

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-158**

PANEL: Ms Jacqueline Freedman, Chairperson
Dr. Sheldon Claman
Ms Irene Giesbrecht

APPEARANCES: The Appellant, [text deleted], appeared by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Matthew Maslanka.

HEARING DATE: June 9, 2015

ISSUE(S):

- 1. Whether the Personal Injury Protection Plan ("PIPP") provides coverage for all future injuries or disease, regardless of causation;**
- 2. Whether the PIPP provides funding for legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation;**
- 3. Whether there is a causal relationship between the Appellant's use of medication and the motor vehicle accident, so as to allow for reimbursement of expenses for same.**

RELEVANT SECTIONS: Subsection 70(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 38 of Manitoba Regulation 40/94.

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

Background:

The Appellant, [text deleted], was injured in a motor vehicle accident on May 29, 1998 (the "first accident"). He was in receipt of PIPP benefits. At the time of the first accident, the Appellant

was self-employed and ran an [text deleted] business. Due to his injuries sustained in the first accident, he was unable to continue with that business. He entered into a legal agreement with MPIC to the effect that MPIC would fund the acquisition of certain equipment for his business in exchange for the Appellant's relinquishing of additional Income Replacement Indemnity ("IRI") payments. MPIC at that time covered a certain amount of the Appellant's fees for independent legal advice. Subsequent to the first accident, the private health insurance carried by the Appellant thereafter excluded conditions arising from or relating to injuries in the areas injured in the first accident.

The Appellant was subsequently injured in another motor vehicle accident on June 21, 2007 (the "second accident"). As a result of the second accident, and due to the limitations placed on him by his private insurer after the first accident, the Appellant sought coverage under PIPP for sickness and disability in respect of all future injury or disease, regardless of causation. In addition, the Appellant sought funding under PIPP for legal representation to allow the Appellant to pursue such coverage from MPIC regardless of causation. He also sought reimbursement under PIPP for his expenditures for the purchase of the medication Oxycocet.

The Appellant's case manager, by decision letter dated May 10, 2010, advised the Appellant as follows:

"Based on the medical information on file, there is insufficient evidence to support a causal relationship between your request coverage (sic) for Oxycocet medication and the motor vehicle accident of June 21, 2007. Therefore, there is no entitlement under Personal Injury Protection Plan (PIPP)."

The Appellant's case manager sent another decision letter to the Appellant dated June 10, 2010, which advised the Appellant as follows:

“Your request for Manitoba Public Insurance to provide sick and disability coverage to the anatomical areas listed above does not fall within the scope of the Manitoba Public Insurance Corporation Act or Manitoba Regulations.

MPI does however have relapse provisions where the customer would become entitled to benefits following a recurrence of a disabling condition which is directly related to an initial injury sustained in an automobile accident or the development of a new condition which is directly related to the original accident injuries i.e. surgery.”

The Appellant’s case manager sent another decision letter to the Appellant also dated June 10, 2010, which provided as follows:

“Your request for Manitoba Public Insurance to provide legal representation or consider the costs associated with legal representation do not fall within the scope of the Manitoba Public Insurance Corporation Act or Manitoba Regulations. As such, there is no coverage for costs or disbursements associated with you electing to seek legal representation.”

The Appellant filed an Application for Review of all three of these decisions. The decisions were considered by the Internal Review Officer, who provided a decision dated August 27, 2010.

The decision letter provided as follows with respect to the sickness and disability coverage sought by the Appellant:

“As with every insurance policy, there are limitations, exclusions, and restrictions in the benefits provided. There is no error in stating that the benefits you are seeking are not contemplated by the legislation and, therefore, I am upholding the case manager’s decision letter at this time.”

With respect to the legal fee coverage that the Appellant sought, the Internal Review decision stated as follows:

“The legal representation or counsel you now suggest is required to pursue MPI for coverage of all future injuries to your neck, back, spine or posterior pelvis, regardless of causation, does not fall within the provisions of the governing legislation.”

With respect to the coverage for reimbursement of medication, the Internal Review decision provided as follows:

“In my view, the totality of medical evidence fails to establish that “Oxycocet” is required for a medical condition arising out of either accident in question. Accordingly, I am unable to conclude that the caser manager’s decision of May 10, 2010, was made incorrectly based on the provisions of the Personal Injury Protection Plan.”

The Appellant disagreed with the decision of the Internal Review Officer and filed this appeal with the Commission. The issues which require determination on this appeal are as follows:

1. Whether the PIPP provides coverage for sickness and disability in respect of all future injury or disease, regardless of causation;
2. Whether the PIPP provides funding for legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation; and
3. Whether there is a causal relationship between the Appellant’s use of the medication Oxycocet and the first or second accident.

Decision:

For the reasons set out below, the panel finds as follows:

1. The Appellant has not met the onus of establishing, on a balance of probabilities, that the PIPP provides coverage for sickness and disability regardless of causation;
2. The Appellant has not met the onus of establishing, on a balance of probabilities, that the PIPP provides funding for legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation; and
3. The Appellant has not met the onus of establishing, on a balance of probabilities, that there is a causal relationship between the Appellant’s use of the medication Oxycocet and the first or second motor vehicle accident.

Evidence and Submission for the Appellant:

The Appellant appeared at the hearing via teleconference. He indicated that he did not have great confidence in the appeals process. He had previously been assisted by the Claimant Adviser Office but found that they were unhelpful. In addition, he found his experience at Mediation was not good. However, he was prepared to participate in the appeal hearing in order to provide the Commission with his position in support of his appeal.

He described the first accident, in which he got thrown in the air onto his back and then landed on his hip. He indicated that he is only pursuing what is right and proper. He felt that various doctors have not always been supportive of him. However, he noted that his chiropractor has been supportive and he referred the panel to a report from [Appellant's chiropractor], his chiropractor, dated April 23, 2010. In that report, [Appellant's chiropractor] noted that he saw the Appellant prior to and for a period of time following the second accident. [Appellant's chiropractor] stated:

“I have no doubt that his precious [previous] vehicle accidents affected his symptoms for the worse. ...”

The Appellant noted that the first accident left him with various ongoing sources of pain and injury, and now he is left with the inability to obtain private insurance coverage. He sees a gaping hole in the system and he feels that the legislation should be amended to cover it. The Appellant noted that with respect to his first accident, MPIC was previously prepared to pay for his legal fees and he didn't understand why they were no longer prepared to do so. The Appellant suggested that the PIPP system appears to be one-sided, in the sense that MPIC has lawyers appearing before the Commission; however, MPIC is unprepared to provide continuing legal assistance for the Appellant.

With respect to the reimbursement to the Appellant of the Percocet (Oxycocet), the Appellant submitted that his need for the Percocet relates to both the first and second accidents. He submitted that the panel should prefer the reports from doctors who examined him personally as opposed to those physicians who only did a paper review. He again referred to the April 23, 2010, report of [Appellant's chiropractor], who indicated as follows:

“... His chief complaint always seemed to be low back pain and neck stiffness, similar to his original complaint. ...”

The Appellant submitted that his appeal should be allowed.

Submission for MPIC:

With respect to whether the PIPP system should provide sickness and disability coverage for all future injuries or disease regardless of causation, it is MPIC's position that there are certain things that are covered by the MPIC Act, for example, a victim who has an accident is entitled to compensation for IRI, permanent impairments, reimbursement of expenses and various kinds of treatment. However, counsel for MPIC submitted that the MPIC Act is not all-encompassing. Rather, it is just a plan under which certain benefits are provided. If benefits are not provided under the plan, then there is no coverage. The MPIC Act and Regulations do not provide for sickness and disability coverage beyond that which is the direct result of a motor vehicle accident and beyond that which is directly found in the MPIC Act and Regulations.

With respect to the issue of whether PIPP provides funding for legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation, it is MPIC's position that such coverage is not provided. Counsel for MPIC submitted that the Appellant has used the Claimant Adviser Office, which is the statutory body provided to claimants under the MPIC Act. Unfortunately, the Appellant did not have a good experience with the Claimant Adviser Office,

but that is beyond the scope of the Commission to deal with. Even though MPIC did pay for certain legal expenses of the Appellant in the past, this was in a very specific and unique circumstance, specifically independent legal advice for an agreement to allow the Appellant to resume his pre-accident employment, where MPIC determined that it was reasonable on a very narrow issue. Counsel for MPIC pointed out that nowhere did MPIC say that it was providing funding for legal services for an unlimited basis.

With respect to the issue of the causal relationship between the Appellant's need for Percocet (Oxycocet) and the first and second accidents, it is MPIC's position that the Appellant has not provided any evidence to establish that the case manager's decision and the Internal Review decision are incorrect. Counsel for MPIC relied on the report of the Health Care Services consultant, [MPIC's doctor], dated July 28, 2010. In that report, the consultant provided the following opinion:

“In response to your question, the medical evidence indicates that the patient did not sustain a probable back condition with the events in question of either 1998 or 2007. It appears that in 1999, the patient developed low back pain in association with an acute flexion episode. Based on a medical causality assessment, this was not probably causally related to the event in question. Approximately six years after that event, the patient is noted as receiving Percocet, a narcotic analgesic for the back pain experience. He has been using the medication since that time. The medication does not seem to have changed since the 2007 accident.”

Counsel for MPIC submitted that the evidence was that the Appellant was taking the medication Percocet (Oxycocet) since 2005 and that his use did not change after the accident. On that basis and on the basis that no further evidence was adduced with respect to causation, it is MPIC's position that the appeal should be dismissed.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that the decision of the Internal Review Officer dated August 27, 2010, is incorrect. In particular, the Appellant needs to show, on a balance of probabilities, that the PIPP scheme provides for sickness and disability coverage for all future injuries regardless of causation, that the PIPP scheme provides for funding for legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation, and that there is a causal relationship between the Appellant's use of Oxycocet (Percocet) and the first and second motor vehicle accidents.

After a careful review of all of the reports and documentary evidence filed in connection with this appeal, and after hearing the evidence and submission of the Appellant and the submission of counsel for MPIC and taking into account the provisions of the relevant legislation, the Commission finds as follows:

Sickness and Disability Coverage:

The Appellant has argued that the PPIP provides coverage for sickness and disability coverage for all future injuries or disease, regardless of causation. MPIC argued that coverage is limited by the terms of the legislation.

The Manitoba Court of Appeal considered the purpose of the MPIC Act in *Menzies v. MPIC et al*, 2005 MBCA 97. In that case, the court reviewed the original legislation which enacted the no-fault insurance scheme, as well as an earlier decision commenting on the scope of the MPIC Act, and noted as follows at paragraph 36:

“... The [MPIC] Act is intended to provide compensation for “real economic loss” (Bill 37, *the Manitoba Public Insurance Corporation and Consequential Amendments Act*, Manitoba, 1993), and see *McMillan v. Thompson (Rural Municipality)* (1997), 115

Man.R. (2d) 2 (C.A.) where Helper J.A. said the legislature in the [MPIC] *Act*: “created an all encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile” (at para. 54).”

The Court held that the MPIC Act is intended to provide coverage for real losses related to accidents involving an automobile. It is not intended to provide a broad spectrum insurance scheme for possible future losses for injuries unrelated to automobile accidents. Upon a careful review of the MPIC Act and Regulations, and considering the purpose of the legislation, the panel finds that the Appellant has not met the onus of establishing, on a balance of probabilities, that the PIPP provides coverage for sickness and disability coverage for all future injuries or disease, regardless of causation.

The panel does sympathize with the Appellant’s circumstances, in that it appears he has made at least one attempt and been unable to obtain private disability coverage. We note that should the Appellant suffer a relapse of any condition arising from or caused by the first or second accident, he is free to bring forward information regarding such relapse to his case manager.

Legal Fees:

The Appellant has submitted that MPIC had previously paid for his lawyer in connection with his first accident, and therefore coverage ought to continue with respect to ongoing legal fees to allow him to pursue MPIC for ongoing coverage of injuries regardless of causation. MPIC argued that payment for legal fees is not provided under the terms of the MPIC Act. MPIC did acknowledge the prior payment of the Appellant’s fees for independent legal advice, but noted this was limited to specific facts.

It is true that MPIC did, in the past, enter into an agreement with the Appellant in connection with his excavation and landscaping business, in order to facilitate his return to work after the first accident. The draft copy of that agreement dated June 7, 2001, which is on the indexed file provides at paragraph 15.1 as follows:

“[The Appellant] hereby represents and warrants that he has obtained legal advice with respect to the agreement independent of MPIC. MPIC shall pay for such advice, which payment shall be made, at [the Appellant’s] option directly to his legal advisor.”

MPIC’s file notes dated August 10, 2001, regarding the finalization of the agreement contain the following:

“[Text deleted] has decided to approve the concept of the [text deleted] Agreement. His reasoning is that it will take considerably more time to determine whether MPIC should ever enter into this sort of agreement again. In light of the expectations we’ve placed on [the Appellant], [text deleted] has stated that we should go ahead this time only.”

It is clear that the 2001 agreement was a unique circumstance, and MPIC’s payment of fees for the Appellant’s independent legal advice was unusual and limited to that specific circumstance. MPIC did not make any commitment to the Appellant to cover his ongoing legal fees.

However, the MPIC Act does make provision to assist appellants in the conduct of their appeals. The MPIC Act provides, in sections 174.1 through 174.4, for the establishment and funding of the Claimant Adviser Office (CAO). Those sections provide that the CAO may assist any appellant with his or her appeal to the Commission at no cost to the appellant. Given that the MPIC Act establishes and funds the CAO, there are no express provisions in the legislation for the payment of an appellant’s legal fees.

Upon a careful review of the MPIC Act and Regulations, the panel finds that the Appellant has not met the onus of establishing, on a balance of probabilities, that the PIPP provides funding for

legal representation to allow the Appellant to pursue MPIC for coverage of injuries regardless of causation.

Reimbursement of Expenses for Medication:

The MPIC Act and Regulations provide that the victim of an accident is entitled to be reimbursed for expenses incurred for medication that is taken in connection with injuries caused by the accident as follows:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

...

(d) such other expenses as may be prescribed by regulation.

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

In accordance with the foregoing provisions, in order for an Appellant to be reimbursed for expenses incurred in connection with the purchase of medication, such medication must be “required for a medical reason resulting from the accident”, or in other words causally connected to the accident.

The Appellant has submitted that his use of the medication Oxycocet (also known as Percocet) was related to injuries suffered by him in the first and second accidents. He relies on the April 23, 2010, report of [Appellant’s chiropractor], his chiropractor, in support of his position that his

use of the medication was connected to the accident. However, there is no mention of the medication in that report. MPIC submits that the use of the medication was not causally connected to the accident. MPIC relies on the July 28, 2010, report of [MPIC's doctor], which notes that in 1999, the Appellant developed low back pain in association with an acute flexion episode. The report of [MPIC's doctor] also notes that the Appellant began taking Percocet in 2005, which is a date in between the first and second accidents. [MPIC's doctor's] report further notes that the Appellant's use of the medication did not appear to have changed since the second accident. Based on the weight of the evidence, the panel concludes that the Appellant has not met the onus of establishing, on a balance of probabilities, that his use of Oxycocet (Percocet) was causally connected to either the first or second accident. Accordingly, the Appellant is not entitled to reimbursement for his expenses for the purchase of this medication.

Disposition:

Based on the foregoing, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated August 27, 2010, is upheld.

Dated at Winnipeg this 20th day of August, 2015.

JACQUELINE FREEDMAN

DR. SHELDON CLAMAN

IRENE GIESBRECHT