

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-12-101**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Pat Heuchert
Dr. Chandulal Shah

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

HEARING DATE: September 22, 2014

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

RELEVANT SECTIONS: Sections 71(1) and 141(1)(a) 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

The Appellant is appealing the Internal Review decision dated May 3, 2012 respecting MPIC's decision to deny her PIPP benefits.

The facts surrounding this matter may be briefly summarized as follows:

1. The Appellant was involved in a motor vehicle accident on March 31, 2001. At that time, the Appellant was a seat-belted driver in a two vehicle collision,

2. The Appellant's vehicle was deemed a total loss due to major rust and rough condition and she was paid \$800 for the vehicle.
3. The Appellant contacted MPIC to open an injury claim on April 20, 2001. At that time, she advised that she had suffered injuries in the motor vehicle accident including, a sore back and neck, that she hit her left temple on the driver's door window and that she had missed one week of work. At the time of the accident, the Appellant was a self-employed [text deleted].
4. Thereafter, several attempts were made by MPIC to contact the Appellant via mail and telephone calls. No calls were returned and no paperwork was completed by the Appellant, including an Application for Compensation.
5. On June 6, 2001, the Appellant spoke with her collision adjuster regarding the accident's circumstances and enquired about her injury claim. The adjuster indicated that the case manager had been trying to contact the Appellant by telephone and had sent a letter to the Appellant which was returned. The Appellant advised the collision adjuster of her new address and this information was passed on to the case manager.
6. The case manager sent a contact letter to the Appellant on July 20, 2001. No response was received to that letter and the Appellant's file was closed on September 20, 2001.
7. On January 13, 2011, the Appellant contacted MPIC requesting that her injury file be re-opened. In conversation with the case manager on February 22, 2011, the Appellant indicated that since the accident she had been suffering with memory loss, anxiety and

mental health issues. She stated that she suffered injuries in the motor vehicle accident including a sore neck and back, a head injury, memory loss, anxiety, psychological issues requiring ongoing treatment with a psychiatrist and that she had been unable to work since the motor vehicle accident of March 31, 2001. She also stated that due to her head injury, she was unable to concentrate and therefore started to fail her one class at [text deleted]. She also stated to the case manager that she had required ongoing treatment with her chiropractor due to the motor vehicle accident of March 31, 2001.

8. The Appellant completed an Application for Compensation on March 25, 2011.
9. Due to the delay in reporting the Appellant's injuries, the case manager attempted to collect medical information respecting the Appellant's medical conditions dating back to 2001. After receiving medical information from various clinics and practitioners, the Appellant's medical file was reviewed by both a medical consultant and a psychological consultant with MPIC's Health Care Services.
10. In the medical review of December 6, 2011, the consultant noted that the Appellant attended the emergency department four days after the accident and that she was diagnosed with musculoskeletal pain. The Appellant was prescribed Tylenol medication and advised to follow-up with her family physician as needed. The medical consultant concluded that based on the review and the totality of all medical evidence, the Appellant sustained a soft tissue injury with an expectation for an unremarkable recovery over a period of weeks following the motor vehicle accident of March 31, 2001.
11. In the psychological review of December 29, 2011, the consultant noted that the Appellant presented to the emergency department three [four] days after the accident with complaints of headache. There was no report of loss of consciousness at the time the

Appellant was seen in the emergency department. The psychological consultant opined that there was insufficient evidence to support that the Appellant had developed a psychological or a cognitive condition as a result of the motor vehicle accident.

12. In a decision dated January 4, 2012, MPIC's case manager, based on these medical opinions, denied PIPP benefits on the basis that the medical information, or the lack thereof, did not support a medical condition that was causally related to the motor vehicle accident of March 31, 2001 that would entitle the Appellant to PIPP benefits.

13. The Appellant sought an Internal Review of that decision. In an Internal Review decision dated May 3, 2012, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of January 4, 2012. The Internal Review Officer found that without further medical documentation to substantiate a connection between the Appellant's medical problems and the motor vehicle accident of March 31, 2001, he could not find an entitlement to PIPP benefits.

The Appellant has now appealed from 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 motor vehicle accident of March 31, 2001.

Relevant Legislation:

The MPIC Act provides as follows:

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Time limitation for claim

141(1) Subject to subsections (2) to (4), a claim for compensation under this Part shall be made

- (a) within two years after the day of the accident; or
- (b) if symptoms of a bodily injury that is not apparent immediately after the accident are observed by a practitioner within two years after the day of the accident, within two years after the day on which the observation is first made by the practitioner.

Appellant's Submission:

The Appellant submits that she tried numerous times over the years to contact her case manager with MPIC, but her telephone calls were never returned. The Appellant confirmed that following her accident she did move and changed her address with MPIC in order to get her payment when her vehicle was written off. She advised her collision adjuster of her new address. The Appellant testified that she tried to contact the case manager countless times, to no avail.

The Appellant testified that as a result of the motor vehicle accident of March 31, 2001, she has been suffering with memory loss, anxiety and mental health issues. She maintains that she sustained a brain injury as a result of the motor vehicle accident which has caused these difficulties. The Appellant testified that although she had anxiety before the motor vehicle accident, the accident made her condition worse. The Appellant also advised that she has seen a chiropractor for treatment for her injuries since the motor vehicle accident and that she has not worked since the accident. The Appellant claims that she sustained a scar to her left eyebrow area as a result of the motor vehicle accident. She maintains that she had no scars prior to the motor vehicle accident and that she sustained a cut above her left eyebrow in the motor vehicle accident of March 31, 2001. As a result of these claims, the Appellant submits that she is entitled to PIPP benefits arising from the motor vehicle accident of March 31, 2001.

MPIC's Submission:

Counsel for MPIC submits that there was a lack of contact from the Appellant for almost 10 years following her motor vehicle accident. He maintains that her evidence, that she attempted to make almost 100 contacts with her case manager at MPIC, without a note being made of those contacts by MPIC or a return phone call being made by her case manager, was not credible and not plausible.

Counsel for MPIC submits that the Appellant's physical and psychological conditions are not related to the motor vehicle accident of March 31, 2001 and therefore she is not entitled to PIPP benefits. Regarding the Appellant's physical conditions, counsel for MPIC submits that the Appellant did not sustain any physical injuries as a result of the motor vehicle accident. In support of his position, he notes that although the Appellant attended chiropractic care throughout the years between 2001 and 2010, there was no request for funding for her chiropractic care throughout that time. As a result, counsel for MPIC submits that her chiropractic care was not as a result of injuries sustained in the motor vehicle accident.

With respect to the Appellant's psychological problems, counsel for MPIC submits that there is no indication that the Appellant's psychological problems are related to the motor vehicle accident of March 31, 2001. Counsel for MPIC notes that the Appellant had anxiety problems before the motor vehicle accident and that her treatments with [Appellant's Psychologist] did not commence until several years following the motor vehicle accident. He maintains that the Appellant was not a credible witness and that her description of her symptoms following the accident are not borne out by the emergency records or the little evidence that is available on her file.

In summary, counsel for MPIC submits that the Appellant was not a reliable historian and therefore her evidence could not be relied upon in support of her claim. He maintains that she has not met the burden of proof and that her claim for PIPP benefits should be dismissed.

Decision:

Upon hearing the testimony of the Appellant, and after 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 is not entitled to PIPP benefits as a result of the motor vehicle accident of March 31, 2001.

Reasons for Decision:

The Commission finds that the Appellant did not file a claim for compensation with MPIC within two years after the date of the accident. The Appellant's Application for Compensation was completed on March 25, 2011. The Commission finds that the Appellant has not provided a reasonable excuse for failing to file a claim prior to that date. The Commission does not accept the Appellant's testimony that she attempted to contact MPIC on numerous occasions but that her messages were never returned. As a result, the Commission would not have allowed the Appellant's claim for PIPP benefits due to her failure to file a claim for compensation within two years after the day of the motor vehicle accident.

Additionally, the Commission has found that the Appellant has not established, that she sustained a physical or psychological injury as a result of the motor vehicle accident of March 31, 2001. As a result, the Appellant is not entitled to PIPP benefits. The Commission agrees with the opinions provided by MPIC's Health Care Services, that the medical information does

not support a causal relationship between a medical condition requiring chiropractic treatment and the motor vehicle accident of March 31, 2001. There is also no medical information to support that the Appellant developed a psychological or cognitive condition as a result of the motor vehicle accident of March 31, 2001. In addition, the Commission finds that there is no medical evidence to support the Appellant's inability to hold employment or that her difficulties at school were related to the motor vehicle accident of March 31, 2001. Finally, the Commission finds that there is no medical information to support that the cut above the Appellant's left eyebrow was related to the motor vehicle accident of March 31, 2001.

As a result, the Commission finds that the Appellant is not entitled to PIPP benefits, including income replacement indemnity, permanent impairment or reimbursement of chiropractic and psychological treatment, or any other medical expenses in relation to the accident of March 31, 2001.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated May 31, 2012 is confirmed.

Dated at Winnipeg this 22nd day of October, 2014.

YVONNE TAVARES

PAT HEUCHERT

DR. CHANDULAL SHAH