

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC FILE NO.: AC-14-145**

PANEL: Ms Laura Diamond, Chairperson
Ms Karin Linnebach
Ms Irene Giesbrecht

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation (“MPIC”) was
represented by Mr. Trevor Brown.

HEARING DATE: April 12, 2016

ISSUE(S): Whether the Appellant is entitled to dental treatment for
tooth #24 and #46.

RELEVANT SECTIONS: Section 70(1) 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

Background and Preliminary Issues:

The Appellant, [text deleted], was involved in a motor vehicle accident (“MVA”) on February 27, 2014. On February 28, 2014, the Appellant contacted MPIC and filed a claim concerning dental injuries. The Appellant received Personal Injury Protection Plan (“PIPP”) benefits pursuant to Part 2 of the MPIC Act as a result of damage to one of his teeth, tooth 16. However, the Appellant maintained that teeth 24 and 46 were also damaged as a result of the MVA.

The Appellant appealed the Internal Review Decision dated September 24, 2014 that denied dental treatment for teeth 24 and 46. The Internal Review Officer found that the damage requiring treatment for teeth 24 and 46 was not causally related to the MVA of February 27, 2014.

A Case Conference Hearing (“CCH”) was held regarding the Appellant’s appeal on November 18, 2015. During the CCH, the Appellant indicated that he wanted to obtain an additional medical report from a new dentist in support of his position that the damage to teeth 24 and 46 was caused by the accident. The Appellant was advised that, pursuant to the regulations under the MPIC Act, the Commission would pay for the reasonable costs of up to three (3) medical reports to a maximum of \$373.00 each.

During the hearing, the Appellant indicated that he is not pursuing his appeal regarding tooth 24 and is only pursuing his appeal for tooth 46. The Appellant indicated that the only issue to be decided is dental treatment for tooth 46, a tooth on the bottom right hand side of his mouth. As the Appellant clearly indicated that he was not pursuing the appeal regarding tooth 24, the Appellant’s claim regarding tooth 24 is dismissed.

The issue before the panel was whether the damage to the Appellant’s tooth 46 was causally connected to the MVA, thereby entitling him to further PIPP benefits.

Decision:

For the reasons set out below, the Commission finds that the damage to tooth 46 is not causally connected to the MVA and therefore that the Appellant is not entitled to PIPP benefits under the MPIC Act for tooth 46.

Evidence of the Appellant:

The Appellant stated that his chin hit part of the steering wheel during the MVA. The day after the MVA, he felt grit in his mouth, spit out the grit and then felt pain in his tooth. Because of this pain, he contacted MPIC to make a claim and he was told to go see a dentist.

The Appellant stated that he first saw a dentist, [Appellant's dentist #1], maybe a month and a half or 2 months after the MVA, at which time he told [Appellant's dentist #1] that he had injured his teeth in the MVA. [Appellant's dentist #1] examined his teeth, took x-rays and said he would contact MPIC directly. The Appellant did not know what [Appellant's dentist #1] had determined so he contacted him. The Appellant was advised that [Appellant's dentist #1] did not think the damage to any of his teeth occurred from the MVA.

The Appellant indicated he continued to be in pain so he went to see a different dentist, [Appellant's dentist #2], who examined the Appellant and made a plan to fix his teeth. According to the Appellant, [Appellant's dentist #2] had no problems believing that the pain from tooth 46 was caused by the MVA. When he told [Appellant's dentist #2] what the situation was, [Appellant's dentist #2] didn't disagree that it was possible the MVA caused the further damage to his tooth. [Appellant's dentist #2] started fixing tooth 16 and set an appointment to fix tooth 46. However, the treatment for tooth 46 was cancelled because MPIC told [Appellant's dentist #2] to stop the treatment while they consider [Appellant's dentist #1's] findings.

The Appellant indicated that he has never claimed that there wasn't damage to tooth 46 prior to the MVA, but that the MVA caused further damage resulting in pain. His claim is that there was contact between teeth 16 and 46 during the MVA and that this contact caused nerve exposure.

The Appellant stated that he had a previous MVA in 2012 and, at that time, only made a claim to get his car fixed. He stated this time he is making an injury claim because the difference now is that he has tooth pain as a result of nerve exposure which cannot be seen.

On cross examination by counsel for MPIC, the Appellant acknowledged that tooth 46 is a partial tooth and that dental work had been done on tooth 46 prior to the MVA. The Appellant asserted that although tooth 46 was damaged prior to the MVA, it was damaged more after the MVA. While he had prior dental work done on tooth 46 in [text deleted] and the tooth broke after that treatment, he didn't have any pain after it broke. He decided that he would get it fixed when he had the money. It was only after the MVA of February 27, 2014 that tooth 46 started to cause him pain.

On cross-examination, the Appellant acknowledged that neither [Appellant's dentist #1] nor [Appellant's dentist #2] are associated with MPIC and that neither dentist provided a report supporting his claim that tooth 46 was damaged in the accident. The Appellant was previously advised that if he wanted his claim for tooth 46 to succeed, he would need to get a medical report supporting that tooth 46 was damaged in the MVA.

Evidence of MPIC

MPIC did not call any witnesses but did cross-examine the Appellant, as noted above.

Medical Reports

[Appellant's dentist #1] completed an MPIC dental report on or about March 12, 2014. This report states that [Appellant's dentist #1] does not believe the damage to teeth 16, 46, and 24 was caused by a car accident. [Appellant's dentist #1] suggested that MPIC obtain records from the Appellant's previous dentist to review these teeth.

[Appellant's dentist #2] completed a dental report on April 22, 2014. This report stated that the Appellant reported he gritted teeth during impact and that several days later the Appellant was spitting out teeth fragments. The report states that the Appellant attributes fractured teeth 16, 24 and 46 to the accident.

A MPIC dental consultant provided an opinion after reviewing the documents on file, including photographs and models of the Appellant's teeth. The dental consultant stated the following about the condition of tooth 46:

“On the models, tooth #46 has over erupted into the mouth so that the lingual wall is higher than the adjacent teeth. This happens over a long time period. In the photograph, there are two brown lines running through the base of the tooth from front to back. The edges of the tooth have been prepared for a crown or inlay and are smooth. On the model, the temporary material (not placed by a dentist in [text deleted]) is present but chipped off when the study models were taken as demonstrated in the photograph. The edges of tooth 46 could not have chipped and the staining on the tooth indicates that the tooth has been fractured for a long time. The temporary restorative material sticks to the tooth but does not last forever.”

The dental consultant determined that there is no causal relationship between the treatment requested for tooth 46 and the MVA.

Appellant's Submissions

The Appellant submitted that [Appellant's dentist #1's] `s findings are what caused the problem on his claim. [Appellant's dentist #1's] report is vague and not scientific and [Appellant's dentist #1] doesn't say on what he bases his opinion. The Appellant has no information as to [Appellant's dentist #1's] level of expertise.

The Appellant submitted that [Appellant's dentist #2] clearly believed him as [Appellant's dentist #2] started fixing his teeth. The only reason [Appellant's dentist #2] didn't fix tooth 46 was that MPIC told him to stop treatment. The Appellant asserted that [Appellant's dentist #2] had no doubt tooth 46 was further damaged in the MVA.

With respect to MPIC's medical consultant's conclusion that tooth 46 is smooth and not chipped, the Appellant submitted that he can see sharp edges on the pictures of tooth 46 and that tooth 46 looks "ragged". Tooth 46 is not smooth like the MPIC dental consultant is saying.

The Appellant submitted that it is common sense that pain from tooth 46 is related to the MVA as he never had this tooth pain before the accident. While he had pre-existing damage to tooth 46, the pain was caused by the MVA and it is ridiculous to say that it was not.

MPIC's Submissions

Counsel for MPIC submitted that tooth 46 was a compromised tooth in very poor condition prior to the MVA and there is no evidence supporting the Appellant's position that tooth 46 was damaged in the MVA. Counsel referred the panel to the report of the MPIC dental consultant, who concludes that the edges of tooth 46 have been prepped for crown or inlay and are smooth. The dental consultant states the edges of tooth 46 could not have chipped and the staining

indicates that tooth 46 has been fractured for a long time. Counsel submitted that a smooth stained tooth is inconsistent with fresh damage as chips take time to smooth out and stains take time to develop. The picture of tooth 46 shows a stained tooth with no sharp edges.

Counsel for MPIC submitted that [Appellant's dentist #1] provided his report approximately 3 weeks after the MVA and, while the report is not detailed, [Appellant's dentist #1] did not believe any of the teeth were damaged due to the MVA. The Appellant's second dentist, [Appellant's dentist #2], does not provide an opinion regarding causation. Rather, he simply documented what the Appellant reported to him. Counsel cited the Internal Review Decision where the Internal Review Officer states that he spoke with [Appellant's dentist #2] and [Appellant's dentist #2] was unable to provide evidence to refute the opinion of the MPIC dental consultant.

Counsel for MPIC submitted that the Appellant was made aware by the Commission that he could seek additional medical information and had an opportunity to seek out this evidence. The only evidence to support his claim regarding tooth 46 is his testimony. Although he reports he experienced pain, pain is subjective and his testimony regarding causation cannot take over the opinions of three dentists. The damage to tooth 16 was minimal and even if tooth 16 was damaged by the Appellant hitting the steering wheel, this does not mean that tooth 46 was hit. Counsel submitted that the appeal should be dismissed because there is no evidence to support the MVA caused the damage to or condition of tooth 46.

Discussion:

In order to qualify for further PIPP benefits, the Appellant must establish, on a balance of probabilities, that he falls within the provisions of the MPIC Act. Subsection 70(1) of the MPIC Act provides the following definitions:

Definitions

70(1) In this Part,

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

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

The onus is on the Appellant to show, on a balance of probabilities, that he suffered a “bodily injury caused by an automobile” as described in subsection 70(1) of the MPIC Act. In this case, the onus is on the Appellant to show, on a balance of probabilities, that the MVA caused the damage to tooth 46.

While the Appellant believes that the pain in tooth 46 was caused by the MVA, there is no medical evidence reporting a casual relationship between the MVA and the damage to tooth 46. Rather, the evidence shows that tooth 46 was a broken and compromised tooth that had been previously prepared for further dental treatment.

[Appellant's dentist #1], the first dentist the Appellant saw a few weeks after the MVA, clearly stated that he did not believe the damage to teeth 16, 24 and 46 was caused by a car accident. While [Appellant's dentist #2] provides a report outlining his diagnosis and treatment plan, nowhere does he state his opinion on causation. Rather, he simply documents that the Appellant reported gritting his teeth during the MVA and spitting out teeth fragments a few days later. [Appellant's dentist #2] wrote that it was the Appellant who attributed the fracture of tooth 46 to the MVA. As such, the panel finds that neither of the dentists who examined the Appellant's teeth provided an opinion connecting the damage to tooth 46 to the MVA.

The MPIC dental consultant provided an opinion based on a file review, including a review of models and photographs. Notwithstanding [Appellant's dentist #1's] comments that none of the damage to the Appellant's teeth was caused by the MVA, the dental consultant notes chipping on the walls of tooth 16 which the consultant concludes may have led to the Appellant spitting out pieces of tooth as he reported. As a result, the consultant concludes that it was possible that tooth 16 was injured in the MVA so that the treatment for tooth 16 could be considered causally related to the MVA. However, the consultant did not find a causal relationship between the damage to tooth 46 and the MVA as tooth 46 had staining indicating that the tooth has been fractured for a long time and the edges of tooth 46 are smooth. There is no medical information before us that contradicts the dental consultant's conclusions.

The Appellant strongly believes that the MVA caused his already damaged tooth 46 to cause him pain. The panel notes that while the Appellant indicated he would be seeking another medical report, he has not provided a medical report that supports his belief.

After a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing and giving careful consideration to the testimony and submissions of the Appellant and counsel for MPIC and taking into account the provisions of the relevant legislation, the Commission finds that the Appellant has not met the onus of establishing that, on a balance of probabilities, that the damage to tooth 46 was caused by the accident of February 27, 2014.

Disposition:

For the reasons outlined herein, the Commission finds that the Internal Review Officer's decision of September 24, 2014 should be upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 12th day of May, 2016.

LAURA DIAMOND

KARIN LINNEBACH

IRENE GIESBRECHT