



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E.O.  
AICAC File No.: AC-04-111**

**PANEL:** Ms Laura Diamond, Chairperson  
Dr. Patrick Doyle  
Ms Barbara Miller

**APPEARANCES:** The Appellant, E.O., was represented by her husband, G.O.;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Mark O'Neill.

**HEARING DATE:** December 16, 2004 and April 25, 2005

**ISSUE(S):** Entitlement to further Personal Injury Protection Plan  
benefits and permanent impairment benefits for  
psychological impairment

**RELEVANT SECTIONS:** Sections 81(1), 127 and 136(1) of The Manitoba Public  
Insurance Corporation Act ('MPIC Act')

**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, E.O., sustained injuries in a motor vehicle accident on December 10, 2000. The Appellant, who was seventeen (17) weeks pregnant at the time, suffered pain in her abdomen and, the following evening, was taken to the hospital emergency room with complaints of vaginal bleeding, hip pain and back ache. She was diagnosed with a threatened abortion and discharged home.

However, on January 9, 2001, after continued bleeding, she was hospitalized for the next several months, with a diagnoses of placenta previa. The Appellant was put on bed rest in an effort to prolong the pregnancy, but at thirty-two (32) weeks gestation, on March [text deleted], 2001, a Caesarean section was performed because of the increasing amount of bleeding. As well, a hysterectomy was required because the bleeding could not be controlled.

The Appellant's child, [text deleted], born on March [text deleted], 2001, went into a coma and died on March [text deleted], 2001. It was determined that the coma was related to hyperammonemia.

Following these tragic events, the Appellant suffered from depression and was admitted to a psychiatric unit. She was diagnosed with postpartum depression with psychosis, and it was suggested that the Appellant suffered from Schizophrenia. She received grief counseling and psychiatric treatment.

The Appellant, who was unable to work following the accident and these events, was in receipt of Income Replacement Indemnity ('IRI') benefits until December 7, 2003 and medical and travel expenses until November 7, 2003.

### **Internal Review Decision**

The Appellant sought an Internal Review of MPIC's decision to terminate her IRI benefits on December 7, 2003 and her medical and travel expenses on November 7, 2003. She also sought review of MPIC's decision not to award her permanent impairment benefits for psychological impairment. On April 27, 2004, an Internal Review Officer for MPIC issued a review decision denying the Appellant's claims. The Internal Review Officer found that:

The medical evidence suggests that you would have lost the child and your uterus even without the motor vehicle accident because of the pre-existing congenital conditions which you and your child had. The evidence does not show the motor vehicle accident aggravated, accelerated or materially contributed in any way to the placenta previa.

Further, the psychological evidence does not show that on a balance of probabilities, your current diagnosis of schizophrenia is related to the accident. Dr. Calhoun said it is possible you would not have developed schizophrenia without the accident and subsequent loss of your fetus and uterus. She also said the current thinking is that schizophrenia's cause is twofold, genetic predisposition and a stressor. A stressor can be a trauma. In your case, Dr. Calhoun said the trauma may have been the accident or the loss of fetus or the loss of your uterus, or a combination of all three.

Dr. Rallo has summarized the extensive psychological evidence, and he concludes the evidence does not support a relation between your psychological condition and the accident. It goes without saying you would not be entitled to any funding from MPI for your psychological condition.

It appears that you have not been treated for any physical injuries from the accident since December 2000. As such, there are no further PIPP benefits you are entitled to. You do not qualify for a permanent impairment award for any psychological impairment because your psychological condition was not caused by the accident.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

### **Submissions**

It was submitted on behalf of the Appellant that the accident was the cause of the Appellant's difficulties. She had been healthy and hardworking prior to the accident. Following the accident, the bleeding started, as did the difficulties with her pregnancy, leading to the loss of her child and subsequent depression and psychiatric condition. He pointed to a report from the Appellant's obstetrician and gynecologist, Dr. Meera Sinah, dated February 9, 2005, where Dr. Sinha stated:

Bleeding from placenta previa usually occurs in the second trimester. Although some abortions may result from the abnormal location of the developing placenta, the fact that [E.O.'s] complaints of lower abdominal pain and tenderness and "tight uterus", episode of hematuria and vaginal bleeding started after the MVA and all within 24 hours of the accident makes it highly probable that the MVA initiated the bleeding from the abnormally located placenta. This early onset of bleeding thereby probably caused an

earlier need for hospitalization and contributed therefore in prolonging [E.O.'s] hospitalization.

Counsel for MPIC submitted that this appeal clearly involved issues of causation. Although the Appellant's bleeding may have begun at the time it did because of the accident, this would have occurred eventually in any event, as there was an abnormal implantation of the placenta as shown by features of "exaggerated placenta site". This was not caused by the accident and was a condition which would have ultimately led to the Appellant's difficulties with her pregnancy, even had the accident not occurred.

Further, he submitted that the Appellant's baby, [text deleted], was suffering from a developmental or genetic condition which caused his demise, and that the accident had nothing to do with the demise of the baby. Further, it was this demise of the child which led to the Appellant's depression and psychiatric condition, and not the accident. It was just coincidental that the nature of the accident may have brought on bleeding symptoms when they did, and led to an earlier hospitalization. However, the Appellant's placenta previa, premature delivery, hysterectomy, loss of her baby, depression and psychiatric condition, were not caused by the accident.

### **Discussion**

Pursuant to the MPIC Act, a victim is entitled to a lump sum indemnity for permanent impairment when they suffer a permanent physical or mental impairment **because of an accident:**

#### **Lump sum indemnity for permanent impairment**

**127** Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

A victim is also entitled to compensation for expenses relating to medical care if that medical treatment is required **because of the accident**:

**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:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Section 81(1) of the MPIC Act provides:

**Entitlement to I.R.I.**

**81(1)** A full-time earner is entitled to an income replacement indemnity if any of the following occurs **as a result of the accident**:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

The onus is on the Appellant to show that the benefits sought are required due to injuries caused by the accident.

The panel had reviewed the submissions of the parties and the documentary evidence on the file in this matter. We have reviewed medical reports by the Appellant's and her baby's caregivers, as well as evidence and testimony provided by Dr. Baydock, Medical Consultant to MPIC's Health Care Services.

In regard to the Appellant's premature delivery, Caesarean section, and hysterectomy, the panel has reviewed Dr. Baydock's evidence, as well as the medical reports, including the most recent report from Dr. Sinha dated February 9, 2005. Dr. Sinha stated:

The abnormal location of the placenta, ie., complete placenta previa with features of "exaggerated placental site" and infiltration of trophoblasts at the implantation site into the inner one third of the myometrium, antedated the MVA. . . . The abnormal implantation site of the placenta was present developmentally. The heavy bleeding in the second trimester and the need for a premature delivery by Caesarean section and subsequent hysterectomy was the unavoidable result of the abnormal placentation and not the result of the MVA.

In regard to the death of the Appellant's baby, the panel has reviewed both the report of his pediatrician, Dr. Bradley Pollock (Death Summary dated March 29, 2001) and of Dr. Sinha dated February 9, 2005.

Dr. Pollock described the baby's condition and provided the following diagnosis:

**FINAL DIAGNOSES:**

Hyperammonemia causing irreversible coma.

Hyperammonemia likely secondary to urea cycle defect bear in mind possibility of organic aciduria.

RDS.

Dr. Sinha stated:

The reference to [E.O.'s] depression was regarding the hyperammonia that [text deleted] was suffering from secondary to a metabolic defect in the urea cycle. Again, the baby's death was (sic) unavoidable result of a metabolic inherent disorder present in the baby. The MVA did not contribute towards the demise of the baby.

Accordingly, based upon the medical evidence, the Commission is of the view that the Appellant has failed, on the balance of probabilities, to establish that the death of her son was caused by the motor vehicle accident.

The Commission also finds that the Appellant has failed to establish, on the balance of probabilities, that the difficulties with her pregnancy, the premature delivery by Caesarean section and subsequent hysterectomy were caused by the motor vehicle accident, and as such, the Commission finds that she has not established entitlement to further benefits in this regard.

In regard to her psychiatric condition, the Appellant's psychiatrist, Dr. Calhoun, in a letter dated January 29, 2004 indicated:

In [E.O.'s] case the trauma may have been the motor vehicle accident or the subsequent loss of the fetus, or the loss of her uterus. Or it may be all three of these traumas contributed to bringing the schizophrenia on at that time in her life. It is impossible to say, however, that [E.O.] would not have developed schizophrenia at some other time in her life, if she had not had the car accident. A corollary to this is that, it is possible that she would not have developed schizophrenia if she had not had the car accident and subsequent losses.

Dr. Rallo, Psychological Consultant to MPIC's Health Care Services, stated, on October 7, 2003:

All of the opinions in the file regarding the possible causes of the claimant's depression and psychotic symptoms (Dr. Calhoun, Dr. Wiebe, Dr. Miles) have suggested that the symptoms are related to a post-partum depression and/or the death of the claimant's infant, neither of which are considered to be causally related to the motor vehicle accident in question (see Dr. Baydock's report dated January 30, 2003). The nature and severity of the motor vehicle accident were, in this writer's opinion, not sufficient to result in symptoms of post-traumatic stress disorder, depression, or psychosis. It appears, on the balance of probabilities, that the claimant's current psychiatric diagnosis of schizophrenia or Schizo Affective Disorder are more likely related to the claimant's complicated pregnancy and the death of her infant son, and not to the motor vehicle accident. Thus, a permanent impairment award for the psychiatric conditions is not applicable in this case.

Upon reviewing this evidence, the panel has concluded that the Appellant has failed to establish, on the balance of probabilities, that the depression and psychiatric conditions from which she suffered were causally related to the motor vehicle accident in question.

Therefore, she has not established entitlement to an award for psychological impairment.

Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer bearing date April 27, 2004.

Dated at Winnipeg this 9<sup>th</sup> day of May, 2005.

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**LAURA DIAMOND**

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**DR. PATRICK DOYLE**

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**BARBARA MILLER**