

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by R. F.
AICAC File No.: AC-05-51

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Mr. Robert Malazdrewich

APPEARANCES: The Appellant, R. F., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Dianne Pemkowski and Ms Sarah Hill.

HEARING DATE: July 11, 2007

ISSUE(S):

1. Entitlement to Income Replacement Indemnity benefits beyond November 15, 2004;
2. Entitlement to coverage for in-clinic care, a walker or a wheelchair or pharmacological treatment;
3. Entitlement to coverage for a weight loss program;
4. Entitlement to additional permanent impairment benefits.

RELEVANT SECTIONS: Sections 91(1), 127, 136(1) and 138 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, R. F., has been involved in three (3) separate motor vehicle accidents - on January 5, 1999, September 8, 2000 and July 23, 2002. Due to the bodily injuries which the Appellant sustained in these accidents, she became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act.

The Appellant has appealed to this Commission from the Internal Review decision dated February 2, 2005. That Internal Review decision had dismissed the Appellant's Application for Review and confirmed the case manager's decisions of March 22, 2004 and October 25, 2004. The Internal Review Officer determined that the Appellant's entitlement to receive Income Replacement Indemnity ('IRI') benefits ended as of November 15, 2004 and that the Appellant was not entitled to coverage for in-clinic care, a walker or a wheelchair, pharmacological treatment, coverage for "Herbal Magic" program, or additional permanent impairment benefits.

The Appellant submits that she sustained various injuries and medical complaints as a result of the motor vehicle accidents. She relates the following conditions to her motor vehicle accidents:

Accident of January 5, 1999 -

- ◆ Temporomandibular joint complaints;
- ◆ Headaches and nausea;
- ◆ Whiplash injury, including upper back pain, neck pain and stiffness;
- ◆ Numbness and tingling to her left arm;
- ◆ Myofascial pain.

Accident of September 8, 2000 -

- ◆ Low back injury;
- ◆ Vaginal bleeding;
- ◆ Foot problems;
- ◆ Left knee injury;
- ◆ Carpal Tunnel Syndrome;
- ◆ Mobility issues.

Accident of July 23, 2002 -

- ◆ Ventral hernia;
- ◆ Left knee injury;
- ◆ Mobility issues;
- ◆ Arm spasms;
- ◆ Lower back injury;
- ◆ Headaches;
- ◆ Occipital neuralgia.

As a result of the foregoing injuries and medical conditions, the Appellant submits that she continues to be entitled to PIPP benefits, specifically as follows:

- ◆ **Income Replacement Indemnity benefits** - the Appellant submits that the injuries she sustained in the motor vehicle accidents continue to disable her from working and that she has not been able to resume employment since the motor vehicle accident of July 23, 2002.
- ◆ **In-clinic care** - the Appellant was seeking a referral to the Pain Clinic at the Health Sciences Centre, Winnipeg, Manitoba. However, her hernia and high blood pressure prevent her from being able to undertake those programs at this point in time.
- ◆ **Walker and/or wheelchair** - the Appellant submits that she is entitled to reimbursement for the walker which she purchased to assist her mobility. She also seeks consideration for the purchase of a motorized wheelchair to replace her current manual wheelchair. She relies on a prescription dated November 30, 2004 from Dr. Kayler, indicating that she requires a walker for “chronic back and knee disability”.
- ◆ **Pharmacological treatment** - the Appellant is seeking reimbursement for various medications including Tylenol 3’s, Diclofenac and various pain killers. She maintains that she only started taking these medications after the first motor vehicle accident and that she continues to require the medications in order to manage her symptoms.
- ◆ **Weight loss program** - the Appellant claims that as a result of the inactivity which she encountered after the accidents, she has gained a significant amount of weight. This additional weight has contributed to various medical conditions and prevented her from undergoing a hernia operation under general anesthesia. She submits that

she is entitled to coverage for a weight loss program, which would benefit many of her medical concerns.

◆ **Permanent Impairment Benefits** - the Appellant seeks Permanent Impairment benefits for the following conditions:

- ◆ post-traumatic Stress Disorder
- ◆ hives and rashes
- ◆ left knee injury
- ◆ right heel injury (including Achilles Tendon)
- ◆ back injury
- ◆ arthritis in her feet
- ◆ Carpal Tunnel Syndrome
- ◆ Scarring from the ventral hernia

Decision:

Upon hearing the testimony of the Appellant, after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that:

1. her ongoing medical problems which prevent her from working are related to any of her three motor vehicle accidents; and
2. her ongoing medical problems which form the basis of her claim for in-clinic care, a walker and/or a wheelchair, pharmacological treatment, a weight-loss program and additional permanent impairment benefits are related to any of her three motor vehicle accidents.

Particularly, there was a lack of corroborating medical evidence to establish, on a balance of probabilities, that the Appellant's various injuries and medical complaints which prevent her from working or which form the basis for her claim for in-clinic care, a walker and/or a

wheelchair, pharmacological treatment, a weight-loss program and additional permanent impairment benefits were caused by any of her three motor vehicle accidents. The Commission also accepts the conclusions of the Internal Review Officer set out in his decision of February 2, 2005, where he finds that:

The conditions that can be ascribed, with any confidence, to your motor vehicle accidents are: some degree of TMJ dysfunction, perhaps some degree of difficulty with the left patella, and diffuse soft tissue complaints. I agree with Dr. MacKay's assessment that there is nothing there that would prevent you from doing a sedentary job, and there is certainly nothing there that creates an entitlement to IRI benefits. I am also adopting Dr. MacKay's opinions which form the basis for the denial of coverage to you for in-clinic care, a walker, or a wheelchair, and pharmacological treatment.

Therefore the Commission finds that:

1. The Appellant has not established, on a balance of probabilities, that the medical conditions which prevented her from working after November 15, 2004, are related to any of her motor vehicle accidents.
2. The Appellant has not established, on a balance of probabilities, that her requirement for in-clinic care is related to any of her motor vehicle accidents.
3. The Appellant has not established, on a balance of probabilities, that her requirement for a walker or a wheelchair is related to any of her motor vehicle accidents.
4. The Appellant has not established, on a balance of probabilities, that her ongoing requirement for pharmacological treatment is related to any of her motor vehicle accidents.
5. The Appellant has not established, on a balance of probabilities, that the requirement for a weight loss program relates to any of the Appellant's motor vehicle accidents.
6. The Appellant has not established, on a balance of probabilities, that she is entitled to any additional permanent impairment benefits, since she failed to present any medical

evidence at the appeal hearing confirming the diagnosis of the medical conditions for which she claims additional permanent impairment benefits. Additionally, she has not established that these permanent impairments are related to any of her motor vehicle accidents.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated February 2, 2005 is therefore confirmed.

Dated at Winnipeg this 23rd day of August, 2007.

YVONNE TAVARES

PAUL JOHNSTON

ROBERT MALAZDREWICH