

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.A.C.
AICAC File No.: AC-07-04**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sheldon Claman
Ms Linda Newton

APPEARANCES: The Appellant, M.A.C., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Pardip Nunrha.

HEARING DATE: November 6, 2008

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits

RELEVANT SECTIONS: Section 71(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, M.A.C., was involved in a motor vehicle accident on December 30, 2005, when her vehicle was rear-ended. Following the accident, the Appellant was transported by ambulance to the [Text deleted] and admitted to hospital for more thorough investigation. Her complaints consisted of neck, upper and lower back pain, as well as numbness of her left arm and left leg. Her left arm was weaker than her right arm and she had no movement of her left leg. While in hospital she was assessed by Dr. de Muelenaere, orthopedic surgeon, and Dr. Tang-Wai, neurologist. An MRI done during her hospital stay showed that there was a very slight disc protrusion at L5-S1. She underwent physiotherapy and she showed great improvement with that

modality of care. She also received some local steroids in her lower paraspinal muscles with a good result. The Appellant was discharged from the hospital on January 11, 2006 when she was able to ambulate with the use of mobility aids.

Due to the bodily injuries which the Appellant sustained in the accident of December 30, 2005, she became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. In a letter dated January 19, 2006, MPIC's case manager advised the Appellant as follows:

As we discussed during our meeting of January 18, 2006, this letter will confirm that we have determined you are entitled to Personal Care Assistance (PCA) Benefits.

Your entitlement to PCA benefits is based upon a standard assessment tool that evaluates your personal care needs and the level of care that you require on a daily basis. This assessment was performed with you by Stephanie Jordan of Key Steps on January 13, 2006.

This assessment indicates you require assistance with the following activities:

Full Assistance: Heavy Housecleaning; Yard Work and Community Outings;

Partial Assistance: Meal Preparation – Dinner; Light House Keeping; Laundry; Dressing/Undressing; and Transfers – Vehicle

These requirements give you a score of 20.5, which equals a monthly maximum entitlement of \$869.00. As we agreed this would amount to approx 2 hours of care per day (14 hours per week).

The Appellant was readmitted to the [Text deleted] on February 3, 2006 with weakness and pain in both legs, which progressed to the point of complete paralysis from the groin area to the toes. She advised that on February 1, 2006 she had bent over to lift her daughter from her crib and suddenly she felt severe pain within her lower back. Immediately she experienced dysesthesia characterized by pins and needles within her left leg. She continued performing her daily activities trying not to pay attention to the symptoms. However, twenty-four (24) hours later she

woke up and she was paraplegic (she was not able to move at all). After two (2) days, she lost the feeling in both legs and was readmitted to the hospital. On this admission she was treated by Dr. Engelbrecht, M.D. and assessed by Dr. Tamayo, neurologist and Dr. Stambrook, clinical psychologist. Her MRI results were forwarded to Dr. Fewer, orthopedic surgeon, for review. Dr. Fewer found that the MRI findings were essentially normal and there was nothing to suggest spinal cord impingement or nerve root irritation.

In a report dated March 3, 2006, Dr. Engelbrecht advised MPIC's case manager as follows regarding the Appellant's condition:

This is in response to your letter dated February 8th, 2006, regarding the above patient. As you know, [M.A.C.] was involved in a motor vehicle accident in December 2005. The vehicle she was driving at the time was rear-ended and she suffered a lower back injury. This injury improved after steroid infiltration of the lower back. Unfortunately, [M.A.C.] reinjured her lower back on February 1st, 2006, at home when she was bending over the crib and suddenly felt and (sic) excruciating pain in her lower back. She has a thirteen month old child. On February 2nd, 2006, the patient fell at the school in view of sudden leg weakness. Her legs gave way and she had absolutely no control over them. Since then, [M.A.C.] has been troubled with weakness, numbness, and pain in both lower legs.

The MRI of the lumbar spine performed January 4th, 2006, revealed a small postero-central disk protrusion at the L5-S1 level and mild disk bulging at the L4-L5 level.

[M.A.C.] is currently receiving MS-Contin (Morphine) 40 mg bid as well as active physiotherapy. I expect her condition to be ongoing for at least another 1-2 months during which time she will require physiotherapy and rehabilitation. The patient is presently in [Text deleted] on [Text deleted] and as a team the general feeling is that there are some psychological issues involved which may delay her recovery. A consult report from Dr. Stambrook is pending. We suspect over-exaggeration of her symptoms, specifically the weakness in her legs. At this stage, the pain is localized in her lower back and radiates to the lower thoracic spine.

I discussed the case with Dr. Fewer, neurosurgeon in Winnipeg, on February 28th, 2006, and he stated that the MRI findings are normal and there is nothing to suggest spinal cord impingement or nerve root irritation.

The Appellant was discharged from hospital on March 22, 2006, when she was able to ambulate with the use of mobility aids.

In a report dated May 17, 2006, Dr. Gauthier of MPIC's Health Care Services Team, provided his opinion that:

A medically probable diagnosis is not established. Despite numerous advanced investigations a patho-anatomic cause for the claimant's symptoms has not been established.

Without a medically probable diagnosis (effect) a probable cause and effect relationship is not established.

In a letter dated May 18, 2006, MPIC's case manager advised the Appellant as follows:

I arranged to have the medical information received from your care providers reviewed by our Health Care Service Department. Following his review, Dr. S. Gauthier provided the following comments:

"A medically probable diagnosis is not established. Despite numerous advanced investigations a patho-anatomic cause for the claimant's symptoms has not been established. Without a medically probable diagnosis (effect) a probable cause and effect relationship is not established."

As a relationship cannot be established between the motor vehicle accident and your complaints/symptoms we are unable to extend PIPP benefits.

The Appellant sought an internal review of that decision. In a decision dated October 23, 2006, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that:

Taking into consideration all of the information on your file, I am confirming your case manager's decision that you are not entitled to Personal Injury Protection Plan benefits because your current symptoms cannot be related to your motor vehicle accident. You had been discharged from the hospital January 11, 2006 after having received treatment from the injuries sustained in your motor vehicle accident of December 30, 2005. At home you were suffering from only mild pain and were essentially able to function normally. When you bent over to pick up your child in her crib, you experienced

excruciating low back pain. You later suffered from paralysis in your leg or legs. No specialist could find a physical explanation for your symptoms and numerous psychiatrists could not make a diagnosis of a Conversion Disorder. As a result, I can see no physical or psychological symptoms that would relate to your motor vehicle accident of December 30, 2005. For all of these reasons, I am confirming your case manager's decision.

It is from this decision that the Appellant has appealed to the Commission. The issue which arises on this appeal is whether the Appellant is entitled to Personal Injury Protection Plan ("PIPP") benefits as a result of the motor vehicle accident of December 30, 2005, and specifically the incident of February 1, 2006.

At the hearing of this matter, the Appellant advised that, notwithstanding the case manager's letter of January 19, 2006, she had not received any PIPP benefits for the month of January, 2006, arising from the motor vehicle accident of December 30, 2005. Counsel for MPIC confirmed that the internal review decision of October 23, 2006 only applied to the incident of February 1, 2006 and that the decision did not affect the Appellant's entitlement to PIPP benefits arising from the motor vehicle accident of December 30, 2005 and the subsequent hospitalization immediately thereafter in January, 2006. Consequently, counsel for MPIC confirmed that the Appellant should have received PIPP benefits for the month of January, 2006 and that she would follow up with the Appellant's case manager in order to determine and assess M.A.C.'s entitlement to PIPP benefits for the month of January, 2006. As a result, the appeal hearing proceeded with respect to M.A.C.'s entitlement to PIPP benefits arising from the incident of February 1, 2006.

Appellant's Submission

The Appellant advises that on February 1, 2006 she was still having problems associated with the motor vehicle accident of December 30, 2005, as follows:

- She was still recuperating at home;
- She had not yet returned to her classes at the [Text deleted] where she was enrolled full-time taking a medical office assistant course;
- She was unable to go up and down stairs; and
- Her parents were cooking her meals, providing child care for her children and assisting her with various personal care and home care duties.

She maintains that the problems she was experiencing immediately after the motor vehicle accident had not fully resolved when she aggravated those injuries by bending down to lift her daughter on February 1, 2006. Due to the incident of February 1, 2006, Dr. Engelbrecht readmitted her to the hospital on February 3, 2006, on the basis that she had re-aggravated her motor vehicle accident-related injuries.

The Appellant therefore submits that, particularly since her injuries had not yet completely resolved as of February 1, 2006, the February 1st incident was an aggravation of the problems she developed immediately following the motor vehicle accident of December 30, 2005. As a result, the Appellant maintains that she is entitled to PIPP benefits arising from that incident, since it was simply a continuation of her motor vehicle accident-related injuries.

MPIC's Submission

Counsel for MPIC submits that the Appellant has not established an entitlement to any PIPP benefits arising from the incident of February 1, 2006. She argues that since no caregiver could find a physical or psychological explanation for the Appellant's symptoms, a medically probable diagnosis could not be established. Counsel for MPIC maintains that without a diagnosis, a

probable cause and effect relationship to the motor vehicle accident cannot be established. As a result, counsel for MPIC argues that the Appellant has failed to establish, on a balance of probabilities, that her symptoms following the February 1, 2006 incident were related to the motor vehicle accident of December 30, 2005. Accordingly, she submits that the decision of the Internal Review Officer dated October 23, 2006 should be confirmed and the Appellant's appeal dismissed.

Discussion

Upon hearing the testimony of the Appellant and after a careful review of all of the 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's problems following the incident of February 1, 2006 are, on a balance of probabilities, connected to the motor vehicle accident of December 30, 2005. We find that the Appellant's complaints following the incident of February 1, 2006 were essentially the same as the complaints which arose immediately following the accident of December 30, 2005. Irrespective of whether a medically probable diagnosis could be established, the temporal relationship is such that it is more likely than not that the complaints and symptoms following the February 1, 2006 incident continued from the accident of December 30, 2005. The Commission finds that the incident on February 1, 2006, when the Appellant bent over to pick up her child, simply aggravated the injuries which she had already sustained in the motor vehicle accident of December 30, 2005 and for which she had been hospitalized from December 30, 2005 to January 11, 2006. Accordingly, the Appellant's claim shall be referred back to MPIC's case manager for a determination of her entitlement to PIPP benefits that may be applicable arising from the accident of December 30, 2005 and the subsequent incident of February 1, 2006.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated October 23, 2006 is therefore rescinded.

Dated at Winnipeg this 11th day of December, 2008.

YVONNE TAVARES

DR. SHELDON CLAMAN

LINDA NEWTON