

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.H.
AICAC File No.: AC-02-139

PANEL: **Ms. Yvonne Tavares, Chairperson**
Dr. Patrick Doyle
Mr. Paul Johnston

APPEARANCES: **The Appellant, J.H., appeared on his own behalf, assisted by I.H.;**
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.

HEARING DATE: **May 2, 2003**

ISSUE(S): **1. Extension of time to file for review.**
2. Entitlement to reimbursement of the cost of medications.

RELEVANT SECTIONS: **Section 136(1)(d) and Section 172(2) of the Manitoba Public Insurance Corporation Act (the "MPIC Act") and Section 38 of Manitoba Regulation 40/94**

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

The Appellant, J.H., was involved in two separate motor vehicle accidents, which took place on October 10, 1996 and September 19, 1997. As a result of the injuries which the Appellant sustained in those accidents, he became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the decision of MPIC's Internal Review Officer, dated November 15, 2002, with regards to an extension of time to file for a review of the case manager's decision, and with regards to reimbursement of medication expenses.

1. Extension of time to file for review

The Internal Review decision, dated November 15, 2002, rejected the Appellant's Application for Review of the case manager's decision, dated October 4, 2002, for failure to comply with Section 172 of the MPIC Act. The Internal Review Officer determined that, notwithstanding the October 4, 2002 decision respecting reimbursement for medication expenses, a previous decision, dated June 21, 2000, had terminated the Appellant's entitlement to further diagnostic and therapeutic interventions.

The Internal Review Officer found that the Appellant's Application for Review had been filed after the expiration of the 60-day time limit (from the date of receipt of the June 21, 2000 decision) provided by the MPIC Act for applying for a review. As a result, the Appellant was required to provide a reasonable excuse for failing to apply for a review of the decision within the prescribed time period. The Internal Review Officer found that the Appellant had not provided a reasonable excuse for failing to apply for a review of the June 21, 2000 decision within the time period provided for filing and, accordingly, he rejected the Application for Review.

At the hearing of this matter, the Appellant explained that he did not consider that the June 21, 2000 letter from the case manager was a decision letter terminating further diagnostic and therapeutic interventions (which would include medication expenses). Rather, he submits that the decision letter dealt with his entitlement to Income Replacement Indemnity benefits, which issue was the subject of a previous appeal to this Commission, and was ongoing at the time. The Appellant advised that he was reassured by his case manager at the time that the only subject at issue was his entitlement to Income Replacement Indemnity benefits. Since he never considered

that the June 21, 2000 letter was a decision letter terminating medical expenses, he never sought a review of that decision within the sixty-day time period provided for applying.

Disposition:

The case manager's decision, dated June 21, 2000, states that:

This letter will confirm our telephone conversation on June 20, 2000 regarding your entitlement to benefits under the Personal Injury Protection Plan (PIPP), specifically addressing the results of the recent Functional Capacity Evaluation and entitlement regarding Income Replacement Indemnity benefits.

A review of that letter suggests that the decision being rendered by the case manager related to J.H.'s entitlement to Income Replacement Indemnity benefits. Although the case manager commented that “. . . *further diagnostic and therapeutic interventions are not a medical necessity in the management of medical conditions arising from the motor vehicle collisions in question.*”, we find that this did not convey a decision terminating the Appellant's entitlement to reimbursement of medical expenses. As a result, we accept the Appellant's explanation that he did not understand the letter dated June 21, 2000 to be a decision terminating reimbursement of medical expenses.

The Commission, therefore, having considered the testimony of the Appellant and the circumstances of the June 21, 2000 case manager's decision, finds that the decision dated June 21, 2000 was not a decision terminating reimbursement of expenses respecting further diagnostic and therapeutic interventions (which would include medication expenses). Accordingly, since the Appellant did apply for a review of the subsequent case manager's decision, dated October 4, 2002, within the required time, his Application for Review of that decision was properly before the Internal Review Officer.

2. Entitlement to reimbursement for the cost of medications

The case manager's decision, dated October 4, 2002, determined that the Appellant had no further entitlement to compensation for medication expenses as there was no longer a causal connection between the motor vehicle accidents and the ongoing requirement for analgesics. Upon review of that decision, the Internal Review Officer confirmed the case manager's decision and dismissed the Application for Review. The Appellant has now appealed to this Commission.

The issue which requires determination in the Appellant's appeal is whether the Appellant's ongoing requirement for medication is causally related to either of the motor vehicle accidents of October 10, 1996 or September 19, 1997.

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

Section 136(1)(d) of the MPIC Act provides that:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (d) such other expenses as may be prescribed by regulation.

Section 38 of Manitoba Regulation 40/94 provides that:

Medical or paramedical care

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

The Appellant submits that his ongoing requirement for pain control medication is related to the motor vehicle accidents of October 10, 1996 and September 19, 1997, and accordingly the costs of these medications should be covered by MPIC. He maintains that although he may have degenerative disc disease in the lower back, he was asymptomatic prior to the motor vehicle accidents and has never recovered to his pre-motor vehicle accident status since. Additionally, the Appellant argues that if the motor vehicle accidents merely aggravated the degenerative disc disease, that aggravation has not resolved, on a balance of probabilities, since his condition has remained the same since the accidents.

In support of his position, the Appellant relies on the opinions of his treating medical practitioners, who advise as follows:

- Dr. Ian R. Sutton, Attending Anesthesiologist at the Health Sciences Centre Pain Clinic, in his report dated May 25, 2000, opines that:

[J.H.'s] low back pain appears to have been aggravated with the motor vehicle accidents in question. Although his x-rays do show degenerative changes, it appears that these were not a problem until the time of the motor accident. Thus, I believe that the ongoing pain is related to injuries sustained at the time of the motor vehicle accident.

- Dr. Jonathan Elkin, the Appellant's family physician, in his report dated April 12, 2000, comments that:

3. His persistent pain complaints are consistent with spinal stenosis. Based on my discussions with him and review of his chart, including letters from Dr. Arnot and Dr. MacKay, I am inclined to agree that the spinal stenosis pain was brought on at a faster rate by his automobile accident. [J.H.] denies having musculoskeletal symptoms prior to his motor vehicle accident of October 1996.

The Appellant concludes that since his doctors attribute his ongoing pain to the motor vehicle accidents, the cost of the pain control medication should continue to be covered by MPIC.

Counsel for MPIC submits that the medications for which the Appellant claims reimbursement are not required for a medical condition resulting from either accident. She contends that the Appellant's pain complaints are related to his degenerative disc disease, and not to any continuing effects from the accidents. In support of her position, counsel for MPIC relies on the opinion of Dr. Michael MacKay, Medical Consultant to MPIC Health Care Services Team. In Dr. MacKay's Inter-Departmental Memorandum, dated April 3, 2003, he comments that:

The information obtained from Dr. Sutton indicates that [J.H.'s] symptoms involving his back might be a byproduct of the severe degenerative changes involving the lumbar spine. As outlined in my previous reviews of [J.H.'s] file, it is my opinion that degenerative changes pre-dated the incidents in question and the medical evidence does not indicate the changes were enhanced by the incidents.

Dr. Sutton's report does not contain medical evidence indicating [J.H.'s] symptoms were a byproduct of a medical condition that has been shown to be causally related to the incident in question.

In Dr. MacKay's Inter-Departmental Memorandum, dated May 28, 2000, he comments as follows:

There is no documentation identifying a structural change occurring to [J.H.'s] spine as a result of the October 10, 1996 motor vehicle collision. It is not possible to accurately determine when the aggravation of [J.H.'s] pre-existing back symptoms would have subsided had he not been involved in a second motor vehicle collision. The information indicates that the second collision did not factor into the severity of [J.H.'s] low back symptoms to any great extent. In other words, the September 19, 1997 motor vehicle collision did not alter the natural course of the symptoms [J.H.] was experiencing at the time, in all probability. As to when the October 10, 1996 motor vehicle collision involvement in [J.H.'s] symptoms ceased and the symptoms arising from his pre-existing back condition continued on is unknown. The documentation contained in [J.H.'s] file does not provide information that could objectively determine, with any accuracy, as to when this transition might have taken place.

The medical evidence does not indicate that [J.H.'s] pre-existing spinal condition was structurally enhanced as a result of the October 10, 1996 motor vehicle collision. From this, one could conclude that any symptoms [J.H.] was experiencing prior to this collision were exacerbated. An exacerbation would normally resolve within a few months depending on the underlying condition that was affected by a particular event. In [J.H.'s] situation his pre-existing back condition was fairly significant and therefore the exacerbation might have taken longer to fully resolve. A rough estimation as to the timeframe for which the exacerbation would resolve would be one year in my opinion. If

an exacerbation had not resolved to a significant level in this timeframe then it is not unreasonable to conclude that the natural history of the condition was altered (i.e. enhanced).

Counsel for MPIC therefore concludes that, on the balance of probabilities, any aggravation of the Appellant's low back problems which resulted from the motor vehicle accidents has resolved, and his ongoing medical condition is related to pre-existing factors. As a result, the ongoing requirement for pain medications would not be related to either of the motor vehicle accidents.

Disposition:

The argument advanced on behalf of MPIC is that the Appellant sustained an aggravation of his pre-existing degenerative disc disease as a result of the motor vehicle accidents. Counsel for MPIC contends that any aggravation of the pre-existing condition by the motor vehicle accidents would, in the normal course of things, have resolved by October 2002. She contrasts the "aggravation of a pre-existing condition", with an "enhancement of a pre-existing condition", which would have resulted in a permanent worsening of that condition. She concludes that the ongoing degenerative process accounts for the Appellant's continuing complaints.

We note that in his Inter-Departmental Memorandum, dated January 26, 1998, Dr. MacKay commented that:

In the June 30, 1997 report provided by Dr. Arnot it was documented that [J.H.] was involved in a rearend collision where "*apparently his seat broke and he was thrown backwards quite violently.*" In the majority of rearend collisions very little hyperextension forces occur to the lower back. In an individual with degenerative spondylolisthesis, extension movements usually aggravate the symptoms associated with such a condition and if the forces were great enough, the end result could be a worsening of the condition (i.e. large slippage between the affected vertebrae). It was my opinion that the medical information indicated that the forces [J.H.'s] back was exposed to were of a significant level."

Dr. MacKay went on to conclude that *“It appeared that due to the magnitude of the trauma that [J.H.’s] back was subjected to, that [J.H.’s] spinal stenosis symptoms were brought on at a much faster rate”*.

After a careful review of all of the evidence, we conclude, on a balance of probabilities, that the injuries sustained by the Appellant, in the motor vehicle accidents of October 10, 1996 and September 19, 1997, are the reason for his continuing requirement for pain medication. We accept Dr. Sutton's opinion, since he is most familiar with the Appellant's condition, that the ongoing pain is related to the injuries sustained at the time of the motor vehicle accidents. We note that Dr. MacKay has not had the benefit of a personal examination of the Appellant, and his opinion in January 1998 contemplated that the accidents had caused the Appellant's condition to worsen. Accordingly, we find that the Appellant has established, on a balance of probabilities, that his present requirement for the pain medication relates to a medical reason resulting from the accidents.

Therefore, we find that MPIC improperly terminated reimbursement to [J.H.] of his medication expenses, and we conclude that he is entitled to be reimbursed for his medication expenses incurred in connection with the lower back pain resulting from the accidents.

Dated at Winnipeg this 20th day of May, 2003.

YVONNE TAVARES

PATRICK DOYLE

PAUL JOHNSTON