

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-143**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Robert Malazdrewich
Ms Linda Newton

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

HEARING DATE: June 13, 2014

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits.

RELEVANT SECTIONS: Section 70(1) 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], has been involved in three separate motor vehicle accidents which form the basis of the present appeal. The facts surrounding the three motor vehicle accidents may be briefly summarized as follows:

1. The Appellant was involved in a motor vehicle accident on January 1, 1996. He was the driver of a small automobile. His car went off a dead end, crashed into a ditch and flipped. He was wearing a seat-belt. He did not hit his head and was not knocked out.

2. Immediately following this accident, the Appellant had severe pain in his neck and top of the shoulders. The Appellant's file suggests that he had prior neck symptoms and treatment for the neck. The Appellant received chiropractic manipulation to the neck immediately following the accident.
3. The patient was seen and assessed by [Appellant's Rheumatologist]. [Appellant's Rheumatologist] stated that the Appellant had an unremarkable general medical examination. His musculoskeletal examination revealed essentially full range of motion of the cervical spine and full range of motion of the lumbar spine. The Appellant had no evidence of peripheral joint synovitis or enthesitis. However, he had 18/18 fibromyalgia tender points. The diagnosis at that time was fibromyalgia syndrome.
4. The Appellant continued to receive extensive chiropractic treatment following this motor vehicle accident. Additionally the diagnosis of fibromyalgia syndrome was sustained by his family physician, [Appellant's Doctor #1]. The Appellant's case manager, in a decision letter of August 13, 1998, determined that further chiropractic care would not be funded by MPIC. At that time, MPIC's chiropractic consultant determined that the Appellant's fibromyalgia syndrome and possibly his substance abuse disorder were not causally attributed to the motor vehicle accident. The Appellant sought an Internal Review of that case manager's decision. In an Internal Review decision dated February 4, 1999, the Internal Review Officer upheld the case manager's decision and determined that further chiropractic treatment would not be funded by MPIC since it had no ongoing therapeutic effect and it was not related to the motor vehicle accident of January 1, 1996.
5. In August 2001, the Appellant had an injury to his right leg, specifically a commuted fracture of the tibia and fibula, requiring open reduction internal fixation, as a result of a

fridge falling on his right leg. One year later he had the hardware removed. He has had some persisting right lower extremity and side of the right lower extremity symptoms since, including intermittent numbness, aching and pain and symptoms with weather change and with increased activity.

6. In November 2007, the Appellant was off work due to a low back disc injury after some heavy lifting at work. A CT scan in June 2008 identified a large right paracentral disc herniation with symptoms of sciatica. The Appellant received therapy for this, but had ongoing symptoms. As a result of that back injury, he saw [Appellant's Physiatrist]. The Appellant also had ongoing fibromyalgia syndrome.
7. The Appellant was involved in a second motor vehicle accident on July 20, 2009. At that time, the Appellant was the driver of a vehicle which rear-ended a third party vehicle forcing it to rear-end another vehicle. As a result of this accident, the Appellant sustained muscular injuries to his neck and also an aggravation of low back pain and right foot pain. He received physiotherapy treatment for this, including acupuncture, massage therapy and further chiropractic treatment. The Appellant reported that the acupuncture treatment provided some transient benefit. However, none of the treatments significantly improved his symptoms and he only had slight benefit at best.
8. At the time of this accident, the Appellant was employed as an [text deleted] for [text deleted]. He had been employed with them since May 2009. Due to the injuries which he sustained in the accident he was unable to return to his employment and became entitled to Income Replacement Indemnity ("IRI") benefits.
9. On September 29, 2009, [Appellant's Doctor #1] provided a report advising that a CT scan done on September 23, 2009, "... *did not show any evidence of injury to his cervical*

spine and in fact from the report you will note that it says that he has advanced degenerative disc disease at C4-C5 and C6-C7 there is a loss of disc space with marginal osteophyte formation. These findings are certainly not related to his injury in the motor vehicle accident. [The Appellant] did have a pre-existing lower back pain and this information I have passed on to you and in fact he did have a CT scan done on June 17, 2008 of his lower back which showed that he had a paracentral disc protrusion of L5-S1.”

10. In October 2009, the Appellant was diagnosed with severe hypothyroidism. [Appellant’s Doctor #1] felt that this condition may explain why the Appellant was not getting better. With the administration of medication, the Appellant was noted as having more energy and feeling better.

11. The Appellant was involved in another motor vehicle accident on September 14, 2010. At that time he was the passenger in a pick-up truck involved in a rollover accident. He was seat-belted and had a lack of recall of the details of the accident. He had no fractures as a result of this accident but reported increased pain in his neck, shoulders, the top of his head to the tailbone and low back.

The Appellant underwent a third party medical examination with [Independent Doctor] on November 15, 2010. At that examination, the Appellant indicated that he had a number of areas of symptomatology, including the “whole spine”. He also indicated right shoulder and upper arm numbness, stabbing pain in the neck, right shoulder blade, pins and needles in the low back and numbness in the buttocks bilaterally and right ankle symptoms. The Appellant indicated that he had pain seven days a week, almost 24 hours a day with pain occurring regularly at night. He reported the worse times of day for his pain are when he first wakes up, morning and night, with

the best being afternoon. He described stiffness with his pain for “the majority of the time” and that he has constant fatigue. He described the overall severity of his pain as severe and that it was ruining the quality of his life. The Appellant further reported that his pain is much worse than when it first started. He reported that the therapies that he had received have helped decrease the pain, but that the pain kept coming back despite this treatment. He felt that he was not any better and was not continuing to improve.

The Appellant reported that he was able to perform his own activities of daily living, however, he required help from his father for yard work and heavy lifting, but he did try to do what he can or has to do. He reported that he has to sit down or lie down several times a day to control his pain.

Regarding the Appellant’s current level of physical functioning, [Independent Doctor] commented that:

The current MVA appears to have resulted (according to the client) in aggravation as in a worsening of symptoms. However there was no objective evidence of any new injury, structural or physical, with the most recent MVA. There was no physical or objective diagnosis as related to either the current MVAs affecting his function.

Regarding the Appellant’s ability to work as an [text deleted], [Independent Doctor] commented that:

There was no evidence of objective findings related to either MVA affecting his ability to work as an [text deleted] as related to any physical or patho-anatomic diagnosis.

There was no evidence of any objective accident injuries preventing this client from performing the duties of an [text deleted]. If there was some aggravation of some prior soft tissue irritability, this would have been expected to have responded to the prior treatments provided to date. With respect to the most recent incident, any aggravation of prior irritability would be expected to resolve with brief further soft tissue treatment.

[Independent Doctor] also noted that:

As discussed, a number of pre-existing conditions appeared to have been present prior to the MVAs in question (2009 and 2010); this including prior neck injuries with neck symptoms, top of the shoulder symptoms, related apparently to an accident in 2009, prior treatments including chiropractic, with symptoms into both upper extremities from the neck and shoulders prior to the MVA in question. There was also a prior low back injury with reported sciatica which was symptomatic with low back pain according to the clinic notes from the attending practitioner immediately prior to the MVA in question. There was also a pre-existing period off employment immediately prior to the MVA in question (2009) related to stress.

There was no physical or patho-anatomic diagnosis identified as related to either MVA, or only subjective reporting of some increased symptoms. It is uncertain what exactly has changed as a result of either MVA. At most some soft tissue aggravation of some pre-existing soft tissue irritation is potential. It is difficult to be certain if the current condition of the client is result of some ongoing aggravation related to the MVA or related to the pre-existing symptoms that were present.

The Appellant was subsequently referred by MPIC for an Independent Psychological Evaluation with [Independent Psychologist], clinical psychologist and clinical neuro-psychologist. The Appellant underwent a psychological assessment with [Independent Psychologist] on September 26, 2011. In her report dated September 30, 2011, [Independent Psychologist] concluded that:

The primary focus of [the Appellant's] current presentation is in regard to issues of chronic back pain. However, neither [Appellant's Doctor #1], nor the Independent Medical Examiner, [Independent Doctor], have been of the opinion that [the Appellant's] symptoms of chronic pain are related to the accidents in question. In addition, neither have seemed to be of the opinion that [the Appellant's] history of advanced degenerative disc disease would provide an adequate explanation for the nature and extent of his reported symptoms of pain to date. While [Appellant's Doctor #1] was of the opinion that a neurological consultation might be helpful in clarifying [the Appellant's] case, [Independent Doctor] was of the opinion that a psychological evaluation would be helpful in order to assess whether any psychological issues might be present which would be contributing to this issue.

While there was some indication in [the Appellant's] psychological test results that there may be a degree of psychological overlay in terms of the extent of his somatic symptom reports, this was neither consistent with his provided history nor his presentation during the current evaluation. During the current evaluation, [the Appellant] neither reported nor exhibited any sign of pain behaviours. He also did not exhibit any sign of maladaptive cognitions about his pain, nor did he appear to be engaging in any maladaptive coping strategies or pain avoidance behaviours other than his reported inability to return to work. This was consistent with observations made by [Independent Doctor] during his Third Party Medical Examination of [the Appellant]. This would be an atypical presentation for an individual with a strong psychological component to his subjective symptoms of chronic pain. As such, in my opinion, [the

Appellant] would not meet DSM-IV-TR diagnosis criteria for a Pain Disorder Associated with both Psychological Factors and a General Medical Condition, in which psychological factors are felt to have a significant role in the onset or maintenance of an individual's symptoms of pain.

In addition, [the Appellant] neither reported nor demonstrated any obvious signs of a Major Depressive Disorder or any other psychological disorder at this time. Rather, other than some mild symptoms of irritability, [the Appellant] did not report any significant symptoms of psychological distress, nor was this evident within his objective psychological test results.

In light of the above, [the Appellant] does not appear to meet diagnostic criteria for a DSM-IV-TR disorder at this time, and psychological factors do not appear to be present which would present a barrier to [the Appellant's] ability to return to his pre-accident level of employment, should he be determined to be physically able to do so.

However, in light of [the Appellant's] pre-accident history of acute work-related stress, he would likely benefit from some psychological support through any transition back to work, particularly given the length of time he has been away. [The Appellant] has demonstrated a positive response to this type of intervention in the past, and this would likely maximize the likelihood of success in this endeavour.

[The Appellant] may also wish to explore alcohol addictions resources within his community in light of his concern about his drinking. The Addictions Foundation of Manitoba [text deleted] in [text deleted] may be able to provide information to him about what is available in his area. I have also strongly encouraged him to discuss his alcohol and marijuana use with his family physician, in order to ensure that this does not pose a risk to his health in light of the medications which he is being prescribed.

[Independent Psychologist's] reports were forwarded to MPIC's Health Care Services team for their opinion regarding the Appellant's ability to return to work. In an interdepartmental memorandum dated February 13, 2012, MPIC's medical consultant concluded that:

Based on this review it is my opinion [the Appellant] exacerbated pre-existing symptoms as a result of the motor vehicle incidents he was involved in and that the exacerbations have resolved in all probability. At the present time the file does not contain objective medical evidence indicating [the Appellant's] reported symptoms are a byproduct of a condition arising from either motor vehicle incident. It is reasonable to conclude that the degenerative changes identified in the cervical and lumbar spine which are not a byproduct of the incidents in question in all probability could be contributing to the symptoms [the Appellant] reports at this time.

Following that review, MPIC's case manager issued a decision letter dated February 22, 2012 which determined that the Appellant was not entitled to any further Personal Injury Protection Plan ("PIPP") benefits. The case manager noted that:

A review of your medical information received to date has been completed by MPI's Health Care Services. Based on their review, they provided the following opinion:

"Based on this review it is my opinion [the Appellant] exacerbated pre-existing symptoms as a result of the motor vehicle incidents he was involved in and that the exacerbations have resolved in all probability. At the present time the file does not contain objective medical evidence indicating [the Appellant] reported symptoms are a byproduct of the condition arising from either motor vehicle incident."

As your current symptoms are not considered to be related to your motor vehicle accidents, we are unable to extend any further PIPP benefits to you. The claim forms you submitted for medication and an inversion table dated September 20, 2011 will not be reimbursed. As well, your entitlement to Income Replacement Indemnity benefits will end March 8, 2012, in order to provide you with some advance notice.

The Appellant sought an Internal Review of that decision. In a decision dated June 6, 2012, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of February 22, 2012. The Internal Review Officer found that *"the totality of file documentation does not contain objective medical evidence that would establish that your current symptoms are a byproduct of any motor vehicle accident."* The Internal Review Officer went on to conclude that:

Giving consideration to all the information on your file, I must agree with the case manager's decision of February 22, 2012, which is supported by MPI's consultants, as well as various care providers on your file. Your claim for IRI which has been continuous since July 20, 2009, is not supported on the grounds that you have not shown your current medical condition(s) were "caused by an automobile or the use of an automobile". There is simply insufficient evidence for me to conclude that you are entirely or substantially unable to perform your work-related duties on a full-time basis as a result of any motor vehicle accident. Furthermore, as causation has not been established for your need of the medication previously noted in this letter, you will not be reimbursed for the expenses you submitted (dated September 20, 2011), which also included the expense of an inversion table.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to further PIPP benefits as a result of his motor vehicle accidents.

Prior to the hearing of this matter, a further report was received from [Appellant's Doctor #1] dated April 29, 2013. In his report, [Appellant's Doctor #1] opined that:

As I had mentioned at the present time I cannot give any definite evidence that the motor vehicle accidents that he had, played a part in respect to his current complaints. You have in your possession my letters to [text deleted] and at no time was I able to demonstrate any significant injury. Most of his pain as far as I could tell was due to muscle which should have healed by now.

...

I have reviewed [Independent Doctor's] opinion and looked over all my reports to you and I do agree with [Independent Doctor's] findings. I should at this time point out that [the Appellant] had a further investigation done by [Appellant's Doctor #2] and this was secondary to him seeing [Appellant's Physiatrist] who was concerned about his persistent pain. You will note that [Appellant's Doctor #2] stated that his sense of tingling in the arms and legs is a manifestation of his musculoskeletal pain and is not neurological in origin. I am attaching a copy of his report for your information.

The Appellant's Submission:

The Appellant submits that his three motor vehicle accidents have led to his current inability to work. The Appellant indicated that he has had neck pain and back pain since the January 1, 1996 motor vehicle accident where he injured his neck and back. The pain has been off and on since then, but he had been able to work at physical jobs in spite of his recurring complaints of pain. The Appellant notes that although he had pre-existing problems and injuries that aren't related to the motor vehicle accidents, his symptoms have gotten worse with the combined effects of his motor vehicle accidents, compared to his condition previously. The Appellant indicates that the motor vehicle accidents, especially the accident of July 20, 2009, have made his problems worse. He notes that sitting and lifting are much more difficult now than before. He is unable to sit for

extended periods of time. He has difficulty sleeping. He is unable to do any overhead work and cold weather affects his muscles, creates tension and his pain gets worse.

The Appellant argues that the combined effects of all three accidents have made his problems worse. He was able to work before the July 20, 2009 motor vehicle accident. However, since that motor vehicle accident, he has not been able to return to work. He also notes that he has tried various therapies in order to improve his condition, all with little success. He and his medical caregivers are at a loss as to what he can do to improve his condition. The Appellant maintains that because of his multiple motor vehicle accidents, his life is not what it used to be. He is not physically able to run the businesses which he ran before the motor vehicle accidents. Also, he is unable to work as an [text deleted] although that work was not physically demanding. It was, for the most part sedentary employment [text deleted], but with his neck and back pain he is unable to sit for long periods of time and he is therefore unable to continue with that employment.

The Appellant attributes his current symptoms to the combined effects of his three motor vehicle accidents. He maintains that he was fully functional prior to January 1, 1996 and now he is not able to work, moreso after the July 20, 2009 motor vehicle accident. He has had continual issues since the January 1996 motor vehicle accident, especially with his neck and he maintains that his problems have never completely resolved. The Appellant submits that his current condition is related to the cumulative effects of his motor vehicle accidents and therefore he submits that he is entitled to ongoing PIPP benefits. As a result, the Appellant argues that his PIPP benefits should be reinstated and the Internal Review decision of June 6, 2012 should be rescinded.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established, on a balance of probabilities that his current pain symptoms are causally related to any of his motor vehicle accidents. Counsel for MPIC contends that the cause of the Appellant's pain symptoms is at best unclear. He notes that the Appellant's doctors do not believe that his symptoms are causally related to any of the motor vehicle accidents or the cumulative effect of the three accidents.

Counsel for MPIC notes that [Appellant's Doctor #1], the Appellant's primary physician who has treated him for 30 years cannot give any definite evidence that the motor vehicle accidents relate to the Appellant's current and ongoing pain symptoms. Citing his report of April 29, 2013, counsel for MPIC relies upon [Appellant's Doctor #1's] opinion that he cannot give any definite evidence that the motor vehicle accidents have played a part in respect to his (the Appellant's) current complaints. [Appellant's Doctor #1] is also of the opinion that most of the Appellant's pain was due to muscular injuries which should have healed by now.

Counsel for MPIC also relies upon [Independent Doctor's] assessment of November 15, 2010. [Independent Doctor] interviewed the Appellant and undertook an extensive assessment and examination of the Appellant. After undertaking that examination, [Independent Doctor] concluded that there were limited objective findings, restricted to a number of areas of muscular tightness in the lower extremities. [Independent Doctor] concluded that there was no physical or objective diagnosis as related to either of the current motor vehicle accidents affecting the Appellant's function. [Independent Doctor] also concluded that there was no evidence that any objective accident injuries prevented the Appellant from performing the duties of an [text deleted]. If there had been some aggravation of some prior soft tissue irritability, this would have been expected to have responded to the treatments provided to date.

Counsel for MPIC also relies upon the Health Care Services review and the interdepartmental memorandum dated February 13, 2012 which noted that, “It is reasonable to conclude [the Appellant] exacerbated pre-existing symptoms as a result of this incident. Based on the minimal objective findings noted by the health care professionals involved in his care subsequent to this incident, it is not medically probable [the Appellant] enhanced a pre-existing condition as a result of the July 20, 2009 motor vehicle incident.”

Counsel for MPIC notes that MPIC extended PIPP benefits to the Appellant for three years. He contends that the decision to terminate the Appellant’s PIPP benefits was made only after reviewing the reports of the Appellant’s treating physicians and the opinions of MPIC’s Health Care Services consultants. Counsel for MPIC argues that there is no evidence that the continuation of the Appellant’s pain symptoms beyond 2012 were as a result of any of the Appellant’s motor vehicle accidents. He notes that none of the Appellant’s caregivers have provided any evidence to that effect. Counsel for MPIC maintains that even though the Appellant is arguing that he has had continuous symptoms since the motor vehicle accidents and therefore the motor vehicle accidents must have caused his symptoms, there are other causes which could account for the Appellant’s ongoing pain complaints. The Appellant has had numerous other injuries throughout his adult life which would also account for his ongoing pain complaints. Counsel for MPIC submits that the Appellant’s ongoing symptoms are more likely than not related to those injuries.

In conclusion, counsel for MPIC submits that there is no objective evidence on the Appellant’s file to suggest that his pain symptoms are connected to any of the motor vehicle accidents. Rather, all of the reports conclude that there is no causation between any of the Appellant’s motor vehicle accidents and his current and ongoing pain symptoms. As a result, counsel for

MPIC submitted that the Appellant's appeal should be dismissed and the Internal Review decision dated June 6, 2012 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities that his ongoing pain complaints are related to the motor vehicle accidents of January 1, 1996, July 20, 2009 or September 14, 2010. As a result, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to further PIPP benefits arising from any of those motor vehicle accidents.

Reasons for Decision:

Upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that his current and ongoing pain complaints are related to any of his prior motor vehicle accidents, including the accidents of January 1, 1996, July 20, 2009 and September 14, 2010. The Commission finds that the preponderance of the medical evidence on the Appellant's file simply does not establish a causal relationship between any of the Appellant's motor vehicle accidents and his ongoing pain complaints. The Commission notes the opinion of [Appellant's Doctor #1], the Appellant's family physician for 30 years, that he cannot relate the Appellant's ongoing pain symptoms to any of the prior motor vehicle accidents. This opinion was also reiterated by [Independent Doctor] and MPIC's Health Care Services consultants. The Commission accepted the evidence provided by the Appellant. The Commission found that the Appellant was not a malingerer and that he was a credible individual. The Appellant's symptoms are ongoing and affect his ability

to function. However, the Commission finds that the Appellant has not established that the causes of his ongoing pain complaints are the result of any of his prior motor vehicle accidents. The medical evidence before the Commission did not corroborate the Appellant's position or provide support for the Appellant's argument that his motor vehicle accidents have caused his ongoing pain complaints.

As a result, the Commission finds that the Appellant has not established that his ongoing pain condition is related to any of his previous motor vehicle accidents, including the accidents of January 1, 1996, July 20, 2009 and September 14, 2010. Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated June 6, 2012 is confirmed.

Dated at Winnipeg this 5th day of August, 2014.

YVONNE TAVARES

ROBERT MALAZDREWICH

LINDA NEWTON