

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-115**

PANEL: Mel Myers, Q.C., Chairman
Laura Diamond
F. Les Cox

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

HEARING DATE: April 2nd, 2001

ISSUE(S): Whether the Appellant was entitled to reimbursement of dental expenses.

RELEVANT SECTIONS: Sections 136(1) of the MPIC Act ('the Act') and Section 5(4) 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

The Appellant, [text deleted], is appealing an Internal Review Decision of MPIC dated June 28th, 2000 wherein MPIC denied the Appellant reimbursement of dental expenses on the grounds that the Appellant had not established a

cause/effect relationship between her dental problems and an automobile accident which she was involved in on January 26th, 1995.

The Appellant testified before the Commission that the physical trauma and emotional stress that she suffered as a result of the above-mentioned accident caused her to clench/grind her teeth (parafunction) which she testified she had not done prior to the above-mentioned accident and the motor vehicle accidents that she was involved in in 1981, 1982, 1990 and 1995. She further testified that this clenching and grinding of her teeth led to the eventual loosening of her front teeth, loss of bridge and loss of teeth.

[Text deleted], a periodontist, saw the Appellant for a periodontal examination on June 30th, 1995, and made the following findings:

- "
1. Gingivitis (fairly generalized)
 2. Periodontitis (localized moderate to advanced at 11, 21, 31, 41, 26 (ML furcation involvement), 46 (B furcation involvement).
 3. Occlusal trauma: premature occlusal wear mandibular teeth opposing porcelain occlusal surfaces of maxillary full average restorations; patient aware of nocturnal bruxing; pathological migration 1T.
 4. Gingival recession; minimal gingiva 44B, 46B.
 5. Marked overjet; lack of posterior occlusal support."

[Text deleted] a dentist who assessed the Appellant on December 14th, 1995, and examined her entire dental file indicated that the Appellant's remaining teeth were

periodontally compromised and that the most probable treatment in her best interest is extraction and immediate complete upper and lower prostheses (dentures).

On August 25th, 1995, [Appellant's periodontist] wrote to the Appellant's solicitor and advised him as follows:

"The conditions described in my letter of June 30, 1995 were determined from my periodontal examination on that date. None of these conditions can be related to her January 26, 1995 accident, in my estimation."

The Internal Review Officer accepted [Appellant's periodontist's] opinion, concluded that none of the dental conditions could be related to the accident of January 26th, 1995, and as a result denied reimbursement to the Appellant for the dental expenses required to resolve her dental problems. The Internal Review Officer stated:

"There can be no doubt that this periodontist is of the opinion that your dental problems are not related to this motor vehicle accident."

At the hearing the Commission heard the sworn testimony of the Appellant who asserted that the accident of January 26th, 1995, contributed to her dental problems.

The Internal Review Officer in arriving at her conclusion failed to consider that [Appellant's periodontist] had some doubt about the connection between the

dental problems suffered by the Appellant and the accident of January 26th, 1995.

[Appellant's periodontist] in his letter of August 25th, 1995, states as follows:

"A possibility, depending on the chronology of events, would be that the stress resulting from her complaints which have arisen apparently as a result of the accidents, could be a factor which has contributed to her bruxing and the resultant occlusal trauma, but this is only speculation."

Accordingly, [Appellant's periodontist] admits that it is possible, depending upon the chronology of events, that the emotional stress suffered by the Appellant as a result of the accidents (including the accident of January 26th, 1995) were factors that contributed to her bruxing and the resultant occlusal trauma.

It should be noted as well that the Internal Review Officer failed to obtain a report from [Appellant's dentist #1] who had examined the Appellant on December 14th, 1995, before denying the Appellant's Application for Review. In the Internal Review Officer's decision dated June 28th, 2000, the Appellant requested that a report be obtained from [Appellant's dentist #1]. The Internal Review Officer rejected that request and stated in her report:

"I did however speak to [Appellant's dentist #1's] office and was advised that [Appellant's dentist #1] had not seen you since September of 1999 and had no updated information to offer. [Appellant's dentist #1's] office advised that you would need to be examined so that a report could be provided. As the issue that I am to deal with is the relation of dental problems to an accident five and a half years ago, I felt that this step was unnecessary."

However, after the Internal Review Officer issued her decision on June 28th, 2000, the Appellant requested that [Appellant's dentist #1] submit a report to the

Commission with respect to an assessment he made of the Appellant's teeth on December 14th, 1995. The Commission received [Appellant's dentist #1's] medical report in a letter dated February 27th, 2001. In his report [Appellant's dentist #1] is of the opinion that the circumstances of all of the accidents between 1981 and January 26th, 1995, caused the Appellant to clench/grind her teeth which she reported not doing prior to the accidents. [Appellant's dentist #1] asserts that this led to the eventual loosening of her front teeth, loss of bridge and loss of teeth.

DECISION:

The Internal Review Officer relied solely upon [Appellant's periodontist's] dental opinion in rejecting the Appellant's Application for Review. However, the Commission had the benefit of [Appellant's dentist #1's] dental opinion when considering [Appellant's periodontist's] dental opinion.

The Commission is of the view that had the Internal Review Officer obtained a report from [Appellant's dentist #1] as had been requested by the Appellant, the Internal Review Officer may have concluded that there was a connection between the dental problems suffered by the Appellant and the accident of June 26th, 1995. The Internal Review Officer would have had the opportunity of examining:

- (a) the comments of [Appellant's periodontist] who admits as to the possibility of a connection between the dental problems and the accident of January 26th, 1995;
- (b) together with the comments of [Appellant's dentist #1], who is of the view that all of the circumstances of the accident (including the accident of January 26th, 1995) probably caused the Appellant to clench/grind her teeth which she had not done prior to the accident and which led to the eventual dental problems that she is presently suffering.

The Commission is of the view that the Internal Review Officer erred in failing to obtain a dental report from [Appellant's dentist #1]. As a result the Internal Review Officer in arriving at her decision was not in a position to:

1. consider the dental opinion of [Appellant's dentist #1] which supported the Appellant's position;
2. properly assess the dental opinion of [Appellant's periodontist] (which did not support the Appellant's position) having regard to the dental opinion of [Appellant's dentist #1];
3. give appropriate weight to the Appellant's submission that the accident of January 26th, 1995, contributed to her dental problems.

The Commission upon:

1. considering the dental opinions of [Appellant's periodontist] and [Appellant's dentist #1]; and

2. accepting the sworn testimony of the Appellant that the accident of January 26th, 1995, contributed to her dental problems, determines that the Appellant has established on a balance of probabilities, that the automobile accident which occurred on January 26th, 1995, contributed to her dental problems at that time.

As a result, the Commission finds that there is a casual relationship between the Appellant's dental problems and the motor vehicle accident of January 26th, 1995, and therefore orders that:

- (a) MPIC reimburse the Appellant for the dental treatment expenses that she has incurred to date;
- (b) MPIC reimburse the Appellant for any dental treatment expenses to be incurred in accordance with [Appellant's dentist #1's] proposed treatment plan set out in his report of February 27th, 2001;
- (c) this Commission retains jurisdiction in this matter and if the parties are unable to agree as to the amount of the dental treatment expenses, in respect to paragraph (a) or (b) above, than either party may refer this dispute back to this Commission for final determination; and
- (d) the decision of MPIC's Internal Review Officer dated June 6th, 2000, is therefore rescinded.

Dated at Winnipeg this 23rd day of April 2001.

MEL MYERS

LAURA DIAMOND

F. LES COX

ADDENDUM**TIMELINESS****RIGHT OF REVIEW SECTION 170(2) OF THE MPIC ACT
RIGHT TO APPEAL 170(3) OF THE MPIC ACT**

During the course of the appeal on April 2nd, 2001, the Appellant complained on several occasions as to the unfair manner that she was dealt with by the MPIC Adjusters in respect of her claim. The Commission considered initially the merits of the appeal and determined that the appeal should be granted. Subsequently, independent of determining the merits of the appeal, the Commission considered the above-mentioned complaint of the Appellant. The Commission concluded that the Appellant's complaints were valid and as a result decided to comment in respect of this matter.

Section 170 of the Manitoba Public Insurance Corporation Act ('the Act') states:

"Corporation to give written reasons to claimant

170(1) A decision made by the corporation in respect of a claim for compensation shall be given to the claimant in writing, and shall include reasons for the decision.

Claimant to be given notice of right to review

170(2) Where the corporation makes a decision respecting compensation under this Part, it shall, at the time it gives written notice of the decision to the claimant, give notice of the right of the claimant to apply for a review of the decision.

Claimant to be given notice of right to appeal

170(3) Where the corporation reviews a decision respecting compensation under this Part, it shall, at the time it gives written notice of the review decision to the claimant, give notice of the right of the claimant to appeal the review decision to the commission."

MPIC has issued a pamphlet to the public entitled "Personal Injury Protection Plan, Your Guide". At page 45, under the heading Section VIII, Appeals, the Guide states:

"Your rights

It's your right to ask for a review of our decision when you disagree with it. If you're not satisfied with the review decision, you have a right to appeal that decision to the Automobile Injury Compensation Appeal Commission

Key points

- When there are changes in your situation, you can provide us with information about the changes and ask us to reconsider decisions we've made.
- If you disagree with a decision, you can ask for it to be reviewed. The office which handles the review of PIPP claims decision is separate from the claims department.
- You have 60 days from the date you received a letter informing you of our decision to ask for it to be reviewed.
- You can appeal a review decision to the Automobile Injury Compensation Appeal Commission. The Commission is completely separate and independent from MPI.
- You have 90 days from the date you receive a review decision to file an appeal with the Automobile Injury Compensation Appeal Commission."

(Underlining added.)

An examination of the manner in which MPIC processed the claim of the Appellant indicates that MPIC failed to comply with Section 170(2) of the Act and failed to comply with the MPIC Guide to the public.

In a report from a Staff Adjuster, dated June 14th, 1995, who was initially dealing with the Appellant's accident claim, the Adjuster notes that the Appellant had requested that MPIC pay for a mouth guard which the Appellant required in respect of the clenching of her teeth. The Adjuster indicated to the Appellant that MPIC would not pay for the mouth guard unless they received a report from a medical consultant.

[Text deleted], the Appellant's dentist, referred the Appellant to [Appellant's periodontist] who examined the Appellant on June 30th, 1995, and provided a report to MPIC. In this report, [Appellant's periodontist] sets out the dental problems suffered by the Appellant but does not state whether the accident of January 26th, 1995, contributed directly or indirectly to the Appellant's dental problems. It does not appear that upon receipt of this report the Adjuster wrote to [Appellant's periodontist] requesting an opinion as to whether or not there was a connection between the dental problems suffered by the Appellant and the accident of January 26th, 1995. As a result, MPIC did not at that time obtain a report from [Appellant's periodontist] as to whether or not to accept or reject the Appellant's request for a mouth guard.

It appears from the examination of the MPIC file that the original Adjuster did receive a report from [Appellant's periodontist] to the Appellant's lawyer dated August 25th, 1995, wherein [Appellant's periodontist] referred to his letter to

MPIC dated June 30th, 1995, and indicated that the dental problems described in this letter were not related to the Appellant's January 26th, 1995, accident.

An examination of the MPIC file further indicates that [Appellant's periodontist's] letter came into the possession of MPIC some time after August 25th, 1995, and prior to October 11th, 1995. On January 31st, 2000, the Adjuster who had originally been dealing with this matter, wrote to the Appellant and stated:

"As I had previous involvement in your case, this matter was forwarded to my attention for review. It was noted that on October 11, 1995, we had discussed the dental problems you were having. At that time you were advised that, based on the dental information provided by [Appellant's periodontist] (copy enclosed), there was no direct relationship between your dental problems and the motor vehicle accident of January 26, 1995."

The Adjuster finally acknowledged in writing to the Appellant approximately four years and three months after receiving [Appellant's periodontist's] 1995 report that there was no causal relationship between the January 26th, 1995, motor vehicle accident and the Appellant's dental problems. The failure of the Adjuster, who was responsible for the Appellant's claim, to act promptly in denying the Appellant's claim in 1995 was a serious violation of Section 170(2) of the MPIC Act. The Commission views that this non-compliance of the Act resulted in needless frustration and unhappiness to the Appellant and may have contributed to her depression that she was experiencing subsequent to the accident in question.

The delay of over four years by the MPIC Adjuster in issuing a formal written rejection of the Appellant's claim, prejudiced the Appellant's hearing before the Internal Review Officer. The Internal Review Officer refused the Appellant's request to obtain a dental report from [Appellant's dentist #1] on the grounds that it was unnecessary since the issue of the Appellant's dental problems related to an accident five and a half years prior to the review hearing.

On October 3rd, 1995, the original Adjuster in an internal memorandum stated that on September 29th, 1995, he spoke to [Appellant's dentist #2's] assistant who indicated to him that [Appellant's dentist #2] had received a report from [Appellant's periodontist] who confirmed that the Appellant's dental problems were pre-accident and therefore MPIC will not be required to pay for any treatment whatsoever.

On October 4th, 1995, there is a internal memo from a new Adjuster who assumed the responsibility of this file from the original Adjuster. The new Adjuster reports that he had a discussion with the Appellant on October 4th, 1995, and the Appellant advised him that she had:

- (a) ground her teeth down and lost a couple of top teeth due to the stress caused by the accident;

- (b) had an appointment with the dentist who was also a dentist at the [text deleted] for the beginning of October and she required extensive dental reconstruction;
- (c) requested that this Adjuster authorize whatever work had to be done and the Adjuster indicated that he would have to review the file and get back to her.

There is a further Inter-departmental Memorandum dated October 6th, 1995, from the original Adjuster to [text deleted], a dental consultant on MPIC's Medical Services Team, wherein the Adjuster states:

"Please review the enclosed Dental Report and confirm that dental fees being charged are in order.

Please note that it is the periodontist, [text deleted], opinion that any dental work required is not as a direct result of the above-noted motor vehicle accident."

There is also an inter-departmental memorandum dated October 20th, 1995, from the original Adjuster who reports as to a conversation he had with the Appellant on October 11th, 1995, as follows:

"The victim called the writer on October 11, 1995 regarding her dental problems. Advised the victim that we have received the dental reports and it confirmed that the dental problems she is suffering from are not as a direct result of the motor vehicle accident and therefore, we are not in a position to consider payment for same. This upset the victim who indicates that she had had these problems for quite some time and they are related to the accident. I advised her that her lawyer has been provided with a report from the periorthodontist confirming that her complaints are not directly related to this accident and, should she have any further

questions regarding this matter, to speak to her lawyer on same. She concurred.

Given the fact that I am not handling any of the victim's outstanding injury claim, as they are all being dealt with in our Legal Dept., I feel I should not be handling the PIPP claim, as I am in the tort section of the office. I will therefore be referring this file back to _____."

Subsequent to the discussions between the original Adjuster and the Appellant on October 11th, 1995, [text deleted], a third Adjuster, was contacted by the Appellant on December 8th, 1995. Attached hereto and marked Appendix A is a copy of [text deleted] report to file (Document 13). In this memo, the Adjuster, [text deleted] states

"It is my opinion that this lady should be serviced in a more fair manner as she is definitely going through hard times and is getting more and more depressed as time goes by."

Notwithstanding the comments of [text deleted], it does not appear MPIC wrote to the Appellant denying her claim for reimbursement of expenses for her dental problem and informing her that she could seek an Application for Review of the Adjuster's rejection of her claim.

On January 28th, 2000, the Appellant contacted MPIC's Customer Service Department and spoke to [text deleted] in regards of her complaint in the manner in which MPIC had dealt with her problems. Attached hereto and marked as Appendix B is a copy of the handwritten note from [text deleted] to [text deleted] dated January 28th, 2000. Appendix B states in part "I have reviewed this file and

I cannot find a decision letter." This note was provided to the original Adjuster who now occupied the position of a Senior Case Manager in the Casualty and Rehabilitation Claims Centre of MPIC.

On January 31st, 2000, as a result of [text deleted] note, the original Adjuster wrote to the Appellant and formally advised her that her claim for expenses was rejected and that she was entitled to apply for a review within 60 days of receiving this letter. The Adjuster stated:

"It is my understanding that on January 28, 2000, you had contacted Manitoba Public Insurance's Customer Service Department and spoke with [text deleted] in regards to dental problems you were having.

As I had previous involvement in your case, this matter was forwarded to my attention for review. It was noted that on October 11, 1995, we had discussed the dental problems you were having. At that time you were advised that, based on the dental information provided by [Appellant's periodontist] (copy enclosed), there was no direct relationship between your dental problems and the motor vehicle accident of January 26, 1995.

As your dental problems have no casual relationship to the above noted motor vehicle accident, we are not in a position to consider any expenses you may have incurred as a result of same.

You have the option to apply directly for a review of this decision. Any request for review must be made in writing within sixty (60) days of receiving this letter. We are enclosing an Application for Review of this injury claim decision, should you wish to consider same."

The Commission is of the view that the Adjuster who was responsible for this claim, at the time of MPIC's receipt of the letter from [Appellant's periodontist] dated August 25th, 1995, should have within a reasonable time thereafter, advised the Appellant of MPIC's decision to deny her claim and given her written notice that she was entitled

within 60 days to make application for review and perhaps provided her with a copy of the application for reconsideration.

As a result of the failure of the Adjuster to carry out his responsibilities, the Appellant had no opportunity to make a timely application for a review of the Adjuster's decision pursuant to Section 170(2) of the Act or subsequently to make a timely application to appeal to the Commission pursuant to Sections 170(3) of the Act.

On March 29th, 2000, the Appellant made Application for Review of the Injury Claim Decision. On June 6th, 2000, the internal review hearing was held. On June 28th, 2000, in a letter to Appellant, the Internal Review Officer rejected the Appellant's claim. As a result thereof the Appellant appealed that decision to this Commission and the appeal hearing took place on April 2nd, 2001.

The Commission wishes to commend [text deleted] for taking the time and trouble to listen to the Appellant, to review the Appellant's file and to determine that there has been a non-compliance with Section 170(2) of the Act. It was the action of [text deleted] in writing the note (Appendix B) which resulted in a resolution of the Appellant's claim herein.

When the Appellant appeared before the Commission at the appeal hearing, she appeared to be bewildered and depressed and expressed a great deal of frustration

and unhappiness by the manner in which she was treated by MPIC in respect of her claim in this appeal. The Commission is of the view that as a result of the delay in this matter, the Appellant has not been treated fairly and there has been a denial of justice to her. The conduct of certain Adjusters at MPIC graphically demonstrated that justice delayed is justice denied.

Dated this 23rd day of April 2001.

MEL MYERS

LAURA DIAMOND

F. LES COX