

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M. B.
AICAC File No.: AC-99-158**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Dr. Patrick Doyle
Ms Deborah Stewart

APPEARANCES: The Appellant, M. B., was represented by Mr. Bob Tyre of the Claimant Adviser Office;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: September 13, 2006

ISSUE(S): 1. Entitlement to permanent impairment benefits for concussion;
2. Entitlement to chiropractic treatment benefits beyond March 1, 2000.

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation Act (the 'Act') and Section 5(a) 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

On July 7, 1997 M.B. (hereinafter referred to as the 'Appellant') was a passenger in a motor vehicle that was struck by a vehicle running a red light. The vehicle was rendered a total loss as a result of the accident. The Appellant sustained the following injuries: Broken right collarbone, four cracked ribs, multiple bruises, sore neck and back, and headaches.

Entitlement to permanent impairment benefits for concussion

The Appellant, over a number of years, was medically treated by a variety of doctors, all of which was funded by MPIC.

In 2003 a case manager requested Dr. Garnet Fougere, Medical Consultant to MPIC's Health Care Services Team, to review the entire medical file of the Appellant to deal with a number of the Appellant's medical concerns, including whether or not there was a connection between the possibility of the Appellant sustaining a minor concussion related to the motor vehicle accident.

Dr. Fougere, in a Inter-departmental Memorandum to the case manager dated May 15, 2003, stated:

Anecdotal reference is made to the claimant suffering amnesia related to the motor vehicle collision (September 25, 2000 consultation report to Dr. Winogrodzka from Dr. Lesiuk). The possibility of a minor concussion related to the July 1997 episode could not be determined by this writer in the absence of medical documentation relating to the claimant's initial assessment (Ambulance Attendant's and Emergency Room Reports relating to the day of the motor vehicle collision) or reports regarding the claimant's stay at the St. Boniface Hospital as referred to in an August 6, 1999 correspondence to file. Documentation relating to the immediate post-motor vehicle collision time period would be helpful in establishing whether in fact a concussion occurred that would account for later reference to amnesia.

As a result of Dr. Fougere's comments MPIC conducted a search of the appropriate documentation and wrote to Dr. Fougere as follows:

Reason for Review:

This file had been reviewed in May of 2003. At that time it was noted that the claimant may be entitled to an impairment benefit for a concussion, however the file was missing the information from the St Boniface Hospital. The Emergency Room report has since been received.

Please review the medical documentation of file including the emergency room documentation and confirm whether or not the claimant is entitled to an impairment benefit for loss of consciousness or concussion.

This request to Dr. Fougere is undated, but a note on the request indicates it was received by the Health Care Services Dept. on December 17, 2003. Dr. Fougere, in her response dated December 31, 2003 stated:

The medical documents do not support that a concussion of any degree was sustained.

Case Manager's Decision

The case manager wrote to the Appellant on March 5, 2004 and stated:

Concussion:

Your entire medical package was reviewed by our Health Care Services Team. There is no medical evidence on file that supports that a concussion was sustained. Therefore, there is no permanent impairment entitlement for concussion.

As a result the Appellant made an application for review of the case manager's decision dated March 23, 2004.

Internal Review Officer's Decision

The Internal Review hearing occurred on May 12, 2004. On May 13, 2004 the Internal Review Officer wrote to the Appellant and stated:

Arrangements were also made to determine if you are entitled to a permanent impairment as a result of a concussion. In that regard the Case Manager submitted to the MPI Medical Consultant your file together with the Emergency Room information obtained from the St. Boniface Hospital. According to Dr. Fougere's memo of December 31, 2003:

“The medical documents do not support that a concussion of any degree was sustained.”

Previously I provided you with Internal Review Decisions relating to permanent impairment issues on July 23, 2001 (00-69) and August 26, 2003 (03-494). In her Inter-Departmental Memorandum of May 15, 2003, Dr. Fougere suggested that steps should be taken to determine your entitlement vis a vis the fractured clavicle and the possible concussion. As it would appear that those investigations have been completed, and assessed correctly in accordance with the medical information and the MPI Schedule of Permanent Impairments, I am upholding Ms. Hardy's decision of March 5, 2004 and dismissing your Application for Review.

Appeal

The Appellant filed a Notice of Appeal dated May 28, 2004.

The relevant provision of the Act in respect of this appeal is Section 127 that states:

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.

The Appellant testified at the hearing and described a number of symptoms relating to dizziness, vertigo and headaches which she asserted were related to the motor vehicle accident that occurred on July 7, 1997. At the conclusion of the Appellant's testimony the Commission heard submissions from both the Claimant Adviser and MPIC's legal counsel in respect of this appeal. MPIC did not call any witnesses in support of their position.

Discussion

The Claimant Adviser submitted the Appellant's doctor, Dr. Winogrodzka, who has treated the Appellant for a number of years, has indicated that in his view the Appellant's complaints were connected to the motor vehicle accident. The Claimant Adviser submitted that having regard to the Appellant's testimony and the medical opinion of Dr. Winogrodzka, the Appellant has

established, on a balance of probabilities, that the Appellant's concussion was caused by the motor vehicle accident of July 7, 1997.

In reply, MPIC's legal counsel submitted that:

1. Dr. Fougere, who reviewed the entire medical file of the Appellant, sought additional information and upon receipt of that information concluded that there was no medical documentation to support that a concussion of any degree was sustained by the Appellant in the motor vehicle accident.
2. The onus is upon the Appellant to establish, on a balance of probabilities, that the Appellant suffered a permanent physical or mental impairment because of the motor vehicle accident pursuant to Section 127 of the Act and the Appellant did not meet this onus.
3. The Commission should accept the medical opinion of Dr. Fougere who concluded that there was no medical documentation to support that a concussion of any degree was sustained.

Decision

The Commission, having carefully considered the testimony of the Appellant, the evidence filed in these proceedings, and the submissions of both parties, accepts the submission of MPIC's legal counsel. The Commission is persuaded by the medical opinion of Dr. Fougere that there is no medical documentation to support that the Appellant suffered a concussion of any degree in the motor vehicle accident. In these circumstances the Commission therefore rejects the testimony of the Appellant and the medical opinion of Dr. Winogrodzka that the Appellant suffered a significant concussion in the motor vehicle accident on July 7, 1997. For these reasons, and for the reasons set out in the Internal Review Officer's decision dated May 13, 2004

(which decision is attached hereto and marked as Schedule A and forms part of this decision), the Commission finds that the Appellant is not entitled to a lump sum indemnity in respect of a permanent impairment relating to concussion pursuant to Section 127 of the Act. The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated May 13, 2004.

Entitlement to Chiropractic Treatment Benefits beyond March 1, 2000

As a result of the injuries the Appellant sustained in the motor vehicle accident, the Appellant received chiropractic treatments funded by MPIC. On March 14, 2000 MPIC's case manager wrote to the Appellant advising her that MPIC's chiropractic consultant had reviewed the documentation on file and had concluded that the Appellant had received and reached maximum therapeutic benefit from the chiropractic treatments and, as a result, no further chiropractic care beyond March 17, 2000 would be provided.

The Appellant applied for a review of this decision and the Internal Review Officer issued his report on July 23, 2001 confirming the decision of the case manager and rejecting the Appellant's Application for Review.

Appeal

Upon receipt of the Internal Review Officer's report the Appellant filed a Notice of Appeal to this Commission and this appeal hearing took place on September 13, 2006.

The relevant provision in respect of this appeal is Section 5(a) of Manitoba Regulation MR 40/94:

Medical or paramedical care

5 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 physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

The Appellant testified at the hearing and asserted that the chiropractic treatments were important to her because they maintained her physical condition and permitted her to carry out her daily activities. In response to questions from the Commission panel, the Appellant acknowledged that the chiropractic treatments did not improve her health, but for short periods of time made her feel better. MPIC did not call any witnesses in support of their position.

Discussion

The Claimant Adviser argued that, having regard to the testimony of the Appellant, the Commission should allow the Appellant's appeal. In response, MPIC's legal counsel submitted that the chiropractic treatments were not medically required since they did not improve the Appellant's health and, as a result, submitted that, pursuant to Section 5(a) of Manitoba Regulation M.R. 40/94, that the Appellant's appeal should be dismissed.

Decision

The Commission, having carefully considered testimony of the Appellant, the evidence filed in the proceedings, and the submissions of both parties, accepts the submission of MPIC's legal counsel that the chiropractic treatments were not medically required pursuant to Section 5(a) of Manitoba Regulation M.R. 40/94. The Commission accepts the Appellant's testimony that the

chiropractic treatments did not improve her health but maintained her physical condition and permitted her to carry out her daily activity. The Commission therefore finds, upon a review of all of the evidence, that the Appellant has not established, on a balance of probabilities, that the chiropractic treatments were medically required pursuant to Section 5(a) of Manitoba Regulation 40/94. For these reasons, and for the reasons set out in the Internal Review Officer's decision dated July 23, 2001 (which decision is attached hereto and marked as Schedule B and forms part of this decision), the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated July 23, 2001.

Dated at Winnipeg this 11th day of October, 2006.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

DEBORAH STEWART