

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-04-080**

PANEL: Mr. Mel Myers, Q.C. Chairperson
Ms Laura Diamond
Ms Janet Frohlich

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

HEARING DATE: July 16, 2014

ISSUE(S): 1. Entitlement to Personal Injury Protection Plan benefits
related to knee and hip problems.
2. Entitlement to personal care assistance benefits.

RELEVANT SECTIONS: Sections 70(1), 71(1), 131 of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 2 of Manitoba
Regulation 40/94

**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] was involved in 2 motor vehicle accidents; on January 27, 2002 and on December 2, 2005 in which he sustained various injuries including soft tissue injuries, contusions, lacerations, and blood clot which developed in left calf. The Appellant received various PIPP benefits in connection with this accident and was also seeking additional personal care benefits ("PCA") relating to snow clearing.

Personal Care Assistance Benefits:

The Internal Review Officer's decision of April 27, 2006 stated:

“On January 26, 2006, [text deleted], registered nurse with [text deleted], completed the assessment tool to assess your entitlement to Personal Care Assistance benefits. Based on the assessment, you require assistance with yard work and community outings. You scored 6 out of a possible 89 points and as a result your case manager issued a decision letter advising that you did not qualify for PCA expenses.

You filed an Application for Review on March 9, 2006, stating that you did not agree with the decision. Your Application for Review contests neither the way the assessment tool was prepared, nor the information contained in it. Your objection to the decision is that you cannot do yard work or snow clearing; therefore, you feel you should be entitled to Personal Care Assistance. You wrote that your wife is [text deleted] years of age, has arthritis and cannot do snow clearing.

During the hearing, you advised that snow clearing was the “only issue” on this review. You have had snow removal in place since January of 2002 and that should have no bearing on this review. You advised that you have a blood clot in your leg as a result of the motor vehicle accident and feel you should be entitled to snow removal because of this. You commented that you did not agree with our regulations and regulations could be changed.”

The Internal Review Officer rejected the Appellant's claim for PCA benefits on the grounds that these benefits are governed by Section 131 of the MPIC Act and Section 2 of Manitoba Regulation 40/94 which prescribes the use of a “personal care assistance assessment tool will assess entitlement to PCA benefits”. A minimum assessment score of 9 is required in order to qualify for entitlement to PCA expenses.

The Appellant appealed the Internal Review Officer's decision to the Commission.

Appeal:

The relevant provision of the MPIC Act in respect of this appeal is Section 131 which states:

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 relevant provision of Section 2 of Manitoba Regulation 40/94 states:

Definition

2(1) In this section, “**personal care assistance**” means assistance with an activity where

- (a) the activity is described in Schedule C and, in accordance with that Schedule,
 - (i) it applies to the victim,
 - (ii) it is appropriate for the victim’s age, and
 - (iii) the victim had the capacity to perform it at the time of the accident; and
- (b) the assistance
 - (i) is provided directly to and solely for the benefit of a victim, and
 - (ii) has been evaluated in accordance with Schedule C.

At the hearing, the Appellant appeared on his own behalf and did not argue that MPIC’s assessment of the score of 6 out of a minimum assessment score of 9 was incorrect. Instead he argued that the use of the PCA assessment tool which is used to determine the Appellant’s entitlement to PCA benefits was unfair and unreasonable and should be rejected by the Commission.

MPIC’s legal counsel stated that the Appellant has not demonstrated that the use of the PCA assessment tool in determining the Appellant’s entitlement to PCA benefits was incorrect and therefore the Commission should dismiss the Appellant’s appeal in this respect.

Discussion:

The Commission advised the Appellant that:

1. The Commission did not have the jurisdiction to ignore or to amend the legislation of the MPIC Act.
2. The Manitoba Legislature has sole jurisdiction to amend the provisions of the MPIC Act.
3. If the Commission accepted the Appellant's submission and ignored the provisions of the MPIC Act, the Commission would be committing an error in law. MPIC would appeal the decision to the Manitoba Court of Appeal who would quash the Commission's decision on the grounds that the Commission had exceeded its jurisdiction.

The Commissioner then advised the Appellant that since he had not demonstrated that MPIC had incorrectly interpreted the provisions of the MPIC Act, the Appellant has failed to establish, on a balance of probabilities that MPIC incorrectly calculated the Appellant's score of 6 through the use of the PCA assessment tool. For these reasons, the Commission rejected the Appellant's appeal for PCA benefits.

Personal Injury Protection Plan Benefits – Hip and Knee Problems:

The Appellant was involved in two motor vehicle accidents, on January 27, 2002 and December 2, 2005.

In the January 2002 motor vehicle accident, the Appellant claimed that he suffered injuries to his right hip and knee. The Appellant was therefore seeking PIPP benefits in connection with his knee and hip problems, specifically IRI benefits, medical expenses reimbursement and permanent impairment benefits. MPIC determined that the injuries to his hip and knee were not caused by the January 2002 motor vehicle accident.

The Appellant made an Application for Review of this decision on July 18, 2005.

The Internal Review Officer held a hearing on January 20, 2006 and issued a decision confirming the case manager's decision of July 7, 2005. The Internal Review Officer's decision examined all the relevant medical reports in respect of the Appellant's claim relating to his hip and knee problems and concluded there was no causal relationship between these problems and the motor vehicle accidents.

The Appellant filed a Notice of Appeal on May 1, 2006.

The relevant provisions of the MPIC Act in respect of this Appeal state:

Definitions

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

"**accident**" means any event in which bodily injury is caused by an automobile

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.

Appeal:

The Appellant referred to the medical reports of [Appellant's Doctor] and [Appellant's Surgeon].

The Appellant submitted that this medical evidence established a causal relationship between the motor vehicle accidents and the Appellant's complaints to his hip and knee.

MPIC's legal counsel disagreed and submitted that:

1. The medical evidence did not establish there was a causal relationship between the Appellant's hip and knee problems and the motor vehicle accidents.
2. [Appellant's Surgeon's] report did not support [Appellant's Doctor's] opinion as to causality.
3. The reports of the physiotherapists, [Appellant's Rheumatologist], [Independent Physiatrist] and [MPIC's Doctor] concluded that there was no causal relationship between the motor vehicle accidents and the Appellant's complaints of hip and knee problems.

MPIC's legal counsel therefore submitted that the Commission should accept the opinions of [Appellant's Rheumatologist], [Independent Physiatrist] and [MPIC's Doctor] and reject the opinions of [Appellant's Doctor] and [Appellant's Surgeon].

Discussion:

Knee Complaint:

The Appellant relied on [Appellant's Doctor's] comments in his report of December 21, 2004 that while the motor vehicle accident did not cause the Appellant's degenerative change in his right knee, it was enhanced and led to the medial meniscus problem. [Appellant's Doctor] also referred to the Appellant's historical report to [Appellant's Surgeon] when the Appellant indicated to [Appellant's Surgeon] that there was a relationship between his knee complaints and the motor vehicle accident, and in particular the right medial meniscal tear. On this basis [Appellant's Doctor] determined that historically there was a causal relationship between the Appellant's knee complaints and the motor vehicle accident.

The Commission notes that the Appellant's Application for Compensation dated February 7, 2002 indicates the injuries received include "neck; left shoulder and arm back; ringing in ear".

The Commission notes there is no mention of knee injury.

The Physiotherapy Report of January 31, 2002 sets out the Appellant's symptoms which were of a cervical and shoulder nature with no mention of knee or patella problems.

[Appellant's Doctor's] report of February 6, 2002 describes injuries as tinnitus, whiplash, neck and left shoulder impingement. [Appellant's Doctor] did not indicate any knee injuries.

The Physiotherapy Report of February 25, 2002 indicated a diagnosis of left shoulder capsule pattern, AC sprain with cervical spine spondylosis. There is no mention in the report of a knee problem.

An MRI of the Appellant's knee dated March 30, 2004 indicated:

"Impression:

1. Advanced degenerative changes medial compartment.
2. Degenerative attrition and fraying medial meniscus. Suspect horizontal cleavage tear in body." (underlining added)

[Appellant's Surgeon] operated on the Appellant knee and in his operative report of May 18, 2004 stated:

"...His patellofemoral joint showed no abnormality. The medial joint line showed grade IV chondromalacic changes of osteoarthritis, especially involving the tibial articular surface. There was a medial meniscal tear with degenerative changes..."

[Appellant's Surgeon's] report to [Appellant's Doctor] dated January 21, 2004 stated:

"X-ray examination of his right knee reveals a bit of slight varus deformity. His ligaments are stable. He is tender to the medial joint line that is slight. Examination of

the left knee shows a significant medial joint tenderness, lateral joint tenderness is minimal. He has no effusion. His knee shows full range of motion to both sides with normal ligament exams.”

[Appellant’s Doctor’s] report of December 21, 2004 stated:

“On March 2nd 2004 the right knee was especially painful, and was initially thought to relate to referral from the hip. The left knee was also giving him problems, likely felt to be related to a meniscus problem. He underwent right medial meniscectomy on May 16, 2004 for a torn meniscus confirmed on MRI. While the MVA did not cause his degenerative change in his right knee it likely enhanced it and lead to the medial meniscus problem.

[The Appellant] had also reported complaining of his knees having bothered him since his motor vehicle accident when he was seen by [Appellant’s Surgeon]. On the basis of the historical report, there is a relationship to his motor vehicle accident and the knee complaints and in particular the right medial meniscal tear...”

The Appellant’s medical file in respect of his knee complaints were referred by MPIC to [Independent Physiatrist], for his opinion. [Independent Physiatrist’s] report to MPIC dated June 25, 2005 stated:

“There is no documentation of any significant trauma to the knees as a result of the motor vehicle collision in 2002. The symptoms noted in [the Appellant’s] application and the medical reports do not identify the knee as symptomatic until a much later date. As noted above, the sport medicine physician does indicate that his notes refer to knee symptoms in May 2002. Although the sport medicine physician indicated that “on the basis of the historical report” there is a relationship between the motor vehicle collision and the knee symptoms, it is my opinion that the documentation on file does not support a medically probable causal relationship.

“Advanced degenerative changes” and “degenerative attrition and fraying” of the medical meniscus were identified in the March 30, 2004 MRI. Physical findings of an effusion and possible meniscal tear suggesting a more acute presentation were noted in January 2004. In my opinion, the presentation related to the knee is consistent with osteoarthritis/degenerative changes and are not a result of the January 2002 motor vehicle collision. Direct trauma to the knee can be associated with development of osteoarthritic changes, but the degree of changes identified is not consistent with the injuries that were reported subsequent to the motor vehicle collision. Significant trauma is typically required to result in advanced degenerative changes and would include injuries such as fracture.” (underlining added)

MPIC's director of Health Care Services, [MPIC's Doctor], was provided with a copy of the report from [Independent Physiatrist], the case manager's decision of July 7, 2005, a copy of the [text deleted] Clinic records, and a copy of [Appellant's Surgeon's] file. [MPIC's Doctor] reviewed these documents and stated:

“Having reviewed the medical information that you have forwarded, it appears to indicate that the opinion of [Independent Physiatrist] was correct, in my opinion. The diagnosis of polymyalgia rheumatic is not probably related to the patient's motor vehicle collision. The patient's knee arthrosis is not probably related to the collision in question. The patient's bilateral hip arthrosis and right hip avascular necrosis is not probably causally related to the collision in question.”

The Commission rejects the Appellant's submissions that there was a causal relationship between the motor vehicle accident and the Appellant's knee complaints on the following grounds:

1. There was no mention of knee problems by the Appellant in his Application for Compensation of February 7, 2010; in the Initial Physiotherapy Report of January 31, 2010 and in [Appellant's Doctor's] report dated February 2, 2002 wherein he describes injuries of tinnitus, whiplash, neck and left shoulder impingement.
2. The physiotherapy report of February 25, 2010 where the diagnosis was a left shoulder capsule pattern, AC sprain with cervical spine spondylosis. There is no mention, however, of a knee problem.
3. The MRI of the Appellant's knee dated March 30, 2004 stated:
“Impression:
 1. Advanced degenerative changes medial compartment.
 2. Degenerative attrition and fraying medial meniscus. Suspect horizontal cleavage tear in body.”
4. [Appellant's Surgeon's] report to [Appellant's Doctor] of January 21, 2004 does not mention a motor vehicle accident or trauma to the knee.

5. [Appellant's Doctor] provided a report to MPIC on December 21, 2004 indicating that [Appellant's Surgeon] performed a left knee operation on the Appellant which related to a meniscus problem.
6. The first mention of the Appellant's knee problem was in a referral from [Appellant's Doctor] to [Appellant's Surgeon] dated January 14, 2004, a period of two years after the motor vehicle accident.
7. [Appellant's Surgeon] did not find a causal relationship between the Appellant's knee complaints and the motor vehicle accident.
8. [Appellant's Doctor's] opinion to the temporal relationship between the Appellant's complaints and the motor vehicle accident is inconsistent with his report of February 6, 2010 wherein he diagnosed a number of problems the Appellant had, but did not mention the Appellant had a knee problem.

For these reasons the Commission gives greater weight to the medical opinions of [Independent Physiatrist] and [MPIC's Doctor] than it does to the opinion of [Appellant's Doctor]. [Independent Physiatrist] found that the Appellant's knee complaints were consistent with osteoarthritis/degenerative changes and were not a result of the motor vehicle accident. The Appellant's failure to report a knee problem until a period of two years after the motor vehicle accident is consistent with the opinions of [Independent Physiatrist] and [MPIC's Doctor]. The Commission accepts [Independent Physiatrist's] opinion that while direct trauma can be associated to the development of osteoarthritic changes, significant trauma is required to obtain this result. [Independent Physiatrist] found no evidence of significant trauma in this case. [MPIC's Doctor] agreed with [Independent Physiatrist's] report.

The Commission therefore finds that the Appellant has failed to establish, on a balance of probabilities that there was a causal relationship between the motor vehicle accident and his knee complaints.

Hip Complaints:

As a result of the Appellant's complaints to his hip, [Appellant's Doctor] referred the Appellant to [Appellant's Rheumatologist], [text deleted]. An X-ray taken of the Appellant's neck confirmed degenerative changes. Blood tests were indicated to be consistent with polymyalgia rheumatica. [Appellant's Rheumatologist] concurred with [Appellant's Doctor] that the Appellant likely had polymyalgia rheumatica and in a subsequent visit to [Appellant's Rheumatologist] on October 15, 2004, he concluded that "the etiology of polymyalgia rheumatica is unknown".

[Appellant's Doctor] reported on December 21, 2004 addressing the causal relationship between polymyalgia rheumatic and the accident, wherein he stated:

"The right hip problem has multifactoral etiology in my view and most likely relates to degenerative change in conjunction with a fall which occurred in November of 2003 and possibly compromise from the steroid prescribed to treat polymyalgia rheumatica. He developed avascular necrosis of the head of the femur which is a known risk factor. [The Appellant] underwent right hip replacement August 16, 2004. The polymyalgia rheumatic developed after [the Appellant's] motor vehicle accident. The relationship of his polymyalgia and [the Appellant's] MVA is not clear, recommend an opinion from [Appellant's Rheumatologist] who had seen him for his polymyalgia in this regard." (underlining added)

In [Independent Physiatrist's] report to MPIC of June 22, 2005 stated:

“There were no comments related to knee or hip symptoms in the early medical reports or in the Application for Compensation. As previously noted, there was reference to pre-existing left shoulder symptoms and previous treatment...

...In my opinion, a medically probable causal relationship is not present between the motor vehicle collision of January 2002 and the later onset of polymyalgia rheumatica.”

The Appellant made no submission in respect of the causal relationship between his hip problems and the motor vehicle accident and did not challenge the reports of [Appellant’s Rheumatologist], [Independent Physiatrist] and [Appellant’s Doctor] on the issue of causality in respect of the Appellant’s hip problems and the motor vehicle accident.

Decision:

The Commission reviewed the reports of [Appellant’s Rheumatologist], [Appellant’s Doctor] and [Independent Physiatrist] and agrees with MPIC’s legal counsel that there was no causal relationship between the motor vehicle accident of January 27, 2002 and the later onset of polymyalgia rheumatica.

For these reasons the Commission finds that the Appellant failed to establish, on a balance of probabilities that there was a causal relationship between the Appellant’s hip problems of polymyalgia rheumatic and the motor vehicle accidents.

The Commission finds that the Internal Review decisions of January 24, 2006 and April 27, 2006 shall be upheld and the Appellant’s appeals dismissed.

Dated at Winnipeg this 8th day of August, 2014.

MEL MYERS, Q.C.

LAURA DIAMOND

JANET FROHLICH