

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-152**

PANEL: Yvonne Tavares, Chairperson
Mr. Sheldon Claman
Mr. Wilf DeGraves

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

HEARING DATE: September 11, 2008

ISSUE(S): Whether Appellant's knee injury is related to the motor
vehicle accident.

RELEVANT SECTIONS: Sections 71(1) and 127(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 29, 1998 in which she struck both knees into the dashboard. Since that accident, the Appellant has experienced intermittent pain and discomfort in her knees, which has progressively worsened and become more frequent.

Initially, the Appellant did not make a claim with MPIC as a result of her knee injuries. However, as time passed and her knee condition worsened, she felt she should contact MPIC.

On or about February 2003, the Appellant met with a case manager in order to inquire about benefits and to initiate a claim. The case manager subsequently conducted an investigation in order to determine the Appellant's entitlement to benefits, and particularly permanent impairment benefits. In a letter dated May 23, 2003, the case manager advised the Appellant as follows:

Your entire medical file has been reviewed by our Health Care Services Team. The medical information reviewed indicates that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of January 29, 1998. Therefore, we are unable to consider a permanent impairment award.

The Appellant sought an internal review of that decision. In a decision dated September 26, 2003, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. In arriving at her decision, the Internal Review Officer relied upon [MPIC's doctor's] Inter-Departmental Memorandum dated July 25, 2003, wherein [MPIC's doctor] opined as follows:

Subsequent to my chart review, the claimant had provided medical documentation to MPIC in the form of an Application for Review of Injury Claim Decision submission. In this documentation, there was a medical report dated two days after the collision which indicated that the claimant did have injuries to her patella at the time of the motor vehicle collision. In submitted clinical notes, it appeared that the claimant had episodic reports of knee pain thereafter. In the year 2000, on a date that was assumed to be June 21st, the claimant reported bilateral knee pain. No physical abnormalities were found in examining the knees as of that date. The physician at the time recommended rehabilitation exercises and did investigations to determine if there was the possibility of an inflammatory condition to explain her symptoms.

One month after the above date, on July 20, 2000, the claimant had a complete physical examination. At that time, the treating physician documented the following, "Knees good. Stable. Patella high riding. No OA (sic)". This would indicate that the claimant's knee examination was normal at that time. There were no specific pain reports voiced by the claimant within this chart entry. Thereafter, the claimant returned to the clinic on February 4, 2003 reporting bilateral knee pain.

The newly submitted information did alter the opinion that the collision did not cause the claimant's initial knee pain. The emergency report clearly linked the collision to the knee pain. Based on the intermittent nature of the pain and the probable resolution of

symptoms after June 2000, the chronological record on file would not indicate that the claimant's most recent condition was related to the motor vehicle collision, on the balance of medical probabilities. The resolution of the claimant's symptoms following the motor vehicle collision indicated resolution of the painful syndrome. As this condition is common in the general population, the episodic development of knee pain after the motor vehicle collision cannot be considered to solely have been as a result of the motor vehicle collision. Thus, I cannot determine a probable cause/effect relationship based on the balance of medical probabilities. The association supported by the documentation would be only possible in my opinion.

The Internal Review Officer agreed with [MPIC's doctor's] opinion that the Appellant's initial knee problems had resolved by June of 2000 and that her knee problems reported after February 2003 were a new condition not related to the motor vehicle collision on the balance of probabilities.

It is from this decision that the Appellant has appealed to the Commission. The issue which arises on this appeal is whether the Appellant's current knee injuries are related to the motor vehicle accident of January 29, 1998.

Upon hearing the testimony of the Appellant and after a careful review of all of the reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant's current knee problems are, on a balance of probabilities, connected to the motor vehicle accident of January 29, 1998. In his Inter-Departmental Memorandum of July 25, 2003, [MPIC's doctor] based his opinion that there was no causal relationship between the Appellant's current knee problems and the motor vehicle accident of June 29, 1998 on the assumption that the Appellant's symptoms had resolved after June 2000, since she did not seek further medical attention until February 4, 2003. However, the Appellant testified at the appeal hearing that:

1. her knee condition did remain symptomatic throughout this time (June 2000 – February 2003) and continued to progressively worsen, even though she did not seek medical care;
2. [Appellant's doctor] had advised her that there really was no surgical solution for her knee problems and therefore she didn't think that there was any point in continuing to see doctors for her knee problems;
3. she was pregnant with her second child, who was born in [text deleted] 2001, during this time. She couldn't get x-rays during her pregnancy and after the birth of her second child, she was focused on her baby. It was only when she started to feel more and more pain that she returned to seek further medical care in February 2003.

The Commission finds that the Appellant's testimony explains the gap in her treatment between June 2000 and February 2003 and that her current knee problems relate to the knee injuries sustained in the motor vehicle accident of January 29, 1998 and have continued to progressively worsen since then. Accordingly, the Appellant's claim shall be referred back to MPIC's case manager for a determination of her entitlement to permanent impairment benefits and any other Personal Injury Protection Plan benefits that may be applicable.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated September 26, 2003 is therefore rescinded.

Dated at Winnipeg this 2nd day of October, 2008.

YVONNE TAVARES

SHELDON CLAMAN

WILF DE GRAVES