

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by J. R.
AICAC File No.: AC-01-26**

PANEL: Mr. Mel Myers, Q.C., Chairman
The Honourable Armand Dureault
Mr. Antoine Frechette

APPEARANCES: The Appellant, Ms. J R, appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.

HEARING DATE: April 29, 2002 and November 18, 2002

ISSUE(S): Entitlement to travel expenses related to and from the
pharmacy, and to and from physiotherapy;
Entitlement to Income Replacement Indemnity benefits;
Entitlement to Permanent Impairment Benefits for
compression fractures to the thoracic spine;
Entitlement to Personal Care Assistance;
Entitlement to medication benefits.

RELEVANT SECTIONS: Section 127, 129(1), and 130 of the Manitoba Public
Insurance Corporation Act ("MPIC Act"), and Schedule A
Section 19(b)(iii) of Manitoba Regulation 41/94

Reasons For Decision

The Appellant, Mrs. J. R., was involved in a motor vehicle accident on October 15, 1999 and suffered several injuries including fractures to her thoracic spine. The Appellant who had osteoarthritis prior to the motor vehicle was referred to Dr. Balageorge, an orthopedic surgeon for an examination. Dr. Balageorge in his medical report dated September 6, 2000, stated:

"X-rays examination of the thoracic spine on July of 1999 shows that she has a T12 fracture and a slight fracture of T11. Repeat x-rays on December 22nd show T11 has been greatly compressed. T12 has stayed about the same but she also has compression fractures with slight wedging of T9 and 10. These appear to be stable fractures.

This lady has osteoporotic fractures and from the July to December x-rays, has two new fractures. These may be attributed to her motor vehicle accident in October of 1999. She states that her pain got much worse following the motor vehicle accident."

The Appellant requested reimbursement from MPIC in respect to the following matters:

1. Entitlement of travel expenses to and from the pharmacy and entitlement to income replacement indemnity benefits.
2. Reimbursement for travel expenses to and from physiotherapy.
3. Reimbursement for personal care assistance expenses incurred in respect of snow and shovelling.
4. Reimbursement for medication expenses.
5. Entitlement to permanent impairment benefits for compression fractures to the thoracic spine.

The MPIC case manager rejected the request and as a result the Appellant made application for review by the Internal Review Officer. The Internal Review Officer upheld the decision of the case manager and dismissed the application for review. In respect of the Appellant's claim for compensation for a permanent impairment benefit in respect of compression fractures, the Internal Review Officer acknowledged that the medical information in this respect was confused and dismissed the Appellant's request for compensation. The Internal Review Officer states in his decision dated February 16, 2001:

"All of the physicians agree your compression fractures progressed between the studies of June 28, 1999 and December 22, 1999. There is clear disagreement on the reason for that progress. Drs. Fougere, Jeffery, Casey and Ethans all decline to draw a connection between the progression of the compression fractures and your motor vehicle accident. Dr. Fougere believes that it is medically probable that the worsening of these fractures between June and December 1999 was primarily due to the normal progress of your osteoporosis, possible complicated by your use of immunosuppressant drugs. I have not overlooked that Dr. Fougere's opinion derives, in part at least, from her belief that you "did not suffer any new fractures as a result of the impact injury." This is not necessarily correct since the fracture of T9 was not demonstrated by the June 1999 x-ray as Dr. Fougere supposes. On the other hand, Dr. Intrater does describe a severe onset of back pain occasioned by your reaching for something some three to four weeks prior to your automobile accident. In the absence of other evidence, that would appear as likely a candidate for the immediate cause of the worsened fractures as the automobile accident.

Dr. Balageorge, on the other hand, says that you had "two new fractures" from the July [sic] to December x-rays. That does not seem to be correct. He goes on to say, "These may be attributed to her motor vehicle accident in October of 1999." That proposition appears to be derived from what he says in the very next sentence, "She states that her

pain got much worse following the motor vehicle accident." That is not consistent with the history provided by Drs. Intrater and Jeffery.

I have already upheld Mr. Hallson's decision that you are not entitled to IRI. I can find no basis in the confused evidence regarding your compression fractures for concluding that you are entitled to a Permanent Impairment benefit of the sort Schedule A of Regulation 41/94 provides for compression fractures. The issue is obviously not entirely resolved. If you wish to pursue it, I suggest that you consult with Mr. Hallson and ask him to obtain the original radiographic studies from June and December 1999, as well as any that may have been done more recently, so that this whole question can be reassessed by Dr. Fougere."

The Appellant filed a notice of appeal and the initial hearing before the Appeal Commission occurred by teleconference on April 29, 2002. At the commencement of the Hearing, the Appellant withdrew her appeal in respect of the entitlement of travel expenses to and from the pharmacy and entitlement to income replacement indemnity benefits and wished to proceed with her appeals in respect of reimbursement for travel expenses to and from physiotherapy, reimbursement for personal care assistance expenses incurred in respect of snow shovelling, reimbursement for medication expenses and entitlement to permanent impairment benefits for compression fractures. Both the Appellant and the legal counsel for MPIC made verbal submissions in respect of these issues.

At the conclusion of the submissions by both parties the Commission noted that there was some confusion in respect to the medical evidence relating to the existence of compression fractures caused by the motor vehicle accident. Legal counsel for MPIC undertook to contact MPIC's medical consultant, Dr. Fougere and request that she obtain all relevant x-ray reports, examine them, and provide a report to the Commission as to whether any of the compression fractures were on the balance of probabilities, caused by the motor vehicle accident in question. In addition, the Commission indicated that Dr. Balageorge may also be consulted in respect to this matter.

Legal counsel for MPIC wrote to Dr. Fougere on May 1, 2002, and received a report from him dated July 10, 2002 a copy of which was provided to the Commission and the Appellant. Upon review of the x-rays, Dr. Fougere concluded:

"Thoracic Vertebra (T11)

Comparing the data for T11 across the months, a substantial decrease in height ratios occurred between July and August 1999 and it is apparent that a substantial loss of height occurred between August and December 1999 (pre versus post-motor vehicle collision). It is impossible to know whether the collapse of bone between August and December was accelerated by the motor vehicle collision. It would be reasonable to assume that the motor vehicle collision played a role in the loss of T11 vertebral height given the inability to prove that it didn't. Based on this assumption, the change in height between August and December 1999 represents a change of under 25% and would entitle the claimant to an award of 1% as per the Manitoba Public Insurance Schedule of Permanent Impairments 19(b)(iii); page 30."

On August 6, 2002 the Appellant contacted an officer of the Commission and informed the officer that she was satisfied with Dr. Fougere's assessment of a 1% permanent impairment to thoracic vertebra T11. The Appellant further advised the officer that she does not feel it necessary to have an opinion from Dr. Balageorge.

On November 6, 2002, legal counsel for MPIC wrote to the case manager and requested that he take the necessary steps to arrange for payment of a 1% permanent impairment benefit to be made to the Appellant for the compression of fracture T11. A copy of this letter was provided to this Commission.

The Commission reconvened the Appeal Hearing on November 18, 2002. Legal counsel for MPIC was present and the Appellant communicated with the Commission and MPIC's legal counsel by way of a teleconference call. At the commencement of the hearing, the Appellant indicated that she wished to withdraw her appeal in respect of reimbursement for travel expenses to and from physiotherapy, reimbursement for personal care assistance expenses incurred in

respect of snow shovelling, and reimbursement for medication expenses. She further indicated that she was satisfied with the decision by MPIC to recognize that she had a 1% permanent impairment entitlement for a compression fracture to T11.

The Commission therefore determines that:

- A. The Appellant's appeal in respect of the Internal Review Officer's decision bearing date February 16, 2001 relating to compensation for:
 - 1. Entitlement to travel expenses related to and from the pharmacy, and to and from physiotherapy.
 - 2. Entitlement for Income Replacement Indemnity benefits.
 - 3. Entitlement to Personal Care Assistance in respect to snow shovelling.
 - 4. Reimbursement for medication expenses;

is dismissed and;

- B. Pursuant to Sections 127, 129(1), and 130 of the MPIC Act and Schedule A Section 19(b)(iii) of Manitoba Regulation 41/94, the Appellant be compensated for permanent impairment in respect of a compression fracture to T11 on the basis of 1% together with interest to the date of payment.
- C. Subject to Paragraph B hereof, the decision of MPIC's Internal Review Officer bearing date February 16, 2001, is varied and the foregoing substituted for it.

Dated at Winnipeg this 2nd day of December, 2002.

MEL MYERS, Q.C.

HONOURABLE ARMAND DUREAULT

ANTOINE FRECHETTE