



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-137

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: November 26, 2003 and August 19, 2004

ISSUE(S): Are Appellant's current complaints related to the motor vehicle accident of March 31, 1994 and, if so, is she entitled to further benefits.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Act ('MPIC Act') and Section 5 of Manitoba Regulation P215-40/94

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 appeal hearing in this matter commenced on November 26, 2003. The Appellant attended on her own behalf and Mr. Tom Strutt attended as legal counsel on behalf of MPIC. The appeal Commission heard submissions from both the Appellant and MPIC's legal counsel. After a short recess the Commission advised both the Appellant and MPIC's legal counsel that the Commission noted that the Appellant had never been examined by an orthopedic surgeon, nor had an MRI been conducted in respect of her back complaints. As a result, the Commission

informed the Appellant that, subject to her consent, the Commission at its own cost would request an orthopedic surgeon to examine the Appellant and provide a medical report to the Commission. The Appellant advised the Commission that she wished to consider this request and desired to obtain the advice of a Legal Aid lawyer.

MPIC's legal counsel had no objection to an adjournment of the hearing and, as a result, the Commission adjourned the hearing for a period of three weeks in order to allow the Appellant to seek representation by legal counsel, and to determine whether she would consent to referral to an orthopedic surgeon to obtain a medical opinion as to her medical status.

On January 20, 2004 the Commission wrote to the Appellant and confirmed that the Appellant had not contacted the Commission in response to setting a new date for the appeal hearing, nor had she responded to voice mail messages that were left with her in respect of this matter. The Appellant was requested to advise the Commission within 10 days as to the status of the matter.

On March 1, 2004 the Commission again wrote to the Appellant and indicated that the Commission staff had left voice mail messages on December 18 and 22, 2003 requesting the Appellant to contact the Commission and had written the Appellant on January 20, 2004 and had received no response from the Appellant. On January 27, 2004 the Appellant advised the Secretary to the Chief Commissioner in a telephone discussion that she did not have time to deal with this matter.

The Commission staff left voice mail messages on February 3 and 10, 2004 requesting the Appellant to contact the Commission. On February 10, 2004 the Appellant telephoned and advised the Commission's Director of Appeals that there had been a death in her family and she

had not been able to deal with any issues in respect of the appeal but assured the Director she would make contact with Legal Aid the next day and would advise the Commission as to the outcome by the end of that week. The Commission staff left voice mail messages on February 19 and 25, 2004 but received no response from the Appellant. As a result, the Appellant was advised that arrangements would be made for the hearing to reconvene.

The Commission set the appeal hearing to reconvene on August 19, 2004 and arranged for a Notice of Hearing to be personally served on the Appellant. On April 27, 2004 [text deleted], employed as an Investigator with [text deleted], personally served the Appellant with the Notice of the Hearing and attached hereto as Schedule A is a true copy of the Notice of Hearing and [Investigator's] Affidavit of Service dated April 29, 2004.

On August 19, 2004 the Appellant contacted the Commission office between 12:00 p.m. and 12:45 p.m. and advised a member of the Commission staff that she would be unable to attend the hearing at 1:30 p.m. that day because she had been hospitalized at the [hospital] on the evening of August 18, 2004 and was presently at the hospital.

The Commission panel reconvened the hearing at 1:30 p.m. on August 19, 2004 in the presence of Mr. Tom Strutt, MPIC's legal counsel. The Commission panel decided to adjourn the proceedings pending certain inquiries to be conducted by the Director of Appeals. Upon conclusion of these inquiries, the Commission instructed the Director of Appeals to write to the Appellant advising her as to the results of the Director's inquiries. On August 23, 2004 the Director wrote to the Appellant and advised her as follows:

I was not in the office at the time you made your telephone call to the Commission. I returned at 12:45 p.m. and noted that your telephone voice mail message to me was left at 12:16 p.m. on August 20, 2004 (sic) from telephone no. [text deleted].

After my discussions with the Commission Office's staff member who had received your telephone message, and after reviewing your voice mail message, I telephoned the [hospital] and was advised that there was no record of your having been admitted to the hospital on August 19, 2004 (sic). As a result, I telephoned telephone no. [text deleted], the phone number from which you placed your call to the Commission Office. I was informed by the Human Resource Specialist that the location of this telephone number was [text deleted], which is located at [text deleted].

Subsequently, I telephoned your mother and during the course of my discussion with her, I requested to know whether she was aware of any reason why you were unable to attend the appeal hearing and she replied that she did not know why you did not attend the hearing.

On August 20, 2004 (sic), at 2:26 p.m., I received a voice mail message from you and you provided me with your telephone cell number. At 2:45 p.m. I contacted you by telephone and advised you that the Commission had the discretion, under *The Manitoba Public Insurance Corporation Act*, to grant or refuse to grant a new date for an appeal hearing. I further advised you that in order to obtain an adjournment of the appeal hearing so that the Commission could set a new date for the appeal hearing, you would be required to provide the Commission with written confirmation from the [hospital] as to the time and date of your attendance at the hospital and the time and date of your release from the [hospital]. The Commission requests that you provide this written confirmation within two weeks from the date of your receipt of this letter.

Please be advised that upon receipt of this information the Commission will determine whether or not it will set a new date for the appeal hearing. Further be advised that if the information I have requested is not received within two weeks of the receipt of this letter the Commission may:

1. determine the merits of your appeal based on the material that was filed at the appeal hearing without requesting further representations from either party; or
2. set a new date for an appeal hearing.

You may govern yourself accordingly.

The letter of the Director of Appeals, dated August 23, 2004, was sent by Xpresspost Mail to the Appellant. The Commission office received an Advice of Receipt Card from Canada Post which indicated that the Appellant signed this document on August 26, 2004 acknowledging receipt of the Commission's letter dated August 23, 2004.

The Appellant has not responded to the letter of the Director of Appeals dated August 23, 2004

and has not provided a written confirmation of her attendance at the [text deleted] and the release from this hospital.

Discussion

The Commission panel has met, and has determined that the Appellant has not provided a reasonable explanation for her failure to attend the hearing set for August 19, 2004. As a result, the Commission decided not to set a new date to reconvene the appeal hearing but to determine the merits of the appeal on the basis of the material filed in the proceedings, together with the submissions made by both parties at the appeal hearing on November 26, 2003 and without any further representation from either party.

The Commission panel has reviewed the written material that had been filed in evidence at the appeal hearing on November 26, 2003 and considered the submissions made by both the Appellant and MPIC's legal counsel at this hearing. The Commission notes that the Internal Review Officer in his decision dated November 18, 2002 carefully reviewed all of the Appellant's complaints and considered all of the relevant medical reports in arriving at his decision to reject the Appellant's Application for Review and to confirm the case manager's decision dated September 10, 2002. The Commission is satisfied the Appellant has failed to establish, on a balance of probabilities, that the medical complaints the Appellant made to MPIC in 2002 were not related to her motor vehicle accident which occurred on March 31, 1994.

Decision

The Commission determines that:

1. for the reasons set out herein; and
2. for the reasons set forth in the decision of the MPIC's Internal Review Officer, dated November 18, 2002 (a copy of which is annexed hereto and intended to form

part of this decision as Schedule B).

it dismisses the Appellant's appeal and that the Internal Review decision dated November 18, 2002 is, hereby, confirmed.

Dated at Winnipeg this 5th day of September, 2004.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

WILSON MACLENNAN