

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.Q.K.E.
AICAC File No.: AC-05-187**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms Deborah Stewart

APPEARANCES: The Appellant, R.Q.K.E., was represented by Ms Marcelle Marion of the Claimant Adviser Office;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: June 4, 2008

ISSUE(S): Entitlement to Reimbursement of Dental Treatment Expenses

RELEVANT SECTIONS: Section 136(1) of *The Manitoba Public Insurance Corporation Act* ('MPIC 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

The Appellant, R.Q.K.E., was involved in a motor vehicle accident on December 17, 2005. Due to the bodily injuries which the Appellant sustained in that accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated September 19, 2006 with regards to reimbursement of dental expenses relating to tooth #11. The issue which requires determination

in this appeal is whether there is a causal connection between the Appellant's dental problems with tooth #11 and the motor vehicle accident of December 17, 2005.

The facts giving rise to this appeal may be summarized as follows:

- On December 17, 2005 the Appellant was proceeding East on [Text deleted]. While turning left into a driveway, his vehicle was struck on the passenger side by an oncoming vehicle.
- As a result of the accident, the Appellant sustained a soft tissue injury to his neck, back and shoulders, along with a laceration to his scalp. The Appellant also struck his head on the front windshield of his car.
- After the motor vehicle accident, the Appellant had some difficult sleeping and he attended upon his family physician, Dr. Duerksen. In a report dated April 18, 2006, Dr. Duerksen indicated that following the motor vehicle accident, the Appellant had some ongoing headaches and neck discomfort. His blood pressure was elevated and his medications were increased. He was also prescribed Lorazepam for sleep disturbance.
- The Appellant testified at the hearing that approximately one (1) week after the motor vehicle accident his tooth became painful. He attended upon his dentist, Dr. Toy on January 5, 2006 in relation to his dental problems.
- Dr. Toy referred the Appellant to a periodontist, Dr. Atcheson for re-evaluation.
- Dr. Atcheson referred the Appellant to Dr. Micflikier, an endodontist, for a consultation on March 7, 2006. Dr. Micflikier performed a periodontal flap procedure for investigation. As a result, tooth #11 was extracted due to root fractures and extensive bone loss on April 10, 2006.

- The Appellant testified at the hearing that in August 2005 he had undergone root canal therapy on tooth #11 performed by Dr. Toy. He had followed up with Dr. Toy in September 2005 due to some ongoing problems with tooth #11. The Appellant further testified that, after his last visit in September 2005 with his dentist, he had no pain with tooth #11 until the problems which presented themselves after the motor vehicle accident in December 2005.
- The Appellant's file was reviewed by Dr. Randy Mazurat, Dental Consultant to MPIC's Health Care Services Team. In his Memorandum dated April 24, 2006, Dr. Mazurat noted the following:

I don't see this being MVA related – in fact it is noted that the problem was due to dental tx performed prior to MVA – not anything to do with the MVA.
- The case manager issued a decision letter on May 1, 2006 reflecting Dr. Mazurat's opinion and denying the Appellant's request for reimbursement of the dental treatment.
- The Appellant sought an internal review of that decision. In a decision dated September 19, 2006, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of May 1, 2006. The Internal Review Officer determined that the totality of dental information on the Appellant's file did not establish an entitlement to benefits relating to tooth #11. She found that a causal relationship had not been conclusively established.
- As previously noted, the Appellant is appealing the Internal Review decision dated September 19, 2006 to this Commission, with regards to reimbursement of dental expenses relating to tooth #11.

Submissions of the Appellant

The Claimant Adviser, on behalf of the Appellant, submits that the motor vehicle accident either caused, aggravated or exacerbated the Appellant's dental problems so as to create the necessity for dental treatment to tooth #11. The Claimant Adviser maintains that it is medically probable that the motor vehicle accident was the cause of the root fractures, since there were no pain complaints immediately before the motor vehicle accident. She argues that the consistency of the Appellant's complaints post-accident relate the dental problems with tooth #11 to the motor vehicle accident of December 17, 2005. She insists that there is a strong temporal relationship between the dental problems which arose with tooth #11 and the motor vehicle accident of December 17, 2005. Accordingly, the Claimant Adviser submits that the Appellant is entitled to reimbursement of his dental expenses in connection with tooth #11 and the Internal Review decision dated September 19, 2006 should be rescinded.

Submission of MPIC

Counsel for MPIC submits that the Appellant has not established, on a balance of probabilities, that there is a causal relationship between the motor vehicle accident of December 17, 2005 and his subsequent problems with tooth #11. She argues that it is more likely that the problems which the Appellant experienced after December 17, 2005 were a continuation of his pre-existing problems with tooth #11, rather than as a result of the motor vehicle accident. She maintains that the Appellant had a long history of problems with tooth #11 and that in fact, at the time of the motor vehicle accident, tooth #11 was still healing from the root canal which the Appellant had performed in August of 2005. She also notes that Dr. Mazurat had the opportunity to review all of the relevant reports on the Appellant's file and therefore was in the best position to opine as to whether there was a causal relationship between the motor vehicle accident and the Appellant's subsequent dental problems. Based upon the totality of the dental information, counsel for MPIC argues that there is no causal relationship between the Appellant's dental

problems with tooth #11 and the motor vehicle accident of December 17, 2005. As a result, she submits that the Appellant's appeal should be dismissed and the Internal Review decision dated September 19, 2006 confirmed.

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the dental problems which the Appellant experienced with tooth #11 following the motor vehicle accident of December 17, 2005 were, on a balance of probabilities, related to the accident of December 17, 2005. The Commission finds that there is a strong temporal relationship between the motor vehicle accident and the Appellant's subsequent pain complaints. The fact that the Appellant's complaints of pain with his tooth commenced within a week of the motor vehicle accident of December 17, 2005 suggests that the motor vehicle accident was either the cause of the dental problems, or a major contributing factor to the dental problems. Accordingly, the Appellant is entitled to reimbursement of his dental expenses in relation to the dental treatment he underwent for tooth #11 following the motor vehicle accident of December 17, 2005.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated September 19, 2006 is therefore rescinded.

Dated at Winnipeg this 21st day of July, 2008.

YVONNE TAVARES

PAUL JOHNSTON

DEBORAH STEWART