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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-02-121**

**PANEL:** Ms. Yvonne Tavares, Chairperson  
Mr. Paul Johnston  
Ms. Barbara Miller

**APPEARANCES:** The Appellant, [text deleted], was represented by  
[Appellant's legal counsel];  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Mark O'Neill.

**HEARING DATE:** January 15, 2004

**ISSUE(S):** Entitlement to Personal Injury Protection Plan Benefits.

**RELEVANT SECTIONS:** Sections 81(1) and 136(1) of The Manitoba Public Insurance  
Corporation Act ('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 Appellant, [text deleted], was involved in a motor vehicle accident on October 13, 2001. The Appellant had followed another vehicle into a parking lot. While waiting in her car for the vehicle ahead to park, that vehicle suddenly backed out of the parking stall, crashing into the front of the Appellant's car. At the time of the accident, the Appellant did not feel any symptoms or injuries related to the impact. In her original statement to MPIC, the Appellant did not report any injuries arising out of this accident. However, over the course of the following

days, she developed increasing aching discomfort in her feet, ankles, knees and hips. She subsequently completed an Application for Compensation and made a claim for Personal Injury Protection Plan ('PIPP') benefits with MPIC.

In a letter dated April 17, 2002, MPIC's case manager denied the Appellant's claim for PIPP benefits and advised her as follows:

The medical information indicates the problems you are having with your feet, ankles and hips are related to a condition that you had prior to the motor vehicle accident.

Our Health Care Services Team after reviewing the medical information on your file concurs that your symptoms relate to your prior condition of plantar fasciitis which existed before your accident. The medical information does not support a probable cause and effect relationship between any of the documented injuries and the motor vehicle collision. The exacerbation of your plantar fasciitis would have more likely been caused by your climbing the ladder than the motor vehicle collision. The temporal relationship between the reporting of spinal symptoms and physical findings and the collision would also make a relationship between the two improbable.

Manitoba Public Insurance covers treatment expenses incurred as a result of bodily injuries sustained in a motor vehicle accident. As your current symptoms are not related to a condition resulting from your motor vehicle accident, you are not entitled to Personal Injury Protection Benefits (PIPP), this includes treatment expenses, your Income Replacement Indemnity and replacement of your orthotic insoles.

The Appellant sought an internal review of that decision. In a decision dated October 24, 2002, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. In arriving at his decision, the Internal Review Officer relied upon [MPIC's doctor's] Inter-Departmental Memorandum of August 2, 2002 and his review of the Appellant's file. In his decision, the Internal Review Officer noted that:

Initially your file was reviewed by the MPI Medical Consultant, [text deleted] as evidenced (*by*) his Inter-Departmental Memorandum of February 1, 2002. In the DISCUSSION portion of the memorandum, [MPIC's doctor] stated:

"When the mechanism of injury is taken into consideration, it is unclear how the claimant would have developed bilateral plantar fasciitis based on

the mechanism of the collision. In my opinion, the development of bilateral plantar fasciitis as a result of the collision would be improbable”.

In the CONCLUSIONS portion of the memorandum [MPIC’s doctor] stated:

“At present, there does not appear to be a probable cause and effect relationship between any of the documented injuries and the motor vehicle collision. The exacerbation of the claimant’s plantar fasciitis would have more likely have been caused by her climbing the ladder than the motor vehicle collision in my opinion. Also, the temporal relationship between the reporting of spinal symptoms and physical findings and the collision would also made (sic) a relationship between the two improbable”.

As indicated above, you provided me with further documentation which resulted in my subsequently referring the file back to [MPIC’s doctor] who provided a more recently Inter-Departmental Memorandum of August 2, 2002. In his three-page memorandum [MPIC’s doctor] confirmed that the newly submitted medical information did not alter the opinions he previously expressed in his earlier memorandum of February 1, 2002. For the reasons outlined in his memoranda, he concluded that the direct association between the motor vehicle collision of October 13, 2001 and the development of the symptoms would be improbable in his opinion.

The onus is on you to establish that a causal relationship exists between the motor vehicle accident and your ongoing symptoms and problems for which you are claiming coverage under the Personal Injury Protection Plan. Given the varied nature and extent of your symptoms coupled with the circumstances of the accident I am inclined to agree with [MPIC’s doctor’s] assessment that the motor vehicle accident is not the culprit in your ongoing problems and therefore I am upholding [text deleted’s] decision and dismissing your Application for Review.

The Appellant has now appealed from the Internal Review decision to this Commission. The issue which requires determination in this appeal is whether the Appellant’s symptoms and problems, which she experienced in late 2001 and 2002, are causally connected to the motor vehicle accident of October 13, 2001.

Counsel for the Appellant submits that the Appellant actually developed a hip and low back problem as a result of the motor vehicle accident and not an exacerbation of her pre-existing bilateral plantar fasciitis condition. He notes that the Appellant did complain of pain to her ankles, knees and hips from the outset of her claim. This was documented in her discussions

with her case manager, in the Initial Health Care Report submitted by her family physician, and in her Application for Compensation. As a result, counsel for the Appellant contends that MPIC's determination of the Appellant's entitlement to benefits was flawed, in that incorrect assumptions were made about her injuries, which resulted in the denial of the Appellant's claim.

Counsel for the Appellant notes that the Appellant's problems with her lumbosacral spine were in fact diagnosed by her chiropractor, [text deleted]. In the Initial Health Care Report dated January 11, 2002, [Appellant's chiropractor] diagnoses the Appellant's condition as an acute cervical, thoracic, lumbar hyperflexion/extension injury. In his report dated March 19, 2003, [Appellant's chiropractor] states that:

My clinical opinion is that [the Appellant's] lower leg complaints have been amplified due to this car accident with a possibility of nerve interference originating in her lumbosacral spine/pelvis. Also worth noting is [the Appellant's] occupation (Child Care Worker) which requires her to be on her feet for extended periods of time. This activity can stress both her lower back whiplash complaints and pre-existing plantar fasciitis (*sic*) symptoms.

Counsel for the Appellant also relies on a report dated June 26, 2002, prepared by the physiotherapist at the [rehab clinic]. In that report, the physiotherapist, [text deleted] noted that:

[The Appellant] presented to the [rehab clinic] March 1, 2002 for assessment of bilateral foot, lower extremity, and hip pain related to a motor vehicle accident in which she was involved on October 13, 2001. Prior to attending this assessment, [the Appellant] had attended one course of physiotherapy at [text deleted] Physiotherapy for conservative treatment of plantar fasciitis.

At the time of assessment, [the Appellant] presented with pronated feet (right more than left) with the right foot and leg in external rotation, hypomobility and altered alignment of the right sacroiliac joint, weak core stabilizers, and bilateral tenderness of the medial calcanei.

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Upon reviewing the history, it is possible, although I cannot say definitively, that [the Appellant] sustained injury to her sacroiliac joints during the motor vehicle accident as she braced herself against the clutch and brake pedals as the other vehicle collided with

hers. It might then possible that the sacroiliac joint injury perpetuated a pattern of weakness through the core stabilizers, which could have lead to altered biomechanics of the lower extremities and ultimately the perpetuation foot pain, which began shortly after the motor vehicle accident.

Counsel for the Appellant maintains that, whereas the physiotherapy that the Appellant underwent through [text deleted] Physiotherapy directed at her plantar fasciitis was not helpful in relieving her symptoms, the treatments received by the Appellant from the chiropractor and from the [rehab clinic] were successful in addressing the Appellant's problems. He concludes that the chiropractic and physiotherapy treatments, which were directed at the Appellant's hips and lumbosacral spine were beneficial, since they were addressing the real cause of the Appellant's problems. Similarly, counsel for the Appellant notes that the gabapentin medication was helpful for the Appellant, because her problems had a neuropathic origin, which would not have been indicated by a plantar fasciitis condition. Therefore, counsel for the Appellant insists that [MPIC's doctor's] opinions are of little assistance in determining a connection between the Appellant's symptoms and the motor vehicle accident of October 13, 2001, since [MPIC's doctor] presumed that the Appellant suffered an aggravation of her bilateral plantar fasciitis condition.

Lastly, counsel for the Appellant insists that there is a strong temporal relationship between the Appellant's problems and the motor vehicle accident. He notes that the Appellant was able to participate in all of her usual activities prior to the accident and her difficulties only presented themselves after the accident. Counsel for the Appellant claims that there was no other intervening event to account for the Appellant's problems and therefore the motor vehicle accident was the most likely cause of the Appellant's injuries.

Accordingly, counsel for the Appellant maintains that the Appellant experienced difficulties with her feet because of the injuries sustained to her lumbosacral spine and hips. He submits that the injuries to the Appellant's hips and low back resulted from the motor vehicle accident, and were not an exacerbation of her underlying plantar fasciitis. Consequently, counsel for the Appellant submits that the Appellant's problems were caused by the motor vehicle accident and she is therefore entitled to PIPP benefits.

Counsel for MPIC submits that the Appellant has not established that the problems, which she experienced in late 2001 and 2002, were caused by the motor vehicle accident of October 13, 2001. He insists that a temporal relationship between the Appellant's complaints and the motor vehicle accident does not exist, since she did not start to experience pain complaints until a couple of days post-accident. Rather, counsel for MPIC argues that the Appellant could have developed these problems as a result of the activities of daily living. He also notes that the misalignment of the Appellant's hips could have pre-dated the motor vehicle accident and may have accounted for the Appellant's previous foot problem. Counsel for MPIC contends that the Appellant has assumed the motor vehicle accident was the cause of her problems and has adjusted her story to fit this assumption.

Counsel for MPIC also submits that there is no evidence that chiropractic treatments were medically required for two years as a result of injuries which the Appellant might have sustained in the motor vehicle accident. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated October 24, 2002 should be confirmed.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the motor vehicle accident of October 13, 2001 likely led to the Appellant's problems with her feet, ankles, knees and hips.

We find that the failure to immediately report an injury arising out of the accident is not fatal to the Appellant's claim. The Appellant's symptoms began within three days of the motor vehicle accident. This establishes a very strong temporal relationship with the incident in question. We also note that the Appellant did not immediately relate her physical complaints to the motor vehicle accident, which accounted for part of the delay in reporting these symptoms to MPIC.

Additionally, we find, on a balance of probabilities, that the Appellant's problems were likely related to her lumbosacral spine and hips, rather than her feet. The Appellant's condition did not improve when she underwent physiotherapy directed exclusively to her foot condition. Improvement was noted when she commenced chiropractic treatments and physiotherapy directed at her hips and lumbosacral spine, suggesting that these areas were the affected regions, requiring care. The Appellant's family physician also supports the suggestion that the Appellant's complaints after the motor vehicle accident differed from those associated with her pre-existing foot condition. In his letter dated December 31, 2003, [Appellant's doctor] comments that:

. . . I have outlined the fact that there were some pre-existing abnormalities and that [the Appellant's] pain certainly seemed of a different quality and a different type after the accident as opposed to before. She seemed to respond to medication that's for treating of neuropathic pain which was different to her complaints prior to the accident.

[MPIC's doctor] also lends support to this position in his Inter-Departmental Memorandum dated January 9, 2004. In this report, [MPIC's doctor] comments that:

The reports of tingling sensations in the bottom of the feet are usually not those described by most people with this condition (*i.e. acute plantar fasciitis*). The description is most commonly seen in acute plantar fascial injuries is that of acute heel pain which is of a deep stabbing or aching nature. The sensation of tingling described would be more in keeping with a neuropathic symptom rather than an acute tendinitis injury symptom complex which may explain [Appellant's doctor's] initial diagnosis of a neuropathic pain condition.

Taking into account the treatment modalities which were successful for the Appellant, and the foregoing opinions that the pain which she encountered after the motor vehicle accident was different than the pain associated with her condition prior to the accident, we find that the Appellant's problems after the accident were different than those which were linked to her pre-existing foot condition. As a result, we find that these problems were, on a balance of probabilities, related to the motor vehicle accident of October 13, 2001, and as such the Appellant is entitled to PIPP benefits. The Appellant's claim shall therefore be referred back to her case manager for a determination of her entitlement to Personal Injury Protection Plan benefits.

As a result, the Appellant's appeal is allowed, and the Internal Review decision dated October 24, 2002 is therefore rescinded.

Dated at Winnipeg this 5<sup>th</sup> day of April, 2004.

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**YVONNE TAVARES**

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**PAUL JOHNSTON**

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**BARBARA MILLER**