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Indexed as:  
J.J.W. (Re)

IN THE MATTER OF an appeal by J.J.W.  
AICAC File No.: AC-97-39

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[1997] M.A.I.C.A.C.D. No. 28

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,  
and L. Goodspeed  
Heard: July 29, 1997.  
Decision: August 4, 1997.  
(6 pp.)

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Issue:

Whether TMJ disorder resulted from motor vehicle  
accident, with consequent entitlement of victim to IRI  
benefits and other injury-related treatment and expenses.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 70(1), 81(1) and 136(1).

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.') represented  
by Joan McKelvey.

The appellant, J.J.W., appeared in person.

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MAIC 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

[para1] J.W. was in a serious roll-over motor vehicle  
accident ('m.v.a.') on March 12th, 1996. He sustained injuries  
to his lower back, neck, right leg and left wrist and finger.  
The immediate, discernible result was a whiplash associated  
disorder classified as a 'WAD II' injury, with persistent  
myofascial neck pain and occipital headaches.

[para2] J.J.W.'s pre-accident medical history is

unremarkable in the context of his present claim. His post-accident history may be summarized as follows:

[para3] March 13th. J.J.W. attends at the office of his family physician, Dr. Hussain, at [text deleted], Manitoba. Dr. Hussain prescribes medication, physiotherapy and abstention from work for the time being. (While Dr. Hussain's reports do not mention any temporomandibular problems, J.J.W. testified that, although at the time his neck and back seemed to be the primary focus of his discomforts, he was quite certain that he did, indeed, mention a soreness or tenderness of his jaw to Dr. Hussain.)

[para4] March 21st. J.J.W. attends at the office of his dentist, Dr. Zoltan Horvath, for a regular check-up. He advised Dr. Horvath that he had been involved in the m.v.a., but Dr. Horvath's report of that visit adds that 'no documentation was done because it was not a complaint to teeth (sic) at that time'.

[para5] March 26th. J.J.W. is awarded Income Replacement Indemnity ('IRI') of \$[text deleted] bi-weekly, plus costs of physiotherapy and replacement of broken eyeglasses.

[para6] March 31st. J.J.W. returns to work voluntarily.

[para7] April 19th. Upon the advice of Dr. Hussain, whom he had consulted by reason of the recurrence of myofascial pain, primarily at the neck and back, the appellant was again off work from this date until May 20th; meanwhile, he was continuing with his physiotherapy twice weekly and taking analgesics and anti-inflammatory muscle relaxants.

[para8] June 5th. Dr. Hussain reports that the appellant should be able to recover fully within the next few weeks, and that physiotherapy and medication could now be discontinued.

[para9] September 4th. J.J.W. re-attends upon Dr. Hussain, who finds that, in addition to a recurrence (or, perhaps more properly, the continuance) of the neck pain, the appellant has an upper respiratory infection and fever. He prescribes antibiotic medication. The appellant testified that he was, by this time, also again experiencing the same kinds of pain that were present in the days shortly after his m.v.a., including a more pronounced problem with his temporomandibular joints ('TMJ'). Dr. Hussain again recommended that J.J.W. take a few weeks off work, but was reluctant to express an opinion whether the TMJ disorder could be attributed, in whole or in part, to the motor vehicle accident or was caused by one or more other factors.

[para10] September 17th. Since Dr. Hussain was in the course of leaving [text deleted] for other parts, J.J.W. had

consulted Dr. John Mayba at the Manitoba Clinic in Winnipeg who, in turn, had referred him to Dr. John B. Curran, a specialist in oral and maxillofacial surgery. In his letter of referral to Dr. Curran, Dr. Mayba noted that, in addition to the persistent neck pain and headaches resulting from the m.v.a., the appellant had bilateral crepitus (i.e. a crackling or, sometimes, bubbling sound emanating from both sides) of his TMJs, jaw clicking and difficulty opening his mouth fully - all problems that he had not experienced prior to his accident.

[para11] Dr. Curran, in a carefully worded letter of opinion addressed to this Commission dated July 21st, 1997, expresses a view that may be paraphrased and summarized this way: J.J.W. probably had a pre-existing condition, in the form of a disc displacement, before his m.v.a., but that condition had not progressed to the point where it created any material problem; however, the painful 'locking symptoms' which had developed by September, and which were a direct sequel of the myofascial spasms suffered by the appellant, would not have occurred had he not been involved in the m.v.a.

[para12] Dr. Curran adds that the investigations and severity of the TMJ involvement have not been fully completed; that, in Dr. Curran's view, would require a magnetic resonance imaging (an examination that is apparently not available in Manitoba, requiring the patient to be referred to Saskatoon) and, perhaps, an arthroscopic procedure.

[para13] December 19th, 1997. Dr. Horvath, upon learning in December of J.J.W.'s increasing discomfort, referred him to Dr. Jack Lipkin, who saw the appellant initially on December 19th, 1996. He reported that the appellant complained chiefly of '....a constant pain in my neck, that doesn't allow me to sleep and is giving me some serious pain on occasion (headaches, jaws lock)...' Dr. Lipkin recommended that J.J.W. return to physiotherapy, that he wear a full maxillary flat plane splint pending further examination, and that he be assessed by Dr. Curran to see whether any oral surgical intervention were needed.

[para14] Dr. Lipkin, in his letter of opinion to this Commission dated July 28th, 1997, expresses the view that '.....in all likelihood, the m.v.a. of March 12/96 initiated the cascade of symptoms that J.J.W. presents with.' Dr. Lipkin goes on to note that those symptoms were not present prior to the m.v.a., and that the chronology of symptoms and events following the m.v.a. are 'quite consistent with the typical response of the TMJ and head and neck musculature that is reported in the literature, following a whiplash type of injury'.

DISPOSITION:

[para15] M.P.I.C.'s in-house medical consultant, Dr. Michael MacKay, is of the view that J.J.W.'s current TMJ problems were not, on a reasonable balance of probabilities, attributable to his m.v.a. He reaches that conclusion principally because there was no recorded information from Dr. Hussain to indicate that the appellant had made mention of those problems until September of 1996 - some six months after his accident - and he feels that, if the m.v.a. had been the cause of the TMJ disorder, the problems would have surfaced almost immediately or, at least, a great deal sooner than September. On the other hand, Drs. Horvath, Lipkin and Curran are unanimous in their opinion that, as Dr. Horvath succinctly puts it: 'The T.M.J. problem developed with time as an indirect result of the accident ... I have seen this happen many times, that long after an accident patients have jaw problems'.

[para16] J.J.W.'s own testimony was supported by that of [text deleted]. While intra-familial evidence can seldom be called objective, we were nonetheless impressed with the apparent good faith of both witnesses and saw no reason to doubt their testimony. That testimony included evidence that the appellant's difficulty with his jaw started to become more intense about two months after the m.v.a., and prior to the respiratory infection that was dealt with by Dr. Hussain in September.

[para17] We find therefore, that J.J.W.'s current temporomandibular joint disorder was, in fact, caused primarily by his motor vehicle accident of March 12th, 1996. It follows that the appellant is entitled to have his IRI benefits reinstated for the period from September 4th to November 3rd, 1996, both inclusive, and that arrangements must be made, through the offices of Drs. John Curran and John Mayba, for such additional examinations and other treatment as may be found necessary for the proper care of the appellant's injuries.

[para18] Finally, and although the matter is not properly before this Commission as part of the present appeal, there was some indication of continuing problems being experienced by the appellant with the use of his injured small finger on his left hand and, as well, to the nail on that finger not growing properly. This should be reviewed in order to determine whether there is a disfigurement or impairment benefit to which J.J.W. may, perhaps, be entitled.

[para19] The Commission will remain seized of this matter so that, should the parties, with the assistance of Drs. Mayba and Curran, be unable to agree upon a proper course of examination and treatment for J.J.W., either party may apply to this Commission for further directions. The cost of

medical and dental reports tendered to or acquired and used by the Commission in the course of the hearing will be for the account of M.P.I.C.

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