

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D. M.
AICAC File No.: AC-02-25**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Dr. Patrick Doyle

APPEARANCES: The Appellant, D. M., was represented by V. H.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: November 1, 2002

ISSUE(S): Entitlement to reimbursement for travel expenses beyond
September 3, 2001.

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation
Act (the 'MPIC Act') and Section 2 and Schedule A of
Manitoba Regulation 40/94

Reasons For Decision

The Appellant, D. M., was involved in a motor vehicle accident ("MVA") on April 3, 1997, when she was struck by a motor vehicle while crossing a street as a pedestrian. She was 81 years old at that time and suffered a fractured right ankle, sore left knee, hip, neck and shoulder. As a result of the injuries that she sustained in the accident, the Appellant became entitled to receive personal assistance benefits from MPIC pursuant to Section 131 of the MPIC Act.

On August 20, 2001, MPIC's case manager wrote to the Appellant to advise her that she would no longer qualify for reimbursement of travel expenses effective September 3, 2001.

The Appellant sought an internal review from that decision. In his decision dated December 21, 2001, the Internal Review Officer confirmed the case manager's decision and dismissed D.. M.'s Application for Review. The Internal Review Officer based his decision on the lack of a causal relationship between the Appellant's inability to use public transit and the motor vehicle accident of April 3, 1997. He concluded that the Appellant's inability to utilize public transportation was no longer as a result of the injuries she sustained from the MVA. He relied on Dr. Shariff's report dated May 28, 2001, which stated as follows:

This lady has difficulty to use public transport appeared to be due to poor balance requiring use of a walker to get around and difficulty to climb stairs because of osteoarthritis in both knees and her poor eye sight as well as her age do also play parts and add to her problem. These problems are not related to car accident when she did sustain a fracture involving the distal fibula on the right ankle and bruising about her right knee. She seems to have recovered from the effect of these injuries.

At the time I saw her, there was no measurable functional impairment resulting from the motor vehicle accident of April 3, 1997.

It is from this decision that D. M. now appeals. The issue which requires determination in D. M.'s appeal is whether or not she is entitled to reimbursement of travel expenses beyond September 3, 2001.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 131 of the MPIC Act:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 2 of Manitoba Regulation 40/94:

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under

The Health Services Insurance Act or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A.

Section 131 of the MPIC Act provides for reimbursement of personal assistance expenses, subject to the Regulations. Section 2 of Manitoba Regulation 40/94 provides that MPIC shall reimburse a victim for an expense for personal home assistance in accordance with Schedule A. Schedule A provides a method of evaluating the needs of the victim regarding personal and home care assistance. Points are assigned to areas of need on an evaluation grid. They are totalled to determine the qualifying percentage of expenses that is then applied to the maximum provision under Section 131 of the Act. The Appellant would have to score a minimum of five points on the grids in order to qualify for reimbursement of personal care assistance. If the score is less than five, no reimbursement of expenses is provided.

In this case, the Appellant qualified for reimbursement of travel expenses associated with the activities of daily living. Prior to the MVA, the Appellant had been able to walk to her destinations to complete many of her errands and use public transit when required. As a result of the injuries she sustained in the MVA, she was no longer able to walk those same distances or utilize public transit and therefore she became entitled to reimbursement of her travel expenses in connection with the activities of daily living.

The previous decision of this Commission dated March 11, 1999, provided that the Appellant's entitlement to personal assistance benefits should be reinstated from October 28, 1997, and continue until the Appellant's functional capabilities had been sufficiently restored that she no longer qualified for such assistance. The payment of the personal assistance expenses were limited to the reimbursement to the Appellant of those expenses necessarily incurred by her in ensuring an adequate supply of proper meals and in obtaining housekeeping and housecleaning

services, including laundry (to the extent that she was unable to prepare those meals or independently carry out housekeeping and housecleaning activities for herself), and for transportation between her home and her doctor's offices, her physiotherapist, her hairdresser, her shopping destinations and any other public services and neighborhood facilities of which she may have had need, or may continue to need, from time to time.

The Commission's decision was based in part on Ms Mischuk's in-home assessment of the Appellant on December 11, 1998, wherein she completed a new set of evaluation grids, in which she gave D.. M. a score of 11/51. Ms Mischuk concluded that the Appellant required assistance for housekeeping, laundry and major meals, as well as assistance with the purchase of supplies. Dr. Shariff also completed the evaluation grids for the Appellant based on his examination of her on February 19, 1999. His findings were similar to those of Ms Mischuk, although he gave D. M. a total score of 9/51. Dr. Shariff found that the Appellant required no assistance for the purchase of supplies and light housekeeping and was only in partial need of assistance for housecleaning.

Clearly the Appellant would have to continue to qualify pursuant to the grids in order to be entitled to reimbursement for travel expenses incurred in connection with the activities of daily living. Since no decision has been rendered which terminates her entitlement to personal assistance benefits, we must conclude that she continues to qualify for those benefits. The issue then becomes whether her incidental travel expenses continue to arise as a result of the injuries which she sustained in the MVA.

The Internal Review Officer and the case manager relied on Dr. Shariff's report dated May 28, 2001, to determine that it was not the injuries which the Appellant sustained in the MVA, but

rather her pre-existing conditions which prevented her from using public transit in connection with her activities of daily living.

The Appellant's representative maintains that prior to the MVA, the Appellant was a healthy and independent individual who was quite capable of functioning without assistance, including the use of public transportation. In support of her appeal, the Appellant relies on a report dated October 15, 2001, from her family physician Dr. Swain, wherein Dr. Swain notes that:

D. M.'s osteoarthritic symptoms flared dramatically subsequent to the motor vehicle collision with repeated presentations to the clinic revealing left knee swelling with significant crepitus and pain upon flexion. Her right knee was not swollen however there was also crepitus with discomfort with flexion. Her mobility was limited with difficulty stepping on and off a stool without assistance. It is this persistent exacerbation of her bilateral osteoarthritis subsequent to the injuries sustained in the accident that prevents her from using the public transportation.

Both Dr. Swain and Dr. Shariff agree that it is the Appellant's osteoarthritis which inhibits her ability to walk or use public transportation. Their opinions diverge however, with regards to the continuing effect of the MVA on the Appellant's osteoarthritis. Dr. Swain maintains that the MVA has had a significant effect upon the Appellant's osteoarthritis, limiting her functional status. This opinion was accepted in the previous decision of this Commission dated March 11, 1999. Therein the Commission found that: "*The Appellant's current limitations are clearly due, in whole or in part, to her MVA which, if it did not cause, certainly accelerated, the degenerative process of her osteoarthritis.*"

We accept Dr. Swain's opinion, since she is most familiar with the Appellant's condition both before and after the motor vehicle accident, that the Appellant's osteoarthritis was accelerated by the MVA, and find that the Appellant's current inability to use public transit is due to the injuries sustained in the MVA.

At the hearing of this matter, counsel for MPIC argued that according to the grids as completed by Dr. Shariff, the Appellant would not qualify for assistance with the purchase of supplies and therefore would not be entitled to reimbursement of the associated travel expenses. There is no evidence before the Commission that MPIC has ever reduced the Appellant's entitlement to personal assistance benefits on the basis of Dr. Shariff's grids. Even if that were so, we do not accept Dr. Shariff's opinion that the Appellant does not need assistance with the purchase of supplies. Given the extensive information before the Commission that the Appellant cannot drive and cannot use public transportation, she would surely need some form of assistance to take her to and from her shopping destinations.

Therefore, we find that MPIC improperly terminated reimbursement to D. M. of her travel expenses from September 3, 2001 and we conclude that she is entitled to be reimbursed for her travel expenses incurred in connection with those activities of daily living for which she requires assistance from September 3, 2001 onward.

Dated at Winnipeg this 10th day of December, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

DR. PATRICK DOYLE