

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.E.
AICAC File No.: AC-07-108

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Mr. Neil Cohen

APPEARANCES: The Appellant, J.E., was represented by Mr. Dan Joanisse of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

HEARING DATE: July 9, 2009

ISSUE(S): Entitlement to Reimbursement of Medical and Travel Expenses

RELEVANT SECTIONS: Section 136(1)(a) 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, J.E., is appealing the Internal Review Decision dated August 23, 2007, with respect to her entitlement to reimbursement of medical and travel expenses as a result of an accident which occurred on November 22, 2006.

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

1. On November 22, 2006, the Appellant was a passenger in a vehicle operated by her husband that collided with a deer. A claim for the damage to the vehicle was reported on

November 27, 2006, at which time the driver noted that his passenger had a sore neck and would report back if she wanted to open an injury claim.

2. On November 23, 2006, the Appellant attended upon her family physician, Dr. Elias, for an appointment related to stomach flu. In the clinical chart notes relating to that visit there was a mention of bruises to her arm, however there was no indication at that time that the bruises related to a motor vehicle accident.
3. An injury claim was opened on December 15, 2006. The Appellant, in her conversations with her case manager, complained of right arm and elbow pain.
4. On December 18, 2006, the Appellant attended upon Dr. Stephens following up on her gastrointestinal problems. She also advised Dr. Stephens that she was having some problems with her right elbow, which had started with the accident when her vehicle hit the deer. Dr. Stephens advised the Appellant that she might want to consider physiotherapy treatments.
5. The Appellant re-attended upon Dr. Elias on December 21, 2006. The chart notes from December 21, 2006 indicate a sore right elbow from hitting the elbow on a truck door.
6. On January 2, 2007, the Appellant re-attended upon Dr. Elias. His clinical notes from that date note pain in the Appellant's elbow as a result of a car accident when there was a collision with a deer and she was thrown into the door. Dr. Elias' clinical notes ultimately suggest a diagnosis of tendonitis of the right elbow.
7. The Appellant's entire medical file was reviewed by Dr. Michael MacKay of MPIC's Health Care Services team. Based upon his review, it was his opinion that the medical information did not support a probable causal relationship between the Appellant's current signs/symptoms and the motor vehicle accident of November 22, 2006.
8. In a decision dated April 24, 2007, MPIC's case manager advised the Appellant that MPIC was unable to cover any further treatment or related medical travel expenses

involving her right elbow condition. The case manager noted that as the Appellant's injury was found not to be causally related to the motor vehicle accident, MPIC was unable to reimburse any further treatment or related expenses in regards to the Appellant's elbow injury.

9. The Appellant sought an Internal Review of that decision. In a decision dated August 23, 2007, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that the medical information on the Appellant's file did not support a finding that her right elbow symptoms were related to the motor vehicle accident of November 22, 2006 and therefore, she was not entitled to PIPP benefits in relation to same.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant's right elbow symptoms are related to the motor vehicle accident of November 22, 2006.

Relevant Legislation:

Section 136(1)(a) of the MPIC Act provides that:

Reimbursement of victim for various expenses

[136\(1\)](#) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant's right elbow injury was caused by the motor vehicle accident of November 22, 2006. He argues that the Appellant did not have any problems with her right elbow prior to the accident and that she began to experience right elbow symptoms shortly after the motor vehicle accident. He relies on the Appellant's testimony that she struck the truck door with her right arm due to the impact of the accident and that she began to experience symptoms with her right arm and elbow within a week of the accident. He notes that the Appellant's elbow pain was not initially debilitating and that she was more concerned about her neck, based upon her past history of injury to the neck. The Claimant Adviser also contends that that the Appellant didn't report her symptoms to her medical caregivers immediately, because she thought that the right elbow injury would subside and resolve on its own. However, when her right arm pain did not settle down, the Appellant did promptly seek medical attention and did make a claim with MPIC without further delay.

The Claimant Adviser also argues that the Appellant's right elbow symptoms are causally related to the motor vehicle accident as there is no other possible cause for the Appellant's injury. He insists that the damage to the exterior of the Appellant's vehicle is not a reliable indicator of the extent of the Appellant's injury. The Claimant Adviser maintains that the Appellant's care providers have no concerns with the relationship between the motor vehicle accident and the Appellant's elbow symptoms. The Claimant Adviser submits that the evidence of the Appellant's attending care providers should be preferred to that of Dr. MacKay, as he has not had the opportunity of personally examining the Appellant.

In summary, the Claimant Adviser maintains that there is no evidence of pre-accident problems with the Appellant's elbow. There is a strong temporal relationship between the Appellant's symptoms and the motor vehicle accident (within a week) and there is no other possible

explanation for the cause of the Appellant's elbow symptoms. Accordingly, the Claimant Adviser submits that the Appellant's right elbow symptoms are causally related to the motor vehicle accident of November 22, 2006. Accordingly, he argues that the Appellant's appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established on a balance of probabilities that her right elbow symptoms are causally related to the motor vehicle accident of November 22, 2006. She maintains that the Appellant has not met the onus of proof required in these circumstances. Counsel for MPIC argues that it is not probable that the Appellant's symptoms were caused by the motor vehicle accident because she did not report those symptoms to her doctor when she saw him the following day. Counsel for MPIC also relies upon Dr. MacKay's Inter-departmental memorandum of April 17, 2007, wherein Dr. MacKay opined that the Appellant's symptoms were not causally related to the accident in question based on the balance of medical probabilities.

As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated August 23, 2007 confirmed.

Decision:

Upon hearing the testimony of the Appellant, and 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 Claimant Adviser on behalf of the Appellant and of counsel for MPIC, the Commission finds that the Appellant's right elbow injury was caused by

the motor vehicle accident of November 22, 2006. Accordingly, the Appellant shall be entitled to reimbursement of the medical and travel expenses related to her elbow injury.

Reasons for Decision:

The Commission finds that there is a strong temporal relationship between the motor vehicle accident and the Appellant's subsequent complaints of right elbow pain. We find that the failure to immediately report an injury arising out of the accident is not fatal to the Appellant's claim. The fact that the Appellant's complaints of pain commenced within a week of the motor vehicle accident of November 22, 2006 strongly suggests that the motor vehicle accident was either the cause of the problems, or a major contributing factor to the right elbow problem. Although there was no immediate report of the problem to a medical caregiver, the Commission accepts the Appellant's oral testimony that the problems commenced shortly after the motor vehicle accident. The Appellant was forthright and credible in her testimony before the Commission and we found her testimony to be reliable.

The Commission also finds that the Appellant's explanation for her delay in seeking medical treatment, that being, that she thought the problem would resolve on its own is a credible and likely explanation for the slight delay in seeking medical attention for the right elbow problem. Accordingly, the Appellant is entitled to reimbursement of her medical and travel expenses in relation to the right elbow problems she experienced following the motor vehicle accident of November 22, 2006. The Appellant's claim shall also be referred back to her case manager for a determination of her entitlement to income replacement indemnity benefits and any other

applicable Personal Injury Protection Plan benefits arising out of the November 22, 2006 accident.

As a result, the Appellant's appeal is allowed and the Internal Review Decision dated August 23, 2007 is therefore rescinded.

Dated at Winnipeg this 31st day of July, 2009.

YVONNE TAVARES

DIANE BERESFORD

NEIL COHEN