to an injury. Relying upon this evidence, the Commission finds that the Appellant is not entitled to reimbursement of medical and travel expenses for vision care, including prescription eye glasses.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated November 18, 2010 is therefore confirmed.

3. **Entitlement to reimbursement of expenses for Vitamin B12:**

The Internal Review decision of October 14, 2011 confirmed the case manager's decision dated August 12, 2011 and dismissed the Appellant's Application for Review. The Internal Review Officer found that there was no medical information to confirm that Vitamin B12 was prescribed

to treat an accident-related condition. Accordingly, the Internal Review Officer found that the Appellant's requirement for Vitamin B12 was not causally related to an accident related injury.

The Appellant has appealed that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of expenses for Vitamin B12.

At the appeal hearing, the Claimant Adviser argued that the Vitamin B12 injections were prescribed to assist the Appellant with his dizziness and diminished vibration sense in both ankles. The Claimant Adviser argues that the Appellant did not have these problems prior to the motor vehicle accident and therefore he is entitled to reimbursement of these expenses.

Counsel for MPIC argues that there is no objective medical evidence to link the Appellant's Vitamin B12 deficiency to the motor vehicle accident. Counsel for MPIC maintains that there is a lack of evidence on the file and the Appellant has not established that the requirement for the Vitamin B12 injections is related to the motor vehicle accident of April 16, 2001. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated October 14, 2011 should be confirmed.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Claimant Adviser on behalf of the Appellant and by counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that Vitamin B12 was prescribed to treat an accident-related condition. The Commission finds that there is no objective medical evidence to link the Appellant's Vitamin B12 deficiency to the

motor vehicle accident of April 16, 2001. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated October 14, 2011 is therefore confirmed.

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

YVONNE TAVARES

PAT HEUCHERT

LES MARKS