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Indexed as:
B.F. (Re)

IN THE MATTER OF an appeal by B.F.
AICAC File No.: AC-99-20

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[1999] 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
C. Settle, Q.C.

Heard: May 18, 1999.
Decision: July 27, 1999.
(16 paras.)

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Issue(s) :

Dental Work - whether made necessary by motor vehicle
accident.

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Relevant Sections:

Regulation 40/94, s. 5.

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Appearances:

The appellant, B.F., represented by Stephen Alsip.
Manitoba Public Insurance Corporation ('MPIC') represented by
Joan McKelvey.

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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] On May 2nd, 1998, at about 1:00 o'clock in the
morning, the appellant, B.F., was crossing Pembina Highway in
Winnipeg at a pedestrian cross-walk when he was struck by a
motor vehicle. There is some indication that he was pushed or
thrown some one hundred and fifty-two feet by the force of
that impact, but, although he sustained a number of injuries
(lacerations and scarring under his chin and on his forehead,
and what the City of Winnipeg Community Health Commission
described as "exquisitely tender cervicothoracic spine, left
C6 radial parasthesias with left shoulder abduction or left

neck palpation", there appeared to be no skeletal injury nor any other permanent impairment excepting some major dental loss. More specifically, B.F. lost teeth numbers 11, 12, 13 and 14 completely in that accident, which also resulted in a broken tooth number 21.

[para2] At the time of his accident, B.F. was an unemployed commercial painter, in receipt of Employment Insurance benefits.

[para3] In due course, B.F. attended upon Dr. Lanny Jacob, D.M.D. who, after a complete dental examination of B.F., prepared a treatment plan that included the following:

- "1. Extraction of teeth numbers 18, 28 and 38 (Dr. Jacob later confirmed that only numbers 18 and 28 had been extracted after [B.F.'s] accident, due to their decay; tooth number 38 has not been extracted.)
2. Referral to periodontist for periodontal surgery for pocket elimination. Implants will not be placed until the periodontium is totally healthy.
3. Diagnostic wax up of the mounted study models. (In the course of examining [B.F.'s] mouth, Dr. Jacob had caused articulated mounted study models to be prepared.)
4. Referral to the oral surgeon for implant placement.
5. Surgical stent for the oral surgeon for implant placement for teeth numbers 15 to 11.
6. Fixed bridges to replace missing posterior teeth and restore posterior occlusion. Four-unit bridge from number 44 to number 48, three-unit bridge from number 35 to 37, four-unit bridge from number 24 to number 27. All bridges will be temporized with indirect processed temporaries to finalize the occlusal scheme.
7. Fixed crown on implant supported posts from tooth number 15 to number 11. All will be temporized with indirect processed temporaries to establish anterior guidance.
8. Teeth number 15 to number 21 will be finalized with full crowns made with a customized anterior guide table on an articulator.
9. Night guard for the upper arch to protect the restorations."

[para4] The issue before us stems from the facts that, although B.F. lost his teeth numbers 11 through 14, and his tooth number 21 was broken, all as a direct result of his motor vehicle accident, he was missing his teeth numbers 15, 25, 26, 36, 46 and 47 prior to his accident and teeth numbers 18 and 28 had to be extracted after the accident but due to decay rather than to the accident itself.

[para5] Dr. Randy Mazurat, MPIC's dental consultant, expressed the view: "Given the pre-existing state of [B.F.'s] dentition and the periodontium, it is questionable as to the appropriateness of implant therapy. As none of the posterior teeth was lost due to the motor vehicle accident, we will not cover any replacement costs in those areas. Given the number of teeth missing in the maxillary arch, serious consideration should be given to provision of a cast partial denture as the definitive prosthesis, once the periodontium is stabilized."

[para6] B.F.'s adjuster at MPIC, in reliance on Dr. Mazurat's opinion, advised the appellant that MPIC was not prepared to accept the treatment plan proposed by Dr. Jacob, which carried an estimated cost of \$8,053.60, not including specialists and laboratory fees, and B.F. appealed from that decision to MPIC's Internal Review Officer, Mr. Dean I. Scaletta.

[para7] B.F. had, in fact, been provided with a temporary partial plate, but apparently experienced much difficulty in adapting to it. As well, he told Mr. Scaletta, he did not wish to wear a denture for the rest of his life when there was apparently a form of treatment available that would negate the need for a denture. Dr. Mazurat's response to this last comment was that, although implant therapy might well be desirable, the loss of teeth and the work described in item Number 6 of Dr. Jacob's treatment plan were related to B.F.'s pre-existing dental problems, not to his motor vehicle accident. The bridge on the upper left and the bridges on the lower arch would replace teeth that had been lost prior to the motor vehicle accident, whereas the replacement of the four missing teeth could be accomplished without those additional replacements, using a conventional partial denture or dental implants. This, in Dr. Mazurat's view, would restore the appellant's dentition to a state that was comparable to or better than before the motor vehicle accident.

[para8] Having considered the evidence and the conflicting opinions that had been given him, Mr. Scaletta decided, on February 8th, 1999, to confirm the decision of the adjuster which was, essentially, to have the insurer pay for the cast partial denture but not for any of the other work such as bridges. Mr. Scaletta's decision reads in part:

...the work to the rear teeth recommended by Dr. Jacob would have been required in any event in order to have any chance of preserving the front teeth which you lost as a direct result of the accident.

It is for this reason that Dr. Mazurat refused to authorize, and continues to refuse to authorize, payment for the work being recommended for your rear teeth.

In the course of the hearing of B.F.'s appeal his counsel, Mr. Alsip, expressed agreement with the position taken by Dr. Mazurat respecting B.F.'s rear teeth.

[para9] Dr. Jacob, in a letter to B.F. of May 17th, 1999, after reviewing Mr. Scaletta's decision, submits the following points:

- a) It is not necessarily correct to suggest that the work to the rear teeth that was being recommended would have been required in any event in order to have any chance of preserving the front teeth, as Dr. Mazurat had apparently suggested in a discussion with Mr. Scaletta; Dr. Jacob felt that this suggestion was pure speculation.
- b) "The story changes when implants are placed. Long-term success of properly placed implants would be dependent and more predictable with a fully restored dentition. That is why the treatment has been proposed in its entirety."

[para10] In the course of the hearing, counsel for B.F. submitted that, while giving effect to the total treatment plan proposed by Dr. Jacob would, indeed, have replaced B.F.'s Model T dentition with a Cadillac (our language, not Mr. Alsip's), it would be fair and reasonable to require MPIC to pay for dental implants for the four front teeth lost in the motor vehicle accident, numbers 11 to 14, both inclusive, to replace the partial denture that B.F. was then, and is still apparently, using, as well as a porcelain-fused-to-metal crown for the broken tooth, number 21. Subsequent correspondence between this commission and Dr. Jacob elicited Dr. Jacob's opinion that "only restoring the teeth lost as a result of the accident with implants, and restoring number 21 with a crown, is therefore not an option". Dr. Jacob explains the basis for his opinion as follows:

When it comes to restoring a mutilated dentition like this, one has to look at the various functions of teeth. Back teeth function in an up and down motion to chew food. Front teeth function differently, they cut food like scissors. When the back teeth contact in the up and down chewing motion, the very strong muscles of

mastication are triggered by a reflex to function. Immediately upon moving the lower jaw forward or side to side into position for the cutting function of front teeth, the back teeth must come apart so the same strong muscles of mastication will be triggered to turn off and not overload the front teeth. This describes an acceptable occlusion (bite).

When an individual has lost back teeth, the remaining teeth tilt into the open spaces. As the back teeth tilt, the bite becomes uneven, and the teeth create interferences in the front to back and side to side movement of the lower jaw. This causes the strong masticatory muscles to be in function when the front teeth are in contact, this is an unacceptable situation, these forces are destructive. This becomes even more important when dealing with dental implants. Dental implants in the front of the mouth would fail if they were expected to function with excessive forces always directed onto them.

The accident has made it necessary to replace the missing teeth. When implants are placed in the front of the mouth, it becomes necessary to have the missing back teeth restored as well to the acceptable occlusion. In other words, it is neither "desirable" or "preferable", it is necessary.

[para11] The issue here, of course, is whether the full plan recommended by Dr. Jacob, no matter how desirable or even necessary it may be, may properly be said to fall within the provisions of Section 136(1) of the MPIC Act and Section 5 of Manitoba Regulation Number 4/94. Section 136(1) reads, in part, as follows:

Subject to the regulations, the victim is entitled to the extent that he or she is not entitled to reimbursement under the Health Services Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) Medical and paramedical care...
- (b) The purchase of prostheses...
- (d) Such other expenses as may be prescribed by regulation.

[para12] Section 5 of Regulation 40/94 reads, in part, as follows:

Subject to Sections 6 to 9, the Corporation shall pay an expense incurred by a victim, to the extent that the

victim is not entitled to be reimbursed for the expense under the Health Services Insurance Act or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a...dentist...

In other words, the work that B.F. is entitled to have performed at the expense of the Insurer must have been made necessary by the motor vehicle accident and be deemed medically necessary. The position of MPIC, as expressed by Dr. Mazurat, is that, although the legitimacy of the treatment plan proposed by Dr. Jacob is not questioned at all, it is still necessary to distinguish between what was pre-existing and what was made necessary by the motor vehicle accident. If B.F. had presented to Dr. Jacob's office with no damage from a motor vehicle accident, he would have been advised to have the missing, posterior teeth restored in order to maintain function and preserve the remaining teeth. In other words, prescribing restoration of the pre-existing, posterior teeth would have been desirable, even in the absence of the motor vehicle accident. The patient had a compromised situation, dentally, prior to his motor vehicle accident due to the lack of attention to his previous dental problems.

[para13] Replacement of B.F.'s lost anterior teeth with dental implants in the anterior region would restore him to a comparable or better situation than had prevailed before his accident. This is not to say that those implants would restore him to full dental health or function, but it must be remembered that he was not in that state prior to his accident.

[para14] Dr. Mazurat offered the view that:

Implants are a recognized treatment modality and we have provided coverage for this treatment in the past. However, it is also feasible to restore the missing teeth with conventional appliances (partial dentures). They are not required as a medical necessity, however they probably would provide function most closely akin to natural teeth.

We have concluded that if, on the advice of Dr. Jacob, B.F. elects to have teeth numbers 11 through 14, inclusive, replaced by dental implants, and to have a permanent porcelain-fused-to-metal crown on tooth number 21, that work should be done at the expense of MPIC. In saying that, we have given very careful attention to Dr. Jacob's letter of May 31st but have been obliged to conclude that, if the remaining work recommended by Dr. Jacob is to be done, it was not made necessary by the motor vehicle accident and will have

to be done at the expense of B.F. or from some other source of payment.

[para15] Matters related to permanent impairment or any other facet of B.F.'s overall injuries are not before us.

[para16] The decision of the Internal Review Officer dated February 8th, 1999, will therefore be varied accordingly, to allow for implants and permanent crown as noted above.

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