



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant] (ESTATE OF [the Deceased])
AICAC File No.: AC-09-42

PANEL: Mr. Mel Myers, Chairperson
Ms Wendy Sol
Ms Lorna Turnbull

APPEARANCES: The Appellant, [the Appellant] (Estate of [the Deceased]), appeared on her own behalf; The Appellant was assisted by an interpreter, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: November 30, 2009, June 14, 2010 and April 18, 2011

ISSUE(S): Whether the Estate is entitled to a death benefit and to home care expenses.

RELEVANT SECTIONS: Sections 119(1) and 131 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 Deceased] was born on [text deleted] and was involved in a motor vehicle accident on December 1, 1999. At that time he was walking to a lunch meeting when a car went up on the sidewalk and hit him and as a result he sustained fractures to his right hip and right leg, as well as lacerations and contusions requiring medical intervention. He was admitted to the [Hospital] and surgery was performed on him on December 5, 1999 to deal with the right hip fracture. The other fractures were managed non-operatively.

[The Appellant] advised the Commission that the Deceased was in the hospital for a period of six months at which time he returned to his home. He was unable to walk and was confined to a wheelchair for the rest of his life. Prior to the motor vehicle accident the Deceased, who was [text deleted] years of age, was quite independent and was able to assist his wife in doing housework and going for walks after supper.

An examination of the documentary evidence filed at the appeal hearing indicates:

1. That on February 10, 2007, when the Deceased was [text deleted] years old, he was admitted to the [Hospital] Emergency Department.
2. He subsequently returned to the [Hospital] on June 15, 2007 and spent two days in the hospital.
3. He again attended the Emergency on July 19, 2007 when he was diagnosed with mild congestive heart failure and hypertension.
4. He was again hospitalized on August 13, 2007 and then placed in a personal care home upon discharge from the hospital.

The Deceased again returned to the [Hospital] Emergency on October 30, 2008 and he died on November 1, 2008. The Proof of Death Report, dated December 9, 2008 signed by [Deceased's Doctor], [text deleted], stated:

“Death is not attributable to an accident. Death due to ischemic bowel causing acidosis and hypokalemia.”

On November 6, 2008, the Appellant filed an Application for Compensation on behalf of the Estate of the Deceased. In this Application, the Appellant requested that MPIC reimburse the estate for death benefits and also to pay Personal Care Assistance benefits to the Deceased's wife for looking after the Deceased during the last eight years of his life.

Case Manager's Decision:

On December 11, 2008, the case manager wrote to the Estate of the Deceased rejecting the Application for Compensation. The case manager stated:

"We are now in receipt of the Proof of Death and Ambulance Reports. [Deceased's Doctor] completed the Proof of Death Report indicating the cause of death as Ischemic Bowel causing Acidosis and Hypokalemia.

Based on this information the cause of death does not have a medically probable relationship to the motor vehicle accident of December 1, 1999. Therefore, no entitlement to death payment exists under the Personal Injury Protection Plan."

Application for Review:

The Appellant made an Application for Review of the case manager's decision on January 18, 2009 and stated:

"My father was a very healthy old man before the car accident in 1999. He helped my mom do housework and going for walks after supper. He loved going out to socialize at lunch everyday. Never missing a day. On Dec. 1, 1999, he was walking to lunch when a car went up on the sidewalk and hit my father. He was in the hospital for 6 months and then confined to a wheelchair."

The Appellant further stated in the Application for Review that:

1. The Deceased passed away on November 1, 2008 and MPIC denied the Estate death benefits because the case manager had advised her that the cause of death was not related to the motor vehicle accident.
2. Everything related to the accident.
3. The Deceased was confined to a wheelchair for the last nine years, and was not able to walk and his body was deteriorating.
4. Otherwise the Deceased could have lived a longer life.

In this Application, the Appellant requested that:

1. A death benefit be paid to the estate.
2. The Deceased's wife be given compensation for looking after the Deceased over the last nine years until she could not do it anymore and as a result he was placed in a care home.

Internal Review Officer Decision:

On February 25, 2009 the Internal Review Officer issued a decision dismissing the Application for Review and confirming the case manager's decision of December 11, 2008. In arriving at her decision, the Internal Review Officer stated:

"As you know, the Proof of Death and Ambulance Reports filled out by [Deceased's Doctor] indicated the cause of death was ischemic bowel causing acidosis and hypokalemia.

At the time of the accident your father sustained a right hip fracture requiring internal fixation, fractured right tibia plateau and fibular fracture that was casted. Your father was then hospitalized at the [Hospital] and then transferred to [text deleted] for long term therapy. After discharge, he attended [Hospital] Out-Patient Physiotherapy and then once that treatment plateaued, he attended the [text deleted] Centre for further therapy and walking with a walker. Your father then decided to discontinue the [text deleted] Centre and did not continue with his exercise. At that point his condition weakened and he stopped walking. This occurred in early 2002.

When looking at the injuries sustained by your father in his motor vehicle accident, which were fractures to the lower body, this would not have caused ischemic bowel, acidosis or hypokalemia. As a result, your father's passing was not caused by the injuries sustained in this motor vehicle accident of December 1, 1999. As a result, I am confirming your case manager's decision and dismissing the Application for Review. "

The Appellant filed a Notice of Appeal on May 19, 2009 and again set out the reasons why, in her view, there was a causal connection between the motor vehicle accident and the Deceased's death.

Appeal:

The relevant provisions of the MPIC Act state:

Definitions

119(1) In this Division,

"deceased victim" means a victim who died as a result of the accident;

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.

The appeal hearing in this matter commenced on November 30, 2009. The Appellant and the Deceased's wife attended this hearing together with an Interpreter, [text deleted]. Ms Danielle Robinson, Legal Counsel, attended on behalf of MPIC.

At the hearing the Appellant submitted that she was not satisfied that the medical evidence established there was no causal connection between the motor vehicle accident and the death of the Deceased. The only information that the Appellant had in respect of the death of the Deceased was the two sentence statement by [Deceased's Doctor] on the Proof of Death Report which indicated that:

"Death is not attributable to an accident. Death due to ischemic bowel causing acidosis and hypokalemia."

The Commission noted that, unfortunately, prior to issuing his decision, the case manager did not obtain a full complete narrative report from [Deceased's Doctor] in language that the Deceased's family could understand and who set out the reasons for the death and why there was no causal

connection between the Deceased's death and the injuries sustained in the motor vehicle accident. In the Commission's view, the lack of a satisfactory medical report from [Deceased's Doctor] clearly raised significant doubt for the Deceased's family as to MPIC's position that there was no causal connection between the death of the Deceased and the injuries he sustained in the motor vehicle accident. The Appellant and her family concluded that the Deceased's death was caused by the motor vehicle accident injuries which forced a healthy man to be confined to a wheelchair for the rest of his life as a result of the motor vehicle accident. In the family's view the Deceased's health, notwithstanding his age, significantly deteriorated when he was confined to a wheelchair and he died as a result of the injuries sustained in the motor vehicle accident.

During the course of the appeal hearing and as a result of discussions with the parties, the Commission requested that MPIC's legal counsel write to [Deceased's Doctor] requesting a narrative report. In response, [Deceased's Doctor] provided his report on March 1, 2010 and stated.

"I have reviewed carefully the documents containing medical information dating back to [the Appellant's] accident of December 1, 1999.

As a result of that motor vehicle accident, [the Appellant] sustained the following injuries:

- a displaced right hip intertrochanteric fracture
- a displaced and comminuted right proximal tibia fracture
- a proximal fibula fracture
- multiple lacerations and superficial contusions.

He was treated with open reduction and internal fixation of his right hip, casting of his tibia and fibula and standard wound care to his lacerations.

I was first involved in [the Appellant's] medical care on October 30, 2008. He presented in the Emergency Department complaining of abdominal pain; he was in a state of shock and anuric. On examination, the physical findings were consistent with a diagnosis of acute bowel ischemia. Laboratory tests revealed renal failure, hyperkalemia and acidosis, lending further support for the clinical diagnosis. Given the patient's advanced age ([text deleted]) and the severity of his acute illness, further investigations as well as active

treatment were deemed futile. With the consent of his daughter, the patient was admitted to the ward and treated with comfort care measures only. He died on November 1, 2008.

Absolutely no reasonable case can be made for a causal relationship between [the Appellant's] injuries sustained in the December 1, 1999 motor vehicle accident and his acute illness of October 2008 that led to his death."

A copy of this letter was sent by the Commission to the Appellant and in response, the Appellant wrote to the Commission and stated that:

1. The same doctor who was asked to provide a medical report is this doctor who had already stated on December 9, 2009 that there was no causal connection between the motor vehicle accident and her father's death.
2. Another doctor should be retained by the Commission to provide an independent report on the issue of causation.

In response MPIC's legal counsel wrote to the Commission objecting to the Commission proceeding to obtain another medical opinion.

The Commission considered the request of the Appellant and the objection of MPIC and concluded that because the motor vehicle accident had a catastrophic effect on the Deceased's quality of life and in view of the nature of the initial report provided by [Deceased's Doctor] raised significant concerns in the minds of the Deceased's family in respect of the issue of causation. The Commission determined that a second report by an independent medical doctor should be obtained.

As a result, the Commission requested [Independent Doctor], a specialist at the [Hospital], to review all of the relevant medical reports, including [Deceased's Doctor's] two reports, and provide a medical opinion as to the issue of causality.

On January 30, 2011 [Independent Doctor] provided a lengthy report in which he indicated that:

1. After a thorough review of all of the relevant medical reports, there was no causal connection between the injuries sustained in the motor vehicle accident and the death of the Deceased.
2. A review of the medical documentation indicated that the motor vehicle accident was a life altering event for the Deceased.
3. In respect of the hip fracture many patients (approximately 50%) are unable to live independently following a hip fracture.
4. "A recent meta-analysis suggests the risk of death during the first three months following hip fracture is roughly 8 times baseline in elderly men, and although the excess risk decreases with time, it does persist for years."

[Independent Doctor] further stated that:

1. It appears that after the hip fracture the Deceased had done reasonably well after his discharge from hospital.
2. He was unable to find any documentation of medical problems until 8 years after the motor vehicle accident.
3. "This alone makes it difficult to establish a link between his accident and his death in 2008." (underlining added)

[Independent Doctor] further stated:

1. That after reviewing medical reports from the [Hospital] Emergency ward in respect of the Deceased that the findings in these reports suggest underlying chronic medical conditions which were not due to the accident but were related to advancing age.
2. The Deceased attended at the [Hospital] Emergency for overall decline in function on June 15, 2007.

3. The Deceased spent less than two days in hospital on this occasion.
4. The Deceased presented to Emergency again on July 19, 2007 where a diagnosis of mild congestive heart failure and hypertension was made.
5. The next hospital admission came shortly after on August 1, 2007 where it was found that his family was no longer able to cope with him at home as his mobility was worsening.

[Independent Doctor] further stated:

"He was not eating. On admission he had evidence of dehydration, malnutrition, high blood sugar, hypernatremia, high blood pressure, high blood pressure, (sic) and a possible urinary tract infection. He was hospitalized until August 13, 2007 and was placed in a personal care home upon discharge from hospital. In my opinion there is evidence that [the Appellant's] overall condition was deteriorating at this time and there was evidence of developing chronic medical problems – hypertension, congestive heart failure, malnutrition, and diabetes. All of these conditions are related to advancing age and none can be reasonably tied to his 1999 accident." (underlining added)

[Independent Doctor] also reviewed the progress notes from [Personal Care Home] where the Deceased was a resident between August 13, 2007 and November 3, 2008. These notes indicated that the Deceased was gradually worsening. [Independent Doctor] stated:

"The [Hospital] chart indicates that he arrived via ambulance at 1308h on October 30, 2008. He was acutely unwell on arrival. He still had a low blood pressure and was breathing very fast. He had major biochemical abnormalities on laboratory testing and an acutely tender abdomen. His biochemical abnormalities were profound, and I believe he was suffering from an acute hyperosmolar state and acute renal failure with elevated blood potassium levels, and metabolic acidosis.

This could have been due to underlying diabetes as he had elevated blood sugars on several occasions in 2007-2008. His blood sugars on this occasion were incredibly high at 51.3 mmol/liter. No acute infection or myocardial infarction was detected. I suspect the profound dehydration caused by the hyperosmolar state might have lead to intestinal ischemia secondary to low blood flow to the bowels. The opinion of the treating physicians at [Hospital] was that his death was imminent and that aggressive medical management would not alter his course. The family was contacted and agreed to comfort care. [The Deceased] died peacefully at 0406h on November 1, 2008.

[Independent Doctor] concluded that the Deceased's death could not be causally linked to the injuries sustained in the motor vehicle accident. [Independent Doctor] summarized the reasons for the Deceased's death as follows:

"...At the time of his death he was [text deleted] days away from his [text deleted] birthday and the mechanism of his death appears to be secondary to malnutrition, poor oral intake, underlying diabetes, and an acute hyperosmolar state which caused shock. This process is linked to age and chronic progressive illness. His poor oral intake and underlying malnutrition were probably contributory. Upon review it is clear that his overall condition was in decline starting February 2007. While being confined to a wheelchair was causally linked to his accident, this confinement was not the cause of the issues he had with poor oral intake, high blood pressure and abnormal blood sugars. Constipation was not a causal factor in his acute deterioration in October 2008. His acute abdominal problems at the time of his death were secondary to his underlying shock state and profound dehydration."

The Commission provided a copy of this report to MPIC's legal counsel and to the Appellant. The Appellant communicated with the Commission indicating that she wanted to make further submissions in respect of this matter.

The hearing reconvened on April 18, 2011. In attendance were the panel members of the Commission, together with Ms Robinson, MPIC's legal counsel. The Appellant participated in the proceedings by way of a teleconference.

The Commission heard submissions from both the Appellant and MPIC's legal counsel. At the conclusion of the hearing, the Commission advised the parties that a decision would be issued in due course.

Decision:

The Commission notes that the death of the Deceased had a profound effect on his wife and the members of his family. At the time of the motor vehicle accident the Deceased was in good

health and was able to carry on his daily activities in an independent fashion. One of the injuries sustained in the motor vehicle accident was a hip fracture which required the Deceased to undergo surgery.

The Deceased, who had been in good health and independent, was now confined to a wheelchair and was unable to carry out the normal activities of his life which included walking, attending lunch engagements and socializing with his friends and acquaintances. In this respect [Independent Doctor's] report clearly indicated:

1. The negative effects which a hip fracture may have on an elderly person.
2. The Deceased had done reasonably well after discharge from surgery.
3. He was unable to find any documentation of medical problems until eight years after the motor vehicle accident.
4. "This alone makes it difficult to establish a link between his accident and his death in 2008."
5. He concluded that the Deceased's declining health leading to his death was not causally related to the motor vehicle accident.

The Commission notes that MPIC initially rejected the Estate's claim for compensation in respect of death benefits and compensation to the Deceased's wife for personal care assistance on the basis of [Deceased's Doctor's] Proof of Death report which stated:

"Death is not attributable to an accident. Death due to ischemic bowel causing acidosis and hypokalemia."

The Commission finds that [Independent Doctor's] medical opinion corroborates the medical opinion of [Deceased's Doctor] that there was no causal connection between the motor vehicle accident injuries and the Deceased's cause of death. The Commission further finds that there

was no objective medical evidence provided by the Appellant to establish that on a balance of probabilities there was such a causal connection between the motor vehicle accident injuries and the Deceased's cause of death. For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated February 25, 2009.

Dated at Winnipeg this 17th day of May, 2011.

MEL MYERS

WENDY SOL

LORNA TURNBULL