

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by T. O.
AICAC File No.: AC-05-224

PANEL: Ms Laura Diamond, Chairperson
Ms Carole Wylie
Ms Mary Lynn Brooks

APPEARANCES: The Appellant, T. O., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Kathy Kalinowsky.

HEARING DATE: July 5, 2007

ISSUE(S): Whether the Appellant is entitled to a lump sum student
indemnity and whether the Appellant is entitled to Income
Replacement Indemnity (IRI).

RELEVANT SECTIONS: Section 88(1) of *The Manitoba Public Insurance Corporation
Act* ('MPIC Act') and Section 8 of Manitoba Regulation
37/94

**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 October 3, 2004 the Appellant was the driver of a vehicle that swerved to avoid another vehicle and hit a cattle fence. The Appellant reported that he hit the left side of his head on the clip of his seat belt.

At the time of the motor vehicle accident, the Appellant was a student at the [text deleted]. In June of 2005, the Appellant sought a lump sum student indemnity from MPIC. He advised

MPIC that as a result of the accident, he was distressed and unable to concentrate on his course work, causing him to voluntarily withdraw from classes in November of 2004.

The Appellant also sought Income Replacement Indemnity (IRI) benefits, claiming he was unable to continue employment as a result of motor vehicle accident related injuries. He advised MPIC that although he had a contract to produce videos from June of 2004, he had not been able to produce videos since the motor vehicle accident and attributed this to motor vehicle accident related injuries.

The Appellant's case manager found that there was no medical information on file indicating that there was an exacerbation of any psychological injury or motor vehicle related reason why he would have had to withdraw from his University courses. Thus he was not entitled to any lump sum indemnity for leaving school.

As well, the case manager found that there was no medical information on file indicating that he was unable to complete his employment duties due to the motor vehicle accident.

The Appellant sought an internal review of his case manager's decision. On December 14, 2005, an Internal Review Officer for MPIC found that there was no objective medical information on his file which established that he had sustained a physical or psychological injury or exacerbation of pre-existing illness. As such, his withdrawal from [text deleted] classes could not be established to be a result of the motor vehicle accident.

The Internal Review Officer also found that there was no medical evidence indicating that the Appellant had suffered an injury or an exacerbation of a pre-accident condition as a result of the

motor vehicle accident, thereby entitling him to IRI benefits. She also found that the Appellant had already completed the two documentary videos which were the subject of the distribution agreement and that he was not entitled to any IRI benefits in this regard in any event.

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

Evidence and Submissions for the Appellant

The Commission heard evidence from the Appellant and from his brother, who was a passenger in the motor vehicle at the time of accident. The Appellant also submitted medical reports from his general practitioner Dr. Heese and his psychiatrist Dr. K. Gallagher.

The Appellant described his history of schizophrenia and his history of admittance into St. Boniface Hospital in the past.

His brother described the circumstances of the motor vehicle accident and indicated that he himself had been hit on the head and had temporarily lost consciousness.

The Appellant reviewed the medical reports on file. He admitted that he did not go to a hospital or doctor after the accident. He saw his psychiatrist, Dr. Gallagher, on January 24, 2005.

Dr. Gallagher, in her report dated August 17, 2005 stated:

It is difficult for me to determine if the MVA was responsible for the client's inability to continue with courses at the University of Winnipeg as I had not seen him at the time of the accident and when I had seen him in January 2005 he denied any significant psychiatric symptoms. He does have an underlying diagnosis of Schizophrenia and he may be more susceptible to stress because of this illness. I cannot in all honesty

determine whether the accident was responsible for [T.O.'s] inability to continue with courses at the [text deleted] or to hold employment.

The Appellant testified that in January of 2005, when he saw Dr. Gallagher, he was dealing with a very hectic schedule and was very reluctant to be hospitalized. He had feared that if he described the difficulties he was having to his psychiatrist, he might be hospitalized and that is the reason he denied any significant psychiatric symptoms at that time.

The Appellant submitted that it was the opinion of his general practitioner, Dr. Heese that the motor vehicle accident caused him to drop his courses. Dr. Heese provided a report dated December 1, 2005.

He stated:

In response to your letter of July 11/05, it is somewhat difficult to respond to your questions. [T.O.] was seen here September 22/04 by Dr. W. C. Tsein regard to an ear infection. The next visit was December 14/04 seen by myself, for a Class 1 Drivers Exam. He was not seen here in the interval between September 22/04 and December 14/04 during which time on October 13/04 he had the MVA.

He attended the clinic here December 14/04, January 14/05, February 18/05, May 3/05 and June 1/05. On July 13/05 he was in to talk about the MVA of October 3/04.

...

Did the MVA cause [T.O.] to drop courses at the [text deleted]? Yes.

[T.O.] states he had much stress, was depressed. He couldn't or didn't get his car repaired for a long time. The extra stress of the MVA in a patient with schizophrenia was too much for him to cope with.

The Appellant submitted that the motor vehicle accident was the cause of his inability to complete his [text deleted] courses and to finish producing and promoting his videos.

Evidence and Submission from MPIC

Counsel for MPIC referred to a brief report prepared by Dr. Jones, a consultant with MPIC's

Health Care Services Team. Dr. Jones states:

Based on my review of Dr. Gallagher's Aug 17/05 report and Dr. Heese's July 11/05 report there is no indication that the claimant suffered an exacerbation of his schizophrenia or any other psychological injury that would be causally related to the MVA. Therefore there is no MVA related reason why he would need to quit his University courses.

Counsel for MPIC noted that the motor vehicle accident occurred in October of 2004, yet the Appellant's first mention of difficulties from the accident was on June 15, 2005 when he told his case manager that he had to drop courses and wanted to advance a claim for compensation. This was the first time in the eight months following the motor vehicle accident that the Appellant reported such difficulties to MPIC.

The Appellant did not go see a doctor or go to the hospital after the motor vehicle accident. Accordingly, she submitted, there is absolutely no medical proof that he suffered any injuries, physical or psychological, as a result of the motor vehicle accident.

Counsel for MPIC reviewed the reports provided by Dr. Heese. She noted that although the accident occurred in October, he made no complaints to Dr. Heese regarding the motor vehicle accident when he saw him regarding a driver's exam test in December 2004. When asked, in a letter of July 11, 2005 "*was the client advised to discontinue working or unable to hold employment as a result of the motor vehicle accident?*", Dr. Heese responded, "*No*". When asked: "*Did the motor vehicle accident cause the client to drop courses at the [text deleted]?*" Dr. Heese responded, "*patient states that after the mva October/04 he had difficulty doing the course work and had to withdraw from studies as of November 8/04*".

Counsel for MPIC noted that this report contained no objective evidence: it was just a

restatement by Dr. Heese of the Appellant's subjective account.

In reviewing Dr. Gallagher's report, counsel for MPIC emphasized that when Dr. Gallagher saw the Appellant in January of 2005, the Appellant had "*stated that he had been doing well.*" Counsel also noted that eight weeks prior, he had reduced his doses of medication, and she submitted that this could have contributed to any difficulty he had regarding his course work.

Counsel noted that Dr. Gallagher had stated she could not determine whether the motor vehicle accident was responsible for the client's inability to continue with his courses, as she had not seen him at the time of the accident and when she had seen him in January of 2005 he denied any psychological symptoms.

Counsel also reviewed Dr. Heese's report of December 1, 2005. She noted that again, when Dr. Heese responds to the question of whether the motor vehicle accident caused the Appellant to drop courses at the [text deleted], he is basing his answer of "yes" only on subjective reports of the patient:

[T.O.] states he had much stress, he was depressed

Counsel also noted that the Appellant's [text deleted] transcripts from the period of 2002 to 2005 showed that he had a history of dropping courses, having completed only four (4) classes in the over twenty (20) to twenty-five (25) classes he had registered for.

She submitted that the Appellant's case has no medical evidence to support it. The situation might be different had he attended at Dr. Heese or another medical practitioner and said that his injuries were precluding him from being able to study and/or work. However, the complete lack

of evidence in this case for a claim advanced nine (9) months after the date of the motor vehicle accident does not satisfy a statutory test for entitlement to a lump sum indemnity or IRI benefits as a result of injuries resulting from the motor vehicle accident.

Discussion

Section 88 of the MPIC Act provides:

Student entitled to fixed indemnity

88(1) A student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies, and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.

Manitoba Regulation 37/94 provides:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

The onus is on the Appellant to show, on a balance of probabilities, that as a result of the motor vehicle accident, he was unable to complete his courses at University or to perform the essential duties of his employment that were performed at the time of the accident.

The panel has reviewed the evidence on file as well as the testimony of the Appellant and his brother. We find that the Appellant has failed to establish, on the balance of probabilities, that he is entitled to these benefits as result of the motor vehicle accident. Although the Appellant provided his subjective evidence that the effects of the motor vehicle accident caused him to be unable to continue with his studies and employment, there is a lack of objective evidence before us to establish his claim.

Although Dr. Heese provided a positive response when asked whether the motor vehicle accident caused the Appellant to drop his courses, this was only supported by the doctor relating the Appellant's subjective account of his difficulties.

The Commission requires more objective evidence to satisfy the onus upon the Appellant of showing that the motor vehicle accident was the cause of his difficulties. Due to the length of time which passed between the accident and the Appellant's reporting of his symptoms, and both Dr. Heese's and Dr. Gallagher's difficulty in providing any definitive or objective assessment of whether the accident was responsible for the Appellant's inability to continue courses or hold employment, the Appellant has failed to meet the onus upon him of providing objective evidence and showing, on a balance of probabilities, that the motor vehicle accident caused him to be unable to continue with his [text deleted] courses or to hold employment.

Accordingly, the decision of the Internal Review Officer is hereby confirmed and the Appellant's appeal dismissed.

Dated at Winnipeg this 15th day of August, 2007.

LAURA DIAMOND

CAROLE WYLIE

MARY LYNN BROOKS