

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-30**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Sandra Oakley
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted], was represented by Ms Marla Garinger Niekamp of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: March 20, 2007

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits

RELEVANT SECTIONS: Section 71(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 January 17, 2004, when his vehicle was rear-ended while stopped at a red light. On March 9, 2004, the Appellant submitted a claim to MPIC for Personal Injury Protection Plan ('PIPP') benefits in respect of injuries arising from this motor vehicle accident. In a decision dated October 7, 2004, MPIC's case manager denied the Appellant's claim on the basis that there was no causal relationship between the Appellant's lumbar disc herniation and the motor vehicle accident of January 17, 2004.

The Appellant sought an Internal Review of that decision. The Internal Review Officer, in his decision dated November 26, 2004, dismissed the Appellant's Application for Review and upheld the case manager's decision of October 7, 2004. The Internal Review Officer also determined that there was no causal relationship between the Appellant's lumbar disc herniation and the January 17, 2004 motor vehicle accident.

The Appellant has now appealed to this Commission. In order to establish an entitlement to PIPP benefits, the Appellant must establish that he has suffered a bodily injury in a motor vehicle accident.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's lumbar disc herniation was, on a balance of probabilities, related to the motor vehicle accident of January 17, 2004. We base our findings of a causal relationship between the motor vehicle accident and the Appellant's lumbar disc herniation upon the following factors:

1. The Appellant's testimony at the appeal hearing that within one (1) week of the motor vehicle accident he began experiencing pain in his ankles, which developed into pain radiating from his right buttock into his right leg;
2. The delay in seeking medical treatment was attributable to the Appellant's lack of a primary care physician;

[Appellant's doctor #1's] report of June 1, 2004, wherein he notes the following:

I had the pleasure of assessing [the Appellant] on March 9, 2004. His presenting complaint was low back and right-sided posterior leg pain which had been occurring for the past three weeks. He stated that he was involved in a motor vehicle accident in mid January and had felt some mild back pain and stiffness then, but did not develop his current symptoms at that time. He also had mentioned problems with sitting for prolonged periods and paresthesia in about the right posterior leg and had occasional increases in pain during Valsalva type manoeuvres.

3. [Appellant's doctor #2's] report of May 5, 2004 wherein he opines that:

As stated in my answer to the first question, I had initially seen [the Appellant] a significant time following the motor vehicle collision. Based upon his reports, the low back pain developed shortly after the collision. Although this would not be a typical presentation for a disc injury related directly to the trauma of the collision, the development of these symptoms closely following a collision could indicate an association. However, as I do not know the mechanism of the collision and do not have direct knowledge of his symptoms immediately following the collision, I cannot determine with a high degree of medical probability that his back pain could only be related to the collision. My insinuation that a relationship is present is based upon his reports of the back pain developing after the collision in an individual who did not have back pain prior to the collision.

Based upon the foregoing factors, the Commission finds that the Appellant did have low back complaints within a short period of time following the motor vehicle accident. In this case, the Appellant's own testimony that he developed mild symptoms shortly after the motor vehicle accident which became more intense as time progressed, convince us, on a balance of probabilities, that the accident is the likely cause of his injury. As such, the Commission finds that the Appellant's lumbar disc herniation following the motor vehicle accident of January 17, 2004 was, on a balance of probabilities, caused by that accident. As a result, we find that the Appellant is entitled to PIPP benefits arising from the motor vehicle accident of January 17, 2004.

Dated at Winnipeg this 18th day of July, 2007.

YVONNE TAVARES

SANDRA OAKLEY

DEBORAH STEWART