

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by The Estate of [the Deceased]
AICAC File No.: AC-00-39**

PANEL: Ms. Yvonne Tavares, Chairperson
The Honourable Mr. Armand Dureault
Ms. Barbara Miller

APPEARANCES: The Appellant, the Estate of [the Deceased], was represented by [text deleted] Executrix of the Estate; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.

HEARING DATE: December 20, 2002

ISSUE(S): Entitlement to death benefits.

RELEVANT SECTIONS: Sections 119(1), 123 and 124 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act').

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 Executrix of the Estate of [the Deceased] has appealed the decision of MPIC's Internal Review Officer dated January 26, 2001. This internal review decision confirmed the case manager's decision that no death benefit was payable under Sections 119 through 125 of the MPIC Act to the Estate of [the Deceased]

[The Deceased] was involved in a motor vehicle accident on November 1, 1995. As a result of the motor vehicle accident, [the Deceased] became entitled to Personal Injury Protection Plan (PIPP) benefits pursuant to the MPIC Act. Tragically, [the Deceased] suffered a massive heart

attack and died on November 7, 1999. The Executrix of her Estate, [text deleted], submitted a claim for death benefits to MPIC. This claim was denied by MPIC's case manager in a letter dated June 26, 2000, which stated:

Compensation for persons injured in motor vehicle accidents in Manitoba is governed by the Manitoba Public Insurance Act (*sic*). There is no discretion on part of the Corporation to pay benefits that are not prescribed by this legislation, and in determining what benefits a claimant is entitled to, it is necessary that there be (*sic*) a co-relation between the motor vehicle accident and the claimant's symptoms.

Decision, if Death Benefit is payable to [the Deceased's] estate.

After careful consideration of all the relevant medical information, there is no medical evidence to support a causal relationship between the motor vehicle accident of November 1, 1995, and [the Deceased's] death. Accordingly, Manitoba Public Insurance is unable to process any Death Benefits payable under [the Deceased's] claim file.

[Text deleted], as representative of [the Deceased's] Estate, sought an internal review of that decision. As already noted, the Internal Review Officer dismissed the Application for Review and confirmed the case manager's decision. In his decision dated January 26, 2001, the Internal Review Officer stated that:

Sections 119 through 125 of the Act provide for the payment of various sorts of benefits to the family and dependants of a "deceased victim". Section 119(1) defines "deceased victim" as someone "who died as a result of the accident". Section 70(1) defines "accident" as "any event in which bodily injury is caused by an automobile". "Bodily injury" is further defined to include a "mental injury".

...

Your position is that medical literature suggests that stress is a contributing factor in cardiovascular disease and that it may be a factor in precipitating a heart attack. You invited me to draw the inference that the stress of coping with her injury, and with the rehabilitation initiatives provided to her, brought on your sister's heart attack. I am not prepared to do so.

I can accept, as a general proposition, the association of stress and heart disease you mention. The medical material on your sister's file makes it clear that she had longstanding problems with anxiety and depression and had been under treatment for these conditions for some years prior to her motor vehicle accident in November 1995. No one will dispute that the accident, and the subsequent problems of coping with the compromise of her mobility and ability to function, did your sister no good. The medical material on file supports the view that it exacerbated her anxiety disorder. That leaves us far short of the conclusion that her death "resulted from the accident" which is what

Section 119 requires before benefits become payable.

As I told you at the hearing, you have raised a *possibility*. What is required is proof that your sister *probably* died "as a result of the accident". A number of different tests for causation have been developed over the years. The wording of Section 119(1) seems to me to call for the application of the "but for" test. In order for you to succeed on this Review, I have to be satisfied, on a balance of probabilities, that "but for" this car accident, your sister would not have had the heart attack that ended her life. That has not been demonstrated. To some extent due to the car accident the last few years of your sister's life were less happy than they might have been, but there is no evidence that the car accident created her heart condition or directly brought on her heart attack. Even on the assumption (and that is all it is) that anxiety triggered the heart attack, how could anyone separate the anxiety attributable to the car accident from the anxiety condition your sister had before the car accident?

[Text deleted], on behalf of the Estate of [the Deceased], has now appealed to this Commission.

The issue which arises on her appeal is whether or not the Estate of [the Deceased] is entitled to the payment of any death benefits pursuant to the MPIC Act.

The relevant sections of the MPIC Act are as follows:

Definitions

119(1) In this Division,

"**deceased victim**" means a victim who died as a result of the accident.

Entitlement of child and parent of deceased victim

123 Where a deceased victim has no dependant on the day he or she dies, each child and parent of the deceased victim, although not a dependant of the deceased victim, is entitled to a lump sum indemnity of \$5,000.

Reimbursement of funeral expenses

123 The corporation shall reimburse the estate of a deceased victim for the actual cost of funeral expenses, including the cost of any grave marker, to a maximum of \$6,000.

[Text deleted], on behalf of the Estate of [the Deceased], submits that the motor vehicle accident of November 1, 1995, had a direct impact on the events that eventually led to the death of [the Deceased], and therefore benefits should be awarded in the form of a death benefit to her parents

and son pursuant to Section 123 of the MPIC Act, as well as coverage of funeral expenses pursuant to Section 124 of the MPIC Act.

At the hearing of the Appeal, and in her written submission, [text deleted] notes various problems which [the Deceased] developed as a result of the motor vehicle accident and which were exacerbated by the effects of the accident. These included [the Deceased's] depression, emotional stress, anxiety and post-traumatic stress disorder. In her submission, [text deleted] concludes that there is a strong relationship between these psychological disorders (depression, emotional stress, psychosocial factors, anxiety and post-traumatic stress disorder) and increased risk and incidence of cardiovascular disease and death. She notes that [the Deceased] was never the same after the automobile accident of 1995. The injuries she sustained resulted in chronic pain that then lead to severe psychological symptoms, which escalated the development of coronary heart disease. [Text deleted] submits that "but for the accident" [the Deceased] would not have suffered the heart attack which caused her death.

Counsel for MPIC submits that in order to qualify for death benefits pursuant to the MPIC Act, the Appellant must come within the definition of a "deceased victim" in Section 119(1) of the MPIC Act. Section 119(1) of the Act defines deceased victim as someone who died as a result of the accident. Counsel for MPIC submits that there is no medical evidence to establish what caused [the Deceased's] heart attack. Further she notes, that there is no medical evidence on which to base the conclusion that the stress faced by [the Deceased] caused the heart attack which caused her death. Accordingly, counsel for MPIC submits that the Appellant has not met the onus of proof required in the circumstances, and therefore the decision of the Internal Review Officer, dated January 26, 2001, should be upheld.

After a careful review of all of the evidence, both oral and documentary, we are unable to conclude, on a balance of probabilities, that [the Deceased] died as a result of the motor vehicle accident of November 1, 1995. While we accept, as a general proposition, the association between stress and heart disease put forward by [text deleted] on behalf of [the Deceased's] Estate, we agree with the Internal Review Officer's decision that [text deleted] has only raised a possibility. In this case, the Appellant has not met the onus of establishing, on a balance of probabilities, that the cause of death was related to the motor vehicle accident of November 1, 1995. There is no evidence before the Commission which demonstrates that the stress and psychological factors which [the Deceased] experienced following the motor vehicle accident, were the cause the heart attack of November 5, 1999, which was the precipitating cause of her death.

As a result, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date January 26, 2001.

Dated at Winnipeg this 8th day of January, 2003.

YVONNE TAVARES

HONORABLE ARMAND DUREAULT

BARBARA MILLER