



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-45

PANEL: Ms. Laura Diamond, Chairperson
Mr. Neil Cohen
Mr. Robert Chernomas

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Dean Scaletta.

HEARING DATE: June 27, 2005

ISSUE(S):

1. Entitlement to personal care assistance benefits for four-week period following motor vehicle accident.
2. Entitlement to permanent impairment benefits for headaches.
3. Entitlement to funding for hospital bed.

RELEVANT SECTIONS: Section 131, 126, 127 of the Manitoba Public Insurance Corporation Act ('MPIC Act') and Manitoba Regulation 41/94

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 Appellant, [text deleted], was injured in a motor vehicle accident on March 28, 1997. As a result of injuries sustained in the accident, the Appellant was in receipt of Personal Injury Protection Plan Benefits pursuant to Part Two of the MPIC Act, including Income Replacement Indemnity and Treatment Benefits.

In May of 2000 the Appellant sought compensation from MPIC for a hospital bed and permanent impairment benefits for headaches.

The Appellant's case manager declined to pay for a hospital bed for the Appellant, noting that there was insufficient medical evidence objectively identifying a condition arising from the collision in question for which a hospital bed would be viewed as a medical necessity.

The Appellant's claim for permanent indemnity benefits was also rejected by his case manager on the basis that headaches did not qualify for permanent impairment benefits under the Act.

These two applications were reviewed by an Internal Review Officer on February 7, 2001. The Internal Review Officer upheld the case manager's decision on both issues. He found that the weight of the evidence suggested that any need the Appellant may have for a hospital bed did not arise because of the accident, but rather was due to the progress of the Appellant's degenerative back condition. The Internal Review Officer further held that the Appellant's on-going headache symptoms could be attributed to his significant degenerative condition and was not a permanent condition caused by the car accident. As well, the Internal Review Officer found that neither headaches nor myofascial pain condition attract a permanent impairment benefit under the Legislation.

The Appellant made a separate application for personal care assistances benefits for a period of four weeks following his motor vehicle accident. This application was made several years following the accident. His case manager rejected this application on the grounds that the

medical reports did not indicate any physical impairment or dysfunction that interfered with the Appellant's ability to carry out his day to day and/or household activities.

This decision of the case manager was also reviewed by an Internal Review Officer on July 6, 2004. The Internal Review Officer considered the information submitted by the Appellant, as well as a review submitted by [text deleted], Medical Consultant with Health Care Services for MPIC and concluded that the Appellant had not provided sufficient objective evidence identifying a condition arising from the collision that would impair his function and require personal care assistance.

It is from these decisions of the Internal Review Officers that the Appellant now appeals.

Preliminary Issues

Prior to the hearing, the Appellant requested an adjournment to the scheduled hearing date so that he could seek additional medical evidence from his doctors. Counsel for MPIC objected to this request for an adjournment. The Panel heard submissions from the parties on the issue on the adjournment and recessed briefly to consider the question. The hearing was then reconvened. The panel indicated that postponements are only granted under unusual circumstances of a compelling nature and that the Appellant had failed to set out such compelling reasons. Accordingly, the hearing continued as scheduled.

At the hearing the Appellant took the position that he was no longer seeking funding for the hospital bed. Counsel for MPIC agreed with the Appellant's request to withdraw this question as an issue between the parties. The Panel proceeded to hear evidence on the remaining two issues of the personal care assistance benefits and permanent impairment benefits.

Submissions

The Appellant submitted that following the accident his sons assisted him in his house. He testified that his headaches were unbearable and his sons came in to help him with meals etc. He did not think of asking for personal care assistance benefits at that time and did not go back to see his doctor for approximately a month. Although he had no recommendation from a doctor, or other health care professional such as an Occupational Therapist or Physiotherapist that he required such assistance, he stated that he could not have coped without it.

It was only later, the Appellant indicated, when he consulted with a lawyer, that he learned that such benefits existed. Therefore, he filed his claim for assistance in 2004.

The Appellant also submitted that he still suffered from headaches as a result of the accident, and that this had also lead to weight gain and sleep apnea. He indicated that, while the medical reports may indicate that he suffered from a degenerative back condition, this condition did not cause any pain symptoms or problems prior to the accident, and as such, he believed that the accident was the cause of these symptoms and that he should be entitled to permanent impairment benefits on account of the headaches from which he suffered.

Counsel for MPIC submitted that the claims for personal care assistance costs submitted by the Appellant were conflicting and inconsistent, adding up to approximately nine (9) hours per day of care for an individual living by himself in a 960 sq. ft. house. The documents supporting the claim were so general and vague, and unsupported by any medical evidence, that it was impossible to assess, at this late date, the necessity for, or the reasonableness of the assistance alleged to have been provided. He submitted that the standard of proof for entitlement, on a balance of probabilities, had not been established.

Counsel for MPIC also submitted that medical evidence from [Appellant's doctor #1] and [Appellant's doctor #2], indicated that the Appellant suffered from accident related muscle tightness and spasm, combined with an underlying malalignment of the upper spine (described as cervical scoliosis) and an underlying degenerative disc disease. Both of these conditions were said to have pre-existed the accident by many years. He argued that, although the musculotendinous strain of the cervical spine that resulted from the accident initially could have caused the Appellant's headaches, the medical evidence suggested that two years was more than ample time for the effects of the motor vehicle collision to have resolved. This was supported by an Inter-departmental Memorandum dated July 30, 2000 from [MPIC's doctor], [text deleted].

Counsel for MPIC submitted that the Appellant's ongoing symptoms after that point were due to the Appellant's pre-existing spinal abnormalities, and that the soft tissue injuries attributable to the accident had likely resolved long before. He also pointed out that the Appellant had indicated, in a letter dated March 8, 2005, that his headaches "had all but disappeared". Accordingly, the evidence fell short of establishing that the Appellant's more current medical condition has any probable causal connection to the motor vehicle accident in 1997. He further noted that there is nothing in the MPIC Permanent Impairment schedule alluding to headaches, and those headaches are simply are not a ground for entitlement for Permanent impairment benefits under the Act.

Discussion

Section 131 of the Act provides as follows:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 126 of the Act provides as follows:

Meaning of "permanent impairment"

126 In this Division, "permanent impairment" includes a permanent anatomicophysiological deficit and a permanent disfigurement.

Section 127 of the Act provides as follows:

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

Manitoba Regulation 41/94 sets out the amount to be awarded for particular types of Permanent Impairments.

The onus is on the Appellant to show, on the balance of probabilities, that he was entitled to personal care assistance expenses due to an inability, because of the accident, to care for himself or to perform the essentials of everyday life without assistance. The onus is also on the Appellant to show, on a balance of probabilities, that he suffered permanent physical or mental impairment because of the accident, entitling him to a lump sum indemnity for permanent impairment.

Decision

Personal Care Assistance Benefits

The Appellant failed to provide details regarding his need for assistance or the particulars of his incapacity. He testified that he had terrible headaches and needed help, and that his sons and sister helped him around the house.

However, there is no indication in the evidence that the Appellant indicated such a need to his case manager following the accident. The claim for personal assistance benefits was not made until much later, in 2004, almost eight years after the accident. As a result, there are conflicts and inconsistencies in the evidence regarding the amount of personal care assistance which he received. As well, there is no medical evidence on the file to support the need for personal care assistance. There is no indication from his doctor, or from a physiotherapist or occupational therapist that the Appellant required such assistance.

Accordingly, the Commission finds that the Appellant has failed to meet the onus of establishing, on the balance of probabilities, that he was entitled to personal care assistance expenses due to an inability, because of the accident, to care for himself or to perform the essential activities of every day life without assistance, pursuant to Section 131 of the Act.

Permanent Impairment Benefits

Counsel for MPIC submitted that any continuation of the Appellant's headaches was not due to the accident, but rather due to the Appellant's pre-existing degenerative back condition. He submitted that, on the evidence, the Appellant's headaches were not permanent, but had "all but disappeared". Further, he pointed out that there is no rateable impairment under the MPIC Permanent Impairment Schedule providing for compensation for "headaches".

It is the finding of the Commission that even if the panel were to have agreed that the continuation of the Appellant's headaches were caused by the motor vehicle accident in 1997,

there is no basis for compensating the Appellant's "headaches" as a permanent impairment under s. 126 and s. 127 of the Act and the Permanent Impairment Schedule set out in Regulation 41/94 to the Act.

As a result, and for these reasons the Commission dismisses the Appellant's appeal and confirms the decisions of the Internal Review Officers dated February 7, 2001 and July 6, 2004.

Dated at Winnipeg this 15th day of July, 2005.

MS. LAURA DIAMOND

NEIL COHEN

ROBERT CHERNOMAS