

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-25**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.') represent
by Ms Joan McKelvey
[Text deleted], the Appellant, appeared in person

HEARING DATE: April 16th, 1996

ISSUE(S): Cost of corrective eyeglass lenses - whether made necessary by
auto accident.

RELEVANT SECTIONS: Section 136(1) of the M.P.I.C. Act ('the Act') & Section 36 of
Regulation 40/94

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.**

REASONS FOR DECISION

THE FACTS:

[The Appellant] was the victim of an automobile accident on July 26th, 1994.
From the notes made by her neurologist when she first saw him about a month after the accident,
[the Appellant] did not suffer any loss of consciousness nor any actual head injury, but did undergo

a jolt to her body and felt what she described as an “explosion” in her head, developing immediate right frontal pain. She apparently got out of her car unassisted and was able to carry on but, she said, she was quite shaky and nervous.

In the context of her eyesight, [the Appellant’s] numerous ophthalmological, neurological and general medical tests (including a spinal tap, C.T.Scan and electroencephalograph) conducted within the few months following her accident produced results that were completely normal; there was no apparent evidence of ocular injury nor any immediate recurrence of the pseudotumor cerebri (defined below) from which [the Appellant] had suffered in 1977 and which, she feared, was about to re-appear. After repeated calls with complaints of swelling eyes and dizziness she was examined again on October 25th, 1994, with normal results, no evidence of recurrence of psuedotumor cerebri and no indication of the need to repeat the spinal tap. *Pseudotumor cerebri* is defined in Schmidt’s Attorneys’ Dictionary of Medicine (Matthew Bender, 1995 edition) as, simply:

1. Same as *meningeal hydrops*, 2. Same as *benign intracranial hypertension*.

‘Benign intracranial hypertension’ and ‘Meningeal hydrops’ are defined by the same author as follows:

‘Meningeal hydrops An abnormal condition in which the brain is edematous (swollen) and the intracranial pressure (the pressure within the skull) is increased. It may be caused by abnormalities in the function of the endocrine (ductless) glands, by toxins or poisons, or by metabolic disturbances. The clinical signs are headache, nausea, vomiting, and a swelling of the optic disk. Also called *pseudotumor cerebri*.’

‘benign intracranial hypertension, A condition caused by cerebral edema

(swelling of the brain), marked by increased intracranial (within the skull) pressure, nausea and vomiting, headache and papilledema (swelling of the optic disk). Also called *pseudotumor cerebri*.’

[The Appellant] has been receiving chiropractic treatment for cervical whiplash syndrome and for reduction of the headaches of which she complains. M.P.I.C. has provided reimbursement for those medical and chiropractic expenses incurred because of the accident. Following the accident, [the Appellant] saw each of the following doctors and, at her insistence, most of them on numerous occasions: [text deleted], Psychotherapist; [text deleted], Physician; [text deleted], Chiropractor; [text deleted], Neurologist; [text deleted], Ophthalmologist, and [text deleted], Optometrist. Due to [the Appellant’s] extreme anxiety, [Appellant’s neurologist] agreed to schedule another set of tests to determine whether there was evidence of increased spinal fluid pressure. [Appellant’s neurologist] expressed some surprise that these tests, which he conducted on December 29th, 1994, indicated that her spinal fluid pressure was elevated, but he believed that her condition would be brought under control with continuation of diuretic medication, which he prescribed. His prognosis seems to have been borne out, since the results of further tests conducted in January, 1996, were completely normal.

[The Appellant] had been examined by [Appellant’s ophthalmologist] on July 8th, 1994 and no change in her eyeglass prescription had been required. After the accident, in August of 1994, she was examined again by [Appellant’s ophthalmologist] and there was no evidence of ocular injury. On her own initiative, [the Appellant] was examined by [Appellant’s ophthalmologist] on several further occasions, undergoing complete eye examinations and tests

for regional and visual field, eye pressure, distance vision and reading vision. New lenses to correct the refraction of her eyes were prescribed on November 29th, 1994, and adjusted on December 29th of that same year; no further correction has been found necessary.

On November 23rd, 1995, in response to a request from M.P.I.C., [Appellant's ophthalmologist] reported on the relationship between the accident and the minor differences in [the Appellant's] eyeglass correction as follows:

"I would like to explain first of all the factors that are involved in changes of refraction in any eye. The refractive power of an eye is a combination of the corneal clarity, corneal curvature, the power and clarity of the lens within the eye, and the axial length of the eye from the corneal surface to the retina. A change in refractive power can be produced by normal changes that take place with age, or by disease or injury. For example, a corneal injury that results in scarring will definitely produce a refractive change. Changes in the lens that produce a cataract will also produce a change, and some surgical procedures that may affect the axial length of the eye can also produce a change in refraction. Optic nerve disorders never produce a change in refraction. The function of a correcting lens is simply to place the refracted image in the correct plane on the retina. **There were no signs of injury involving any of these structures in either of [the Appellant's] eyes.**

...The result of the refractive process also depends, to a great extent, on the patient's responses, and these may indeed vary from examination to examination.

...[The Appellant] **did not sustain any ocular injury as a result of the accident. Therefore, there is no relationship between the sequelae of the accident and the minor differences in her spectacle refractions on two separate occasions."**

THE LAW:

[The Appellant] is entitled to be reimbursed for any expenses that occurred as a result of her automobile accident to the extent that those expenses qualify under the terms of the Act. The relevant section of the Act reads as follows:

“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:

medical and paramedical care, transportation, lodging, prostheses etc., cleaning and repair or replacement of damaged clothing and
“(d) such other expenses as may be prescribed by regulation.”

Regulation 40/94 entitled “Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation”, reads, in part, as follows:

“ Where victim wore or used object before accident

36 Where an expense is incurred under section 34 for an object the victim wore or used before the accident, the corporation shall pay the expense only once, unless an expense is incurred owing to a change in a condition that results from the accident, in which case the corporation shall pay the expense.”

The issue that arises is whether the change in [the Appellant’s] eyeglass lens was ‘a change that resulted from the accident’, giving rise to an obligation on M.P.I.C.’s part to pay for the new prescription lenses.

From the evidence before us, it is not possible for us to make a finding, with confidence, as to whether the accident caused the apparent re-appearance, some five months

after the accident, of the pseudotumor cerebri, a condition from which [the Appellant] had suffered in 1977. There is a wide range of assumed causative mechanisms for pseudotumor cerebri, but none is known with certainty.

In any event, and even if the automobile accident did trigger some mechanism giving rise to the later re-appearance of the pseudotumor cerebri, we find that the latter condition was not the cause of the change in refraction which, therefore, was not brought about by that accident. In the absence of persuasive contradictory evidence we must find, on a strong balance of probabilities, that [the Appellant] has not suffered ocular injury nor swelling of the optic nerve as a result of her accident and that, therefore (to adopt [Appellant's ophthalmologist's] language) "there is no relationship between the accident sequelae and the minor changes in [the Appellant's] spectacle refractions" on November 29th and on December 29th of 1994. Accordingly, the appeal is denied.

It is quite clear that the purpose underlying the present appeal is not primarily to obtain reimbursement of the \$289.00 cost of her new eyeglasses but, rather, to lay the foundation for a future claim in the unhappy event that [the Appellant's] eyesight should deteriorate in a manner and to an extent that she obviously fears.

Should [the Appellant's] condition worsen and if that deterioration is reasonably capable of being related to the accident, she will, of course, be at liberty to ask M.P.I.C. to re-open her file related to that accident so that she may pursue a claim for additional compensation.

DISPOSITION:

For the foregoing reasons, the decision of the Internal Review Officer is confirmed and [the Appellant's] appeal is dismissed.

Dated at Winnipeg this 19th day of April, 1996.