

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by the ESTATE OF [the Deceased]
AICAC File No.: AC-11-048**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Neil Margolis
Ms Linda Newton

APPEARANCES: The Appellant, the Estate of [the Deceased], was represented by Mr. Dan Joannis of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: June 27 and 28, 2012

ISSUE(S): Entitlement to death benefits and funeral expenses.

RELEVANT SECTIONS: Sections 119, 123 and 124 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 representatives of [the Deceased]'s Estate have filed this appeal to the Commission from a decision of the Internal Review Officer dated March 23, 2011.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On August 26, 2009, [the Deceased] was involved in a motor vehicle accident when a Handi-Transit vehicle in which she was travelling stopped suddenly, causing her to be thrown from her wheelchair. She was [text deleted] years old at the time of the accident

and suffered a fracture to her right hand as well as bruising to her head, both arms and left knee.

2. [the Deceased] passed away on September 19, 2009.
3. On December 16, 2010, MPIC's case manager issued a decision regarding the entitlement to death and funeral benefits. The case manager determined that there was no entitlement to death and funeral benefits in regard to [the Deceased]'s August 26, 2009 motor vehicle accident through the Personal Injury Protection Plan ("PIPP"). The case manager found that [the Deceased]'s death was not caused by the August 26, 2009 motor vehicle accident.
4. The Estate of [the Deceased] disagreed with that decision and sought an Internal Review of the case manager's decision. The Estate's position is that [the Deceased]'s death was accelerated by the motor vehicle accident of August 26, 2009. As a result, they claim that there is an entitlement to the death and funeral benefits.
5. In a decision dated March 23, 2011, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the evidence did not show that [the Deceased]'s death was causally related to the accident of August 26, 2009.
6. As noted above, the Estate of [the Deceased] disagreed with the Internal Review Decision and appealed that decision to this Commission.

At the hearing of this matter, the Commission heard testimony from the following individuals. The Commission does not intend to recite all of the evidence adduced; however, it was considered in its entirety. A summary of the evidence is set forth below as follows:

[Deceased's son]:

[Deceased's son] testified that he visited his mother at [personal care home], where his mother was a resident prior to her death, once or twice a week. [Deceased's son] also testified that on August 26, 2009 he travelled with his mother to [hospital] for a medical appointment in the Handi-Transit van and was also a passenger in the Handi-Transit van at the time of the accident. Although he did not see his mother fall, he helped her up into her wheelchair after the accident and before the ambulance attended the scene. [Deceased's son] testified that as a result of the accident, his mother had several bruises, injured her arm, and she also sustained a cut on her face and her head.

[Deceased's son] testified that his mother's health was stable prior to the motor vehicle accident. She was a happy person and did not complain about much. He also testified that his niece was going to get married in the fall of 2009. His mother was looking forward to the wedding and wanted to attend the wedding. According to [Deceased's son], his mother's health in the days following the motor vehicle accident definitely changed. Following the accident, she complained a lot about her pain and just seemed to lose interest. She wasn't as talkative. She wasn't that interested in her craft classes and she was grumpy. He maintains that there was a definite change in his mother's mood after the motor vehicle accident. Although his mother did not express a desire to die following the motor vehicle accident, she had doubts about whether she would be able to attend her grand-niece's wedding.

[Deceased's son] contends that the injuries caused by the motor vehicle accident dampened his mother's attitude and mood and made it difficult for her to do things. In his opinion, his mother's health deteriorated as a result of the motor vehicle accident and the motor vehicle accident definitely contributed to her decline.

[Deceased's doctor]:

[Deceased's doctor] testified that he was the attending physician at [personal care home]. He testified that he probably would have started seeing [the Deceased] sometime in 2007 or 2008. [Deceased's doctor] attended the personal care home once a week and although he did not see every resident every week, he probably saw [the Deceased] once per month due to her ongoing medical conditions, including kidney disease, pacemaker, hip replacement, dementia, anemia, hyperthyroidism and congestive heart failure.

[Deceased's doctor]'s opinion was that [the Deceased]'s cause of death was cardiac related. He did not feel that there had been any deterioration in her condition prior to August 20, 2009. However, following the motor vehicle accident, [Deceased's doctor] testified that [the Deceased] was more tearful, and expressed wishes that she wanted to die. He maintains that given [the Deceased]'s advanced age, the injuries which she sustained in the motor vehicle accident were significant and traumatic. Although they were not life threatening, they were significant for a person with her pre-existing medical conditions. [Deceased's doctor] testified that by the beginning of September 2009, [the Deceased] was sleeping more, not eating as much, not as active as previously and her condition was declining. [Deceased's doctor] provided the opinion that the stress and injuries that she sustained in the August 26, 2009 motor vehicle accident had an effect on her health and led to an earlier than expected death.

Reference was also made to [Deceased's doctor]'s letter (undated) wherein [Deceased's doctor] stated the following:

Although the accident did not directly cause her death, it is my opinion (and I must state that I myself am a Medical Examiner for the province of Manitoba), that the stress and injuries that she sustained would have had an effect on her health and led to an earlier than expected death. She did have several medical conditions but had been holding her own.

[Text deleted] Chief Medical Examiner for the Province of Manitoba:

[Chief Medical Examiner] testified that the Medical Examiner's office was involved in reviewing [the Deceased]'s case as she passed away in a Personal Care Home. [Chief Medical Examiner] also testified that the Appellant's cause of death was diabetic nephropathy as a consequence of Diabetes Mellitus Type II. He testified that he was very certain as to the cause of death and he was certain that the motor vehicle accident did not contribute to [the Deceased]'s death. He maintains that the cause of death as listed by the medical examiner is more probable (as opposed to the cause of death indicated by [Deceased's doctor]) because of [the Deceased]'s magnesium levels prior to her death (her magnesium levels were critical, indicating renal failure) and there were no signs of heart attack.

His opinion was that the motor vehicle accident of August 26, 2009 did not contribute to or cause [the Deceased]'s death. He contends that in the motor vehicle accident [the Deceased] was fully alert and oriented, she did not lose consciousness as a result of the accident, and a CT scan of her head did not identify any major issues. There was no evidence of concussion in this case, [the Deceased] was alert and remembered the accident well.

Further, [Chief Medical Examiner] testified that [the Deceased] had had more severe significant trauma prior to the motor vehicle accident. The relatively insignificant injuries from the motor vehicle accident would not have caused more stress than those previous injuries. The motor vehicle accident related injuries were relatively minor compared to those injuries. As a result he was definitely satisfied that the motor vehicle accident injuries did not cause or contribute to her death. [Chief Medical Examiner] also noted that the change in [the Deceased]'s mental health was more likely due to her declining renal health than the motor vehicle accident. He also

disagreed that there was a sudden change in her condition after the motor vehicle accident and did not agree that the motor vehicle accident accelerated her death.

[MPIC's doctor]:

[MPIC's doctor] is a sports medicine doctor and a consultant for MPIC conducting forensic reviews of files. [MPIC's doctor] testified that it was his opinion that [the Deceased]'s injury from the motor vehicle accident of August 26, 2009 did not have a direct impact on her cause of death. He believes that [the Deceased]'s cause of death was due to complications from diabetic nephropathy. Further, [MPIC's doctor] testified that there was no connection between the deterioration in her health and the injuries sustained in the motor vehicle accident. He maintains that there was no proof that her death was accelerated or that the effects of the motor vehicle accident led to her death.

[MPIC's doctor] testified that [the Deceased]'s kidney condition was worsening just prior to her motor vehicle accident. He noted that her magnesium levels were increasing which indicated worsening renal failure. There was also increasing urea in the blood as her kidneys were not able to adequately remove urea from her blood. [MPIC's doctor] testified that there was no evidence to indicate that stress had any quantifiable effect on [the Deceased]'s medical condition following the motor vehicle accident. He maintains that her condition was slowly deteriorating and that the deterioration was ongoing prior to the motor vehicle accident. His opinion was that the motor vehicle did not contribute to [the Deceased]'s death.

Appellant's Submission:

The Claimant Adviser, on behalf of the Estate of [the Deceased], submits that [the Deceased]'s death occurred as a result of the motor vehicle accident of August 26, 2009. He maintains that the stress and injuries from the motor vehicle accident materially contributed to [the Deceased]'s

death. The Claimant Adviser contends that [the Deceased]'s motor vehicle accident related injuries were not trivial or insignificant and as a result of the stress and the injuries from the motor vehicle accident, her death occurred sooner than it otherwise would have.

The Claimant Adviser submits that the opinion of [Deceased's doctor] is sufficient to establish causation between the motor vehicle accident and [the Deceased]'s death. He argues that this satisfies the onus of proof on the balance of probabilities. The Claimant Adviser submits that [Deceased's doctor] was in the best position to assess the impact of the injuries on [the Deceased]'s death. He met and examined [the Deceased] following the motor vehicle accident and had treated her prior. His opinion that the stress and injuries from the motor vehicle accident led to an earlier than expected death should be preferred to that of [Chief Medical Examiner], who never met or examined the Appellant. As well, the Claimant Adviser argues that [MPIC's doctor]'s opinion should not be given as much weight as that of [Deceased's doctor].

Further, the Claimant Adviser submits that although the Appellant's injuries might have been minor, they were significant for [the Deceased] and triggered her decline and deterioration. The stress from the injuries resulting from the motor vehicle accident caused her to lose interest and lose the will to live and took away her independence. Following the motor vehicle accident, there was also a significant change in [the Deceased]'s mental health as evidenced by the notes of sadness and cheerfulness in the [personal care home] records. They were subtle, but cannot be ignored and support the opinion of [Deceased's doctor]. The Claimant Adviser maintains that [the Deceased]'s family members and [Deceased's doctor] are in the best position to make that determination. Accordingly, the Claimant Adviser submits that the appeal should be allowed and the Commission should find that [the Deceased]'s death was caused by the August 26, 2009 motor vehicle accident.

MPIC's Submission:

Counsel for MPIC submits that there was no indication of serious injuries or loss of consciousness as a result of the motor vehicle accident of August 26, 2009. Counsel for MPIC submits that [the Deceased]'s death 24 days following the motor vehicle accident does not establish a causal connection to the motor vehicle accident, especially given [the Deceased]'s significant pre-existing health issues. She submits that the Appellant has not established that the motor vehicle accident caused or accelerated [the Deceased]'s death.

Counsel for MPIC submits that the evidence of [text deleted], the Chief Medical Examiner for the Province of Manitoba, must be preferred to that of [Deceased's doctor]. She argues that as a pathologist and the Chief Medical Examiner for the Province of Manitoba, [text deleted] is an expert in this area. Therefore, he is in the best position to come to the conclusion about [the Deceased]'s cause of death. Further, she submits that his evidence that the cause of death was due to the diabetic nephropathy was definite and unequivocal. Counsel for MPIC submits that [Deceased's doctor]'s opinions are not founded in evidence. She submits that [Deceased's doctor] didn't take due care when rendering his opinion regarding the cause of [the Deceased]'s death. If it were due to a heart attack, there would have been signs of difficulty breathing and sweating, and there was no evidence of those symptoms.

Counsel for MPIC submits that the Appellant has not met the burden of proof. As a result she submits the Appellant's appeal should be dismissed and the Internal Review Decision dated March 23, 2011 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and oral and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser for the Appellant and of counsel for MPIC, the Commission finds that [the Deceased]'s death was not caused by the motor vehicle accident of August 26, 2009. As a result, there is no entitlement to a death benefit or funeral expenses arising out of the motor vehicle accident of August 26, 2009.

Reasons for Decision:

Upon a careful review of the evidence before it, the Commission finds that the Appellant has not established a causal connection between [the Deceased]'s death on September 19, 2009 and the motor vehicle accident of August 26, 2009, on a balance of probabilities. We are unable to find that the injuries that [the Deceased] sustained in the motor vehicle accident of August 26, 2009 accelerated or hastened her death, on a balance of probabilities. Further we find that there was insufficient evidence to establish that the Appellant's psychological condition diminished following the motor vehicle accident so as to have led to her death on September 19, 2009.

The Commission finds that the evidence of [Chief Medical Examiner] and [MPIC's doctor] was unequivocal. Their evidence established that the Appellant's condition was not stable prior to the motor vehicle accident. She had been unwell and weak prior to the motor vehicle accident and her condition had been slowly deteriorating. Her magnesium levels were increasing and her anemia was worsening. We accept [Chief Medical Examiner]'s evidence which was definite and unequivocal and find that the cause of death was diabetic nephropathy as a consequence of Diabetes Mellitus Type II.

Additionally, the evidence from the extensive file before us shows that [the Deceased] had significant ongoing health problems before the motor vehicle accident. She had already been hospitalized for issues related to renal failure within two months of her death. [MPIC's doctor] testified that he could not conclude that the cause of death listed in the Proof of Death report could have been caused by, or affected by, the motor vehicle accident and therefore he could not conclude that the accident led to [the Deceased]'s death. Relying upon the evidence of [Chief Medical Examiner] and [MPIC's doctor], the Commission is unable to find, on a balance of probabilities, that the effects of the motor vehicle accident contributed directly or indirectly to [the Deceased]'s death.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated March 23, 2011 is therefore confirmed.

Dated at Winnipeg this 15th day of August, 2012.

YVONNE TAVARES

DR. NEIL MARGOLIS

LINDA NEWTON