

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-129**

PANEL: Mr. Mel Myers, Chairperson
Dr. Sheldon Claman
Ms Deborah Stewart

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

HEARING DATE: May 19, 2011

ISSUE(S): 1. Whether the permanent impairment award was properly
assessed;
2. Entitlement to further Personal Injury Protection Plan
("PIPP") benefits including Income Replacement Indemnity
benefits;

RELEVANT SECTIONS: Section 70(1), 71(1), and 127 of The Manitoba Public
Insurance Corporation Act ('MPIC Act')

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

[The Appellant] [text deleted] was involved in a motor vehicle accident on March 20, 1994 and as a result sustained a concussion, scrapes to her face and shoulders, bruising, whiplash, and headaches.

The Commission notes that the Internal Review officer's Decision dated April 11, 2005 succinctly sets out the essential facts relating to the Appellant's appeal:

- At the time you were [text deleted] years old and worked as a cook/hostess at [text deleted]. You missed a few days of work because of the accident.
- You attended your family doctor on March 24, 1994 with mild headaches. Examination noted abrasions and bruising to your face, right shoulder and knuckles. Brief clinical notes for March 28, 1994 noted continuing headaches.
- You began working in a call centre at [text deleted] from 1994 to 1996 and then began working at the [text deleted] call centre in 1996. It appears that call centre work was stressful and you attended to physiotherapy to deal with trapezii and semispinalus strain with tension headaches.
- The next relevant medical appointment you attended was in July 2002 when you complained to your family doctor of worsening headaches. [Appellant's Doctor] advised you to take off work for August and you ceased working at [text deleted] around this time and have not worked since.
- The case manager forwarded the file to MPI Health Care Services for review when you requested IRI benefits and coverage for physiotherapy.
- [MPIC's Doctor], Medical Consultant, MPI Health Care Services, completed a review on August 15, 2002. She stated that a medical cause and effect relationship between your headaches and the motor vehicle accident had not been established as the gap between March 28, 1994 and July 2002 made the case and effect association unlikely.

[MPIC's Doctor] did note, however, that you would be entitled to a permanent impairment benefit for loss of consciousness of 2 minutes duration of 2%.

- Accordingly, by decision letter dated September 30, 2002, the case manager advised that you did not qualify for IRI benefits or other PIPP expenses because the medical evidence did not establish that your current symptoms were related to the motor vehicle accident.

The decision letter did provide you with a permanent impairment benefit of \$2,000.00 for loss of consciousness based on a permanent impairment rating of 2%.

- Following your Application for Review in November 2002, [Appellant's Psychiatrist] forwarded a brief note dated November 20, 2002 that you are currently under his care and unable to work at this time.
- You also advised in November 2002 that you were obtaining further medical information.
- In January 2003 I wrote to [text deleted] requesting their records as you had indicated they required a letter from us in order to obtain the records.
- In September 2003 further clinical records were obtained from your medical practitioners.

- I wrote to you on September 11, 2003 to inquire if you were ready to proceed to a hearing.
- A telephone hearing was eventually scheduled for January 19, 2004 but you cancelled same as more information was forthcoming.
- I wrote to you in January 2004 requesting that we reschedule another hearing. A telephone hearing was held on May 18, 2004. At the hearing you said that the reason you cannot work is because of psychological problems. You indicated that you thought you were knocked out in the accident for 20 minutes rather than 2 minutes and also questioned the permanent impairment award.
- Following the hearing, I wrote to [Appellant's Psychiatrist] on May 19, 2004 and requested a report from him.
- On September 4, 2004, [Appellant's Psychiatrist] wrote and advised that he first began treating you on November 5, 2002 at the request of a referral from your family doctor for depression. [Appellant's Psychiatrist] advised that he sees you about once a month and you were diagnosed with major depressive episode of moderate severity, and panic disorder with agoraphobia. He noted, "It would seem that her current depressive episode is related to her accident of March 20, 1994." He concluded that you are not able to work at this time with a guarded prognosis.
- I then forwarded the file to [MPIC's Doctor] to consider the new medical information which had been received. [MPIC's Doctor] provided a review dated October 7, 2004 and noted that there was still an absence of chronological reporting of headaches and other motor vehicle accident symptoms. She commented that there continues to be a lack of chronological documentation to substantiate a cause and effect associated between headaches and physical injuries and the 1994 motor vehicle accident.

[MPIC's Doctor] referred the file to MPI's psychological consultant to address [Appellant's Psychiatrist's] letter regarding the psychological issues.

- At the suggestion of [MPIC's Psychologist] I wrote to [Appellant's Psychiatrist] and obtained his clinical notes.
- [MPIC's Psychologist] advised by memorandum dated December 10, 2004, that an independent psychiatric examination would be helpful in determining the cause and effect of the relationship between your current depressive symptoms and the 1994 motor vehicle accident.
- Accordingly, you attended an independent psychiatric examination with [Independent Psychiatrist] on February 4, 2005. [Independent Psychiatrist] reviewed your work history, psychosocial/developmental history and the medical documentation. [Independent Psychiatrist] found that you had a mild to moderate major depressive episode, generalized anxiety disorder, with moderately severe psychosocial factors. He also indicated a need to rule out a panic disorder. He felt your prognosis was good and that you are not as impaired as you think you are. He felt you should be able to work.

As to causation, however, [Independent Psychiatrist] wrote that he was unsure to what degree your current complaints were motor vehicle accident related. He noted a pre-motor vehicle accident history of anxiety, maternal history of depression and possible substance abuse on your part. [Independent Psychiatrist] also noted other significant factors that may have led to your stopping work including dissatisfaction of the work. He was not certain if the pain and limitations you were reporting were a factor in contributing to your current mental health problems, and clearly was uncertain if it was a major factor.

- I forwarded the file to [MPIC's Psychologist] to review [Independent Psychiatrist's] report as well as the entire medical documentation on March 29, 2005. [MPIC's Psychologist] concluded that based on the report of [Independent Psychiatrist] and the medical information, there was a possible but not a probable cause and effect relationship between your psychological condition and the 1994 accident."

Internal Review Officer's Decision:

The Internal Review Officer issued a decision on April 11, 2005 dismissing the Appellant's Application for Review and confirming the case manager's decision of September 30, 2002. In this decision, the Internal Review Officer indicated that the two issues for determination were:

1. Was the permanent impairment award properly awarded?
2. Does the evidence support the decision that no causal connection exists between your psychological symptoms and the 1994 motor vehicle accident?

The Internal Review Officer determined that:

1. The Permanent Impairment Award was properly computed.
2. The evidence did not support a causal relationship between the Appellant's current psychological problems and the motor vehicle accident and therefore she was not entitled to PIPP benefits including IRI for the following reasons:

1. "The medical documents from the emergency department document a loss of consciousness on your part of approximately 2 minutes. You indicated you thought you were knocked out for 20 minutes. Under either state of facts,

however, this would be considered a permanent impairment based on alteration of cerebral tissue following a concussion, minor, which has a permanent impairment range of .5 to 2%. This is based on the Schedule of Permanent Impairments in effect for the motor vehicle accident of 1994. You were given an award of 2%, the maximum for this category.

I note that under the new permanent impairment schedule which deals with accidents after March 2000, a concussion with loss of consciousness for less than 5 minutes would entitle one to a permanent impairment award of .5% and for a period of between 5 minutes to one hour, 2%.

There was no error in the award of 2% permanent impairment for your loss of consciousness following the accident.

2. With regard to the issue of your ongoing entitlement to PIPP benefits, under the legislation the motor vehicle accident must have caused an injury in order to entitle you to benefits. In this case you sought further benefits in 2002 and claimed you had lingering injuries from the 1994 motor vehicle accident. Based on the reports of [MPIC's Doctor], there is no physical injury from the 1994 motor vehicle accident as she cannot connect your claim of headaches with the 1994 accident.

The only issue really is whether your psychological problems first identified by [Appellant's Psychiatrist] in November 2002 are related to the 1994 motor vehicle accident.

While [Appellant's Psychiatrist] relates the motor vehicle accident to your problems, the independent report of [Independent Psychiatrist] does not. [Independent Psychiatrist] also had the advantage of reviewing all the medical information. In addition, he met with you for several hours.

Moreover, [MPIC's Psychologist] reviewed all the medical information. He also concluded that there was no probable cause and effect relationship between your depression and generalized anxiety and the 1994 accident.

Based on the medical evidence of [Independent Psychiatrist] and [MPIC's Psychologist], I conclude that you are not entitled to any further PIPP benefits as your psychological symptoms are not as a result of the 1994 motor vehicle accident.

The case manager's decision of denying you further benefits on September 30, 1992 is thus confirmed."

The Appellant filed a Notice of Appeal with the Commission on July 7, 2005. In the Notice of Appeal the Appellant stated:

1. "Neurologist appt to confirm illness today is due to the accident

2. I was treated unfair, only \$2000 for damage (Brain)
3. Sustained injuries that still exist today with no compensation
4. I have proof of unconsciousness for longer than MPI indicated.”

Appeal:

The relevant Sections of the MPIC Act are:

Definitions

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

"**accident**" means any event in which bodily injury is caused by an automobile;
(« accident »)

"**automobile**" means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires; (« automobile »)

"**victim**" means a person who suffers bodily injury in an accident. (« victime »)

Application of Part 2

[71\(1\)](#) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

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.

The Appellant testified at the hearing that:

1. As a result of the motor vehicle accident injuries she was knocked unconscious for approximately 20 minutes.
2. MPIC erred in determining that she had been unconscious for 2 minutes.
3. As a result, she was entitled to a higher permanent impairment award.

She further testified that at the time of the motor vehicle accident she was placed on a stretcher and a photograph was taken of her and published in the [text deleted]. She testified that this photograph would substantiate her claim that she had been unconscious for in excess of 2 minutes. The Appellant did not have a copy of the photograph with her at the time of the hearing and undertook to provide a copy of the photograph to the Commission. The Appellant therefore submitted that she was entitled to a higher impairment award granted by MPIC.

The Appellant submitted that as a result of the motor vehicle accident injuries which still exist to this date, for which she has received no compensation, and that she was unconscious for much longer than determined by MPIC. Accordingly, the Appellant submitted that she was entitled to a higher permanent impairment award and IRI benefits after February 15, 2007.

The Commission heard submissions from MPIC's legal counsel who reviewed the Internal Review Officer's Decision and stated that the Appellant had failed to establish on a balance of probabilities that there was a causal connection between her psychological symptoms and the 1994 motor vehicle accident. MPIC's legal counsel also submitted that MPIC had properly computed the Permanent Impairment Award.

The Commission indicated that the proceedings would be adjourned in order for the Appellant to provide the Commission with a copy of the photograph which she intended to obtain from the [text deleted].

On May 31, 2011 the Commission received a Xerox copy of a page from the [text deleted] dated March 21, 1994 showing the photograph which depicted a portion of the Appellant's face while she was lying on a stretcher. A copy of this photograph was sent by the Commission to MPIC's

legal counsel with a request that he provide the Commission with any comments he wished to make in this matter. MPIC's legal counsel in reply stated:

“As requested, I acknowledge receipt of the newspaper picture of an individual on a stretcher. The caption confirms that the individual was a pedestrian who unfortunately was struck by a vehicle. It makes no reference to whether the person was unconscious or had lost consciousness for a period of time. It also depicts the individual receiving attention. It is of limited benefit to this matter beyond these comments.”

A copy of MPIC's response was provided to the Appellant on June 22, 2011 and asked to provide any comments she may have. On June 24, 2011 the Appellant provided an email response to the Commission wherein she repeated the submission she made to the Commission at the appeal hearing. However, the Appellant did not directly respond to [MPIC's legal counsel's] comments in respect of the newspaper picture.

Entitlement to Permanent Impairment Award:

The Commission has examined the photograph and has determined that it does not assist the Appellant in establishing that she had been knocked unconscious for at least 20 minutes as a result of the motor vehicle accident. The photograph does not indicate whether the Appellant's eyes are opened or closed or how long after the accident the photograph was taken. The Commission therefore finds that the Appellant has not provided any objective evidence in support of her submission that she was knocked unconscious for approximately 20 minutes. In these circumstances, the Commission gives greater weight to the medical documents from the Emergency Department which indicated a loss of consciousness on the part of the Appellant for approximately two minutes, than it does to the photograph.

As well, the Commission agrees with the Internal Review Officer who determined that whether the Appellant's loss of consciousness was for 2 minutes or for 20 minutes, the Appellant

received the maximum award of 2% that could be granted in this category under the MPIC Regulation.

The Commission therefore finds that the Appellant has not established on the balance of probabilities that MPIC erred in awarding a 2% Permanent Impairment Award for loss of consciousness following the accident.

Decision – Entitlement to Further PIPP benefits:

At the appeal hearing the Appellant testified that as a result of the motor vehicle accident of March 20, 1994 she suffered from psychological problems. In support, the Appellant referred to the medical opinion of [Appellant's Psychiatrist].

The Commission notes that [Appellant's Psychiatrist] identified the Appellant as having psychological problems in November 2002 which, in his view, related to the accident of March 20, 1994. However, [Appellant's Psychiatrist] does not set out any objective medical basis for coming to that conclusion.

[Independent Psychiatrist] examined the Appellant's work history, psychosocial/developmental history, and medical documentation and concluded that he was unsure to what degree the Appellant's current complaints related to the motor vehicle accident. [MPIC's Psychologist] reviewed all the medical information and concluded there was a possible, but not a probable relationship between the Appellant's psychological condition and the 1994 motor vehicle accident.

[MPIC's Doctor] concluded that there was a lack of chronological medical documentation to substantiate a cause and effect relationship for the Appellant's headaches and other symptoms and the 1994 motor vehicle accident.

In these circumstances on the issue of causality, the Commission gives greater weight to the opinion of [Independent Psychiatrist], [MPIC's Psychologist] and [MPIC's Doctor] than it does to the opinion of [Appellant's Psychiatrist]. For these reasons the Commission concludes that the Appellant has failed to establish on the balance of probabilities that there is a causal connection between her psychological and physical symptoms and the 1994 motor vehicle accident. Therefore, the Appellant is not entitled to receipt of any further PIPP benefits including IRI benefits.

For these reasons, the Commissions the Appellant's appeal is dismissed and the Internal Review Officer's Decision dated April 11, 2005 is confirmed.

Dated at Winnipeg this 5th day of July, 2011.

MEL MYERS, Q.C.

DR. SHELDON CLAMAN

DEBORAH STEWART