

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-179**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], did not appear at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: July 12, 2011

ISSUE(S): Entitlement to Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Sections 70(1) and 85(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 was injured in a motor vehicle accident on December 22, 2001. He was in receipt of travel and medication expenses, physiotherapy and chiropractic treatment, and occupational therapy benefits. On February 24, 2004, the Appellant's case manager wrote to him indicating that, following review by MPIC's Health Care Services Team, there did not appear to be a probable cause and effect relationship between the motor vehicle accident of December 22, 2001 and the Claimant's ongoing complaints of spinal pain.

The case manager also referred to an opinion of a mental health professional from MPIC's Health Care Services Team who had opined that given the Appellant's pre-existing history of depression and anxiety, as well as his personality pathology, poor coping skills and psychosocial factors with which he was dealing, there were several alternative causative factors, other than the motor vehicle accident, which would account for his condition and diagnosis.

The case manager went on to note that as the Appellant was not working at the time of the accident he was classified as a non-earner and there was no medical or psychological evidence to establish that he was unable to work as a result of the motor vehicle accident. Accordingly, the case manager found that the Appellant was not entitled to Income Replacement Indemnity ("IRI") benefits.

The Appellant sought an Internal Review of this decision. On August 4, 2004, an Internal Review Officer for MPIC reviewed the Appellant's file, including reports from [MPIC's Doctor #1] of MPIC's Health Care Services Team, [Appellant's Psychologist #1], and [MPIC's Psychologist], MPIC's psychological consultant. The Internal Review Officer concluded that the Appellant had not provided any reasons to dispute the opinions provided by [MPIC's Doctor #1] and [MPIC's Psychologist]. There did not appear to be a probable cause and effect relationship between the motor vehicle collision of December 22, 2001 and the Appellant's spinal pain complaint. Further, the Appellant's inability to hold employment was found to be due to pre-existing conditions and not causally related to the motor vehicle accident. No motor vehicle accident related psychological condition prevented him from being employed.

It is from this decision of the Internal Review Officer that the Appellant has appealed.

The Appellant filed a Notice of Appeal with the Commission on October 9, 2004. He stated:

“[Text deleted] (*Internal Review Officer*) acted in bad faith in entreating (sic) in the review hearing base on conflit (sic) of interest, this is not a legal decision letter.”

The Notice of Appeal set out the Appellant’s address on [text deleted].

Since the filing of the Notice of Appeal, the appeals officers and staff of the Commission were in contact with the Appellant on numerous occasions.

On June 8, 2005 the Appellant advised an appeals officer for the Commission that he would accept a copy of the Indexed file at a new address of [text deleted] and provided a telephone number at which he could be reached.

The Commission continued to correspond with the Appellant at this address and by email.

A Case Conference hearing was conducted by telephone on May 9, 2006 and as a result the Appellant was asked to provide fuller particulars regarding his grounds for appeal and whether he would be requesting the Claimant Adviser Office to represent him.

The Appellant later advised that he would be represented by the Claimant Adviser Office.

A pre-hearing meeting was held on June 18, 2007, with the Claimant Adviser’s Office representing the Appellant.

Further Case Conferences were held regarding the administration of the appeal file, and at Case Conference meetings on January 22, 2010 and December 16, 2010, the Appellant confirmed

before the Commission that he did not want further legal representation from the Claimant Adviser's Office or by any legal representative.

A subsequent fax was sent by the Commission to the Appellant enquiring whether he would prefer hearing dates of May 10 and 11, 2011 or July 12 and 13, 2011.

The Appellant indicated, by fax on March 8, 2011, that he would prefer the dates of July 12 and 13, 2011.

A hearing into the Appellant's appeal was scheduled for July 12 and 13, 2011 at 9:30 a.m. On March 9, 2011, the Commission issued a Notice of Hearing which stated:

As the parties have advised the Commission that they have now provided the Commission with all written material that is relevant to the above noted appeal, (**including**, but not limited to, **all medical and related reports**) the Commission has fixed:

Date: Tuesday, the 12th day of July, 2011
and
Wednesday, the 13th day of July, 2011
Time: 9:30 a.m.
Place: 301-428 Portage Avenue, Winnipeg, MB R3C 0E2

for the hearing of the appeal. That time and date are firm; postponements will only be granted under extraordinary circumstances.

The subject of the appeal is outlined on the Issues Under Appeal cover sheet a copy of which was provided with the indexed file.

New documentary evidence must normally be filed with the Commission at least **30 days** before the hearing thereby giving the other party time to study it and, if necessary, to respond to it.

This Notice will also serve as a reminder that if you intend to call witnesses, you must provide your Appeals Officer with the name of each witness and a brief summary of what he or she is expected to say. The Appeals Officer will share that information with the other party, and it is therefore, important that the Appeals Officer receive it from you well before the hearing date.

Should either party fail to appear or to be represented at the above time and place, the Commission may proceed with the hearing and render its decision. Alternatively, it may

dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

This notice, addressed to the Appellant, was sent by both regular mail and Xpresspost to the Appellant at [text deleted].

A report from a member of the Commission's staff indicates that the Notice of Hearing that was sent by regular mail was not returned to the Commission. In respect of the Xpresspost mail, the Notice of Hearing was signed by the Appellant as indicated with an "X" on the Canada Post Scanned Delivery Date and Signature form.

The Commission notes that the address at [text deleted] was the address which was provided by the Appellant to the Commission by November 1, 2005. The Commission finds that pursuant to Section 184(1) and (2) of the MPIC Act, the Appellant is deemed to have received notice of the Commission's hearing scheduled for July 12 and 13, 2011.

The hearing commenced on July 12, 2011 at 9:30 a.m. Mr. Kirk Kirby, MPIC's legal counsel attended the hearing; the Appellant did not. At 9:50 a.m., the Commission indicated that subject to hearing from the Appellant that he had extenuating reasons for not appearing at the hearing, the Commission would hear submissions from MPIC and proceed to make a decision in respect of the merits of the appeal based upon the evidence and submissions before the Commission at that time.

Evidence and Submission for the Appellant:

The Appellant did not appear to provide testimony or submission at the hearing. He has not contacted the Commission. However, the Appellant's Indexed file contained, in addition to reports from MPIC's Health Care and Psychological Consultants, [MPIC's Doctor #1] and [MPIC's Psychologist], medical reports provided by [Appellant's Psychologist #1], [Appellant's Anaesthesiologist], [Appellant's Doctor #1], [Appellant's Psychologist #2], [Appellant's Chiropractor] and [Appellant's Doctor #2].

The Appellant's Application for Review set out the following points:

1. "Entitlement to I.R.I. for the first 180 days
2. Entitlement to I.R.I. after first 180 days
3. Entitlement to further benefits as provided under P.I.P.P.
4. [MPIC's Doctor #2] review
6. [MPIC's Psychologist's] review 3/25/04
7. [Text deleted] signing the decision letter.

*Note: [Text deleted] told me you (Review Office) is legally responsible for giving me a copy of my S.I.U. file. Please do so before my prosecution date is set."

His Notice of Appeal set out:

"[Text deleted] (*Internal Review Officer*) acted in bad faith in entreating (sic) in the review hearing base on conflit (sic) of interest, this is not a legal decision letter."

The Appellant also provided the Commission with a letter dated October 23, 2002 from the Operations Manager of [text deleted] indicating that the Appellant was scheduled to start work January 7, 2002 but that he had contacted the employer on January 5, 2002 and stated that he could not attend work as he had been in a "serious motor vehicle accident".

Evidence and Submission for MPIC:

Counsel for MPIC submitted that the Appellant was involved in a minor motor vehicle accident on December 22, 2001. A description of the motor vehicle accident and the minor damage of

\$393.05 to the other vehicle (with no damage to the Appellant's vehicle), was set out in a report from the Appellant's case manager dated October 20, 2003.

Counsel noted that prior to the motor vehicle accident, the Appellant had been hospitalized with mental health problems, receiving psychiatric care. He was released on December 14, 2001.

The Appellant had not been employed prior to his admission to the hospital and had been under psychiatric care. Since that time, he continued to have difficulties with his attitude and intermittent employment.

The Appellant had mentioned that he was offered a job in mid 2002, but had never established the fact of this job offer to his case manager.

Shortly after the motor vehicle accident, the Appellant began seeing [Appellant's Chiropractor].

He had also been seeing [Appellant's Psychologist #1] since November 2, 2001. [Appellant's Psychologist #1] provided a report dated May 26, 2003, describing the Appellant's complaints of longstanding anxiety and a two year history of feeling depressed and anhedonic. The diagnosis was major depressive disorder with panic attacks, possibly longstanding dysthymia and social phobia since adolescence.

[Appellant's Psychologist #1's] report also contained reference to the patient's unhappiness on January 11, 2002 that he was unable to find employment and had been having marital difficulties.

Counsel for MPIC submitted that this admission of difficulty with employment contradicted the Appellant's statement to MPIC in 2002 that he had employment prospects at the time of the motor vehicle accident.

Counsel submitted that no weight should be given to the information supplied by the Appellant regarding his employment prospects and that he had no real employment opportunities available to him after his discharge from the hospital in December of 2001.

Counsel also noted the extensive pre-existing conditions from which the Appellant suffered prior to the motor vehicle accident. The medical information on file revealed that he has suffered from chronic headaches, chronic back pain and, as far back as September 1997, from a chronic pain syndrome including anxiety, low back aches. A number of investigations including bone scans and CT scans with normal results dated back to 1999 and 2000.

There was inconsistent evidence on the file regarding any injury or pain that the Appellant may have been suffering in his left wrist and the only consistent evidence was of subjective muscle complaints of low and mid back pain.

Reports from his chiropractor and physiotherapist indicated that he had attained full maximum medical benefit on these complaints by 2002.

Counsel submitted that the decision of the Internal Review Officer was well supported by the clinical information before him at that time. This information is currently before the Commission. The medical information was reviewed by [MPIC's Doctor #1], physical medical rehabilitation specialist, and by [MPIC's Psychologist], a psychological consultant. Counsel

submitted that there was no cause and effect relationship between the motor vehicle accident and the Appellant's ongoing spinal pain complaints and that the psychological aspects of his difficulties were only possibly, and not probably related to the motor vehicle accident. His mental state was affected by alternative factors, including difficulties with his marriage and a lack of employment that predated the motor vehicle accident, as well as pre-existing depression, anxiety, poor coping skills, etc.

Counsel submitted, as [MPIC's Psychologist] had concluded, that there were no motor vehicle accident related psychological conditions preventing the Appellant from being employed. Other pre-existing psychological conditions unrelated to the motor vehicle accident affected the Appellant's ability to work and the medical evidence did not establish, on a balance of probabilities that the Appellant had any motor vehicle accident related conditions that interfered with his ability to obtain employment. Hence no IRI benefits should be paid as a result and the decision of the Internal Review Officer dated August 4, 2004 should be upheld.

Discussion:

Definitions

[70\(1\)](#) In this Part,

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

- (a) by the autonomous act of an animal that is part of the load, or
- (b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

Entitlement to I.R.I. for first 180 days

[85\(1\)](#) A non-earner is entitled to an income replacement indemnity for any time during the 180 days after an accident that the following occurs as a result of the accident:

- (a) he or she is unable to hold an employment that he or she would have held during that period if the accident had not occurred;
- (b) he or she is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

The panel has reviewed the documents filed by the Appellant in support of his appeal as well as the medical reports on the Indexed file and the submission of counsel for MPIC.

The onus is on the Appellant to show, on a balance of probabilities, that conditions resulting from the motor vehicle accident are preventing him from working, thereby entitling him to IRI benefits.

The panel agrees with the submission of counsel for MPIC that there were no medical motor vehicle accident related conditions preventing the Appellant from working. We have noted the comments of [MPIC's Doctor #1] who stated:

“Therefore, based on the information currently available, and with a reasonable degree of medical certainty, there does not appear to be a probable cause and effect relationship between the motor vehicle collision of December 22, 2001 and the claimant's spinal pain complaint.”

We also note the comments of [MPIC's Psychologist] who stated:

“Given the information provided by [Appellant's Psychologist #1] and [Appellant's Psychologist #2] regarding the claimant's mental status after the MVA, there is in my opinion, only a possible, not a probable, relationship between the MVA in question and his mental state at the time. [Appellant's Psychologist #1] noted problems with the claimant's marriage and lack of employment three weeks after the MVA, but felt that his mood was stable. [Appellant's Psychologist #2] felt that the claimant was depressed and anxious three months after the MVA.

Given the claimant's pre-existing history of depression and anxiety as well as his personality pathology, poor coping skills and the psychosocial (lack of a job and marital discord) factors he was dealing with, there are several alternative causative factors which could account for [Appellant's Psychologist #2's] diagnosis in March, 2002 other than the MVA which occurred three months earlier. The opinion is further substantiated by the apparent crises the claimant had in April, 2002 which appear to be due to stress with his ex-wife. As noted, the claimant did apparently tell [Appellant's Psychologist #2] that he had two more MVA's in April, 2002. There is no documentation in the file to substantiate his claim."

We agree with [MPIC's Psychologist's] opinion that the Appellant's inability to hold employment on a psychological basis was due to pre-existing conditions and not causally related to the motor vehicle accident.

Accordingly, the panel finds that the Appellant has failed to show on a balance of probabilities that he was unable to work as a result of injuries and conditions arising out of the motor vehicle accident. As a result, the Appellant is not entitled to receive IRI benefits from MPIC, and the decision of the Internal Review Officer dated August 4, 2004 is upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 2nd day of September, 2011.

LAURA DIAMOND

MARY LYNN BROOKS

PAUL JOHNSTON