



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-101**

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Paul Johnston
Mr. Wilson MacLennan

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

HEARING DATE: December 1, 2003

ISSUE(S): 1. Entitlement to reimbursement for medication expense
(Dimetapp Extentabs)
2. Entitlement to Income Replacement Indemnity benefits
following the June 26, 1998 and November 16, 1998 car-
bicycle accidents

RELEVANT SECTIONS: Section 105 and 136(1)(d) of the Manitoba Public Insurance
Corporation Act (the '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

[The Appellant] was a cyclist who on June 26, 1998 came into contact with a motor vehicle and suffered soft tissue injuries to his neck. The Appellant attended at the [hospital] on June 29, 1998 and x-rays of his cervical spine were done. The Appellant also attended a chiropractor for treatments for one week in July 1998. The Appellant was examined by his personal physician,

[text deleted], on September 27, 1998 in respect of the motor vehicle injuries he sustained and, in a report to MPIC dated November 9, 1998, [Appellant's doctor #1] states:

Following my initial examination and assessment on September 27, 1993, I have had occasion to re-examine [the Appellant] on numerous occasions and have referred him for multiple orthopedic and neurological consultations in regard to listed motor vehicle accidents of 1983, 1984, 1987, 1989 and 1991.

He was involved in another motor vehicle accident on June 26, 1998 when the bicycle he was riding became caught in the right side view mirror of an automobile and was dragged about ten feet around a corner in the city. He was not knocked off his bicycle, sustained no visible cuts or bruises nor head injury but statedly sustained an aggravation of the neck, pains radiating down the left arm, hand, thumb and lateral 2 fingers from the old motor vehicle accident. He is also aware of a slight weakness in the left arm and spinal pains from the neck down to the sacrum.

Examination on November 5, 1998 of this [text deleted] year old gentleman, former [text deleted] and unemployed since 1991 revealed slight restriction of all head and neck movements with tenderness on palpation over the left side of the neck and shoulder and scapular area. He had full movements of his shoulder with little if any weakness of the left arm. Reflexes were normal. Spinal movements were slightly restricted.

This man has been prescribed multiple medications including arthritic and various analgesics as well as courses of physiotherapy for the several old motor vehicle accidents. Apparently in discussion with him today, he reported that the Dimetapp tablets on a schedule of one or two daily intermittently give him more relief of symptoms than the NSAID tablets or other medications which I find difficult to explain. That being the case, one could concur with this line of treatment for the next short while.

[Appellant's doctor #1] referred the Appellant to [text deleted], a physiatrist, who provided a report to [Appellant's doctor #1] dated January 6, 1999 and [Appellant's physiatrist] states:

. He states that his symptoms began in 1983 following a motor vehicle collision. Since that time he has experienced 4 other motor vehicle accidents as well as 1 or 2 bicycle accidents. His main complaints at present appear to be of headaches and urinary urgency.

He states that he awakens in the very early hours of the morning feeling fine. He gets up to go to the bathroom and develops a headache. He will take a Dimetapp tablet with resolution of his headache and he falls back asleep. The headaches are not prominent during the daytime or when first going to bed. The headaches appear to be diffuse.

[Appellant's physiatrist] further stated in this report:

As noted above the main abnormal physical finding was of restricted cervical motion. No neurologic abnormality was found on this examination. His gait was normal. The physical examination does not suggest a myelopathy or peripheral neurologic process., I suspect that he may have moderate degenerative changes of the cervical spine. I will attempt to obtain the previously performed x-rays from the [hospital] and see [the Appellant] in follow-up.

[Appellant's doctor #1], in a letter to MPIC dated April 14, 1999, indicates that on February 3, 1999 he attended at the home of the Appellant to see the Appellant's brother. During the course of this house call the Appellant approached [Appellant's doctor #1] and advised him that he was the victim of a second bicycle car accident on November 16, 1998 which was similar in nature to the accident and injuries he sustained in the first accident on June 26, 1998.

[Appellant's doctor #1] in his letter to MPIC states:

This patient states that as a result of these two car bicycle accidents there has been an accentuation of the old neck injuries from previous motor vehicle accidents.

.....

In summary, this man has sustained a minor degree of aggravation of his old neck injuries resulting from these two bicycle accidents. Notation is made of the degenerative changes on his cervical x-ray which doubtless are of long standing duration. He insists that of all the previous analgesic and NSAID medications, he still obtains more relief from Dimetapp tablets, one or two daily particularly for the headaches. Currently, there does not appear to be any indications for physiotherapy or any other specific medication.

In my view, there has been substantial improvement from the bicycle accident injuries although subjectively, he complains of aggravations of the old injuries. Consequently, I expect to see him periodically over the ensuing few months for re-examination and reassurance. From the nature of the accidents and type of injuries sustained in these bicycle accidents a complete recovery should be expected rendering him to the condition existant prior to these accidents.

[Appellant's physiatrist], who examined the Appellant on February 4, 1999, in a letter to [Appellant's doctor #1] dated February 5, 1999, states:

[The Appellant] was present for review on February 4th, 1999. At that time I was able to

review some of his previous cervical spine films from the [hospital]. The main abnormality noted was relatively severe degenerative changes at the mid to lower cervical segments. There was also an area of calcification reported as a “*nuchal ossification*”. I also note that there is a report of mild degenerative changes in the lumbar zygapophysial joints.

[The Appellant’s] cervical motion continues to be moderately restricted in rotation and lateral bending bilaterally. Flexion was near full actively. It is quite possible that the headaches described are of cervical origin. Given his previous treatment and his various symptoms I do not have much specifically to suggest in the form of treatment. He indicates that he will be attending [Appellant’s doctor #2] and perhaps he may obtain some benefit from that form of treatment.

[The Appellant] asked regarding causation. I indicated to him that degenerative changes of the cervical spine will typically occur with aging. The most common segments affected are those that are noted on his x-rays. It is possible that the numerous injuries that he sustained over many years has contributed to an accelerated the degenerative process. Other than that I am unable to comment further on the issue of causation. (underlining added)

Case Manager’s Decision - Reimbursement in respect of Dimetapp Medication

On March 1, 1999 MPIC’s case manager wrote to the Appellant and advised him that he acknowledged receiving the Appellant’s receipts for Dimetapp which the Appellant submitted for reimbursement regarding injuries sustained in the motor vehicle accident of November 26, 1998. The case manager rejected the Appellant’s request for reimbursement of the Appellant’s costs for the purchase of Dimetapp for the following reason:

After reviewing the medical information with our Medical Services Team, it is our opinion that this medication does not have any relation to injuries involved from this incident. It is our opinion that this medication is not appropriate in this case and therefore we are advising that we are unable to consider reimbursement of this medication expense.

On March 18, 1999 the Appellant made Application for Review of MPIC’s decision to deny reimbursement of his costs for the purchase of Dimetapp.

[Text deleted], MPIC's Claims Services Department, was requested by the Internal Review Officer to review MPIC's decision to deny reimbursement payments to the Appellant in respect to the purchase of Dimetapp, which was being used by the Appellant for pain control. As well, MPIC requested [MPIC's doctor #1] to comment on [Appellant's doctor #1's] report dated April 14, 1999 and [Appellant's physiatrist's] report dated February 5, 1999, as well as two articles from a medical journal which the Appellant had provided to MPIC.

[MPIC's doctor #1], in an Inter-Departmental Memorandum dated May 21, 1999 to MPIC, stated:

In [Appellant's doctor #1's] report he reviewed the assessments he performed on [the Appellant] following the bicycle accidents he was involved in. [Appellant's doctor #1] examined [the Appellant] on February 3, 1999 and was made aware at that time that a second accident had occurred on November 6, 1998. His examination revealed tenderness of palpation of neck muscles as well as slight decrease in cervical range of motion. He documented that [the Appellant's] degenerative changes noted on the cervical spine x-ray were of long-standing duration. It was his opinion that physiotherapy treatments were not required. It was [the Appellant's] statement to [Appellant's doctor #1] that the only medication that helped relieve his symptoms was the Dimetapp tablets. [Appellant's doctor #1] documented that he expected full recovery to his pre-accident medical condition.

In [Appellant's physiatrist's] report he documented that x-rays of [the Appellant's] cervical spine revealed "*relatively severe degenerative changes at the mid and lower cervical segments*". X-rays also revealed "*nuchal ossification*" as well as mild degenerative changes in the lumbar zygapophyseal joints. [Appellant's physiatrist's] examination identified moderate restriction of rotation and lateral bending bilaterally. It was [Appellant's physiatrist's] opinion that the degenerative changes that occurred involving the cervical spine were typical of aging. It was also his opinion that it was "*possible that the numerous injuries that he sustained over many years had contributed to and accelerated the degenerative process*".

In respect of the articles that the Appellant had submitted to MPIC, [MPIC's doctor #1] stated that after reviewing these articles, these articles provided nothing in the way of scientific evidence that would substantiate the use of Dimetapp in the management of chronic soft tissue pain and/or osteoarthritic joints. [MPIC's doctor #1] further stated:

DISCUSSION

It is documented that [the Appellant] had a chronic neck and back symptoms prior to the 1998 bicycle accident. It is also documented that he was taking Dimetapp tablets in order to address his chronic pain symptoms. There would be no way to determine to what extent, if any, his previous motor vehicle collisions contributed to the degenerative changes noted in his cervical spine. There is very little documentation objectively identifying an impairment of physical function. The CPS 1999 Manual classifies Dimetapp as an antihistamine/decongestant. The indications for use of Dimetapp are for allergic manifestations of respiratory illnesses such as a common cold and seasonal allergies. To my knowledge, there is no literature presently available identifying Dimetapp with any analgesic properties. To my knowledge, Dimetapp has never been a recommended treatment in the management of chronic pain conditions.

After reviewing the information obtained from the medical documents and articles provided to me, it is my opinion that [the Appellant] mildly exacerbated his pre-existing chronic symptoms involving his cervical spine as a result of his bicycle accidents in 1998. There is no documentation identifying a structural change to his spine or medical conditions arising from these accidents that resulted in permanent worsening of his chronic pain symptoms or a more rapid progression of his pre-existing degenerative changes. It is my opinion that the natural history of an exacerbation is full recovery as indicated by [Appellant's doctor #1]. In other words, the bicycle accidents [the Appellant] was involved in did not alter the long-term prognosis of his pre-existing chronic symptoms. (underlining added)

It is also my opinion that Dimetapp is not a recognized treatment in the management of soft tissue symptoms involving the neck and back regions. It is [the Appellant's] belief that this medication helps minimize his symptoms. This has not been identified objectively in any way. (underlining added)

FINAL COMMENTS

Based on my review of the information provided to me, it is my opinion that Dimetapp is not a medication prescribed specifically to address the exacerbation of [the Appellant's] chronic pain that occurred as a result of the two bicycle accidents in 1998. (underlining added)

Internal Review Decision – Reimbursement for Dimetapp Medication

On May 4, 1999 the Internal Review Officer met with the Appellant to review the case manager's rejection of the reimbursement to the Appellant of the cost of Dimetapp medication.

On June 1, 1999 the Internal Review Officer wrote to the Appellant and confirmed the case manager's decision in this respect. The Internal Review Officer in arriving at his decision stated:

This present claim arises out of accidents which occurred on June 26, 1998 and November 16, 1998. On both occasions you were a cyclist and on both occasions your bicycle came into contact with a moving motor vehicle.

You advised me that you have had allergies since your first motor vehicle in 1983, and indeed I note that there are a number of references in the pre-1998 file materials to you requesting that MPI fund your Dimetapp purchases.

You also advised me that Dimetapp is the only medication which does anything for your aches and pains.

The Internal Review Officer examined the two academic journal articles that were submitted by the Appellant in his Application for Review and [MPIC's doctor #1's] Inter-Departmental Memorandum dated May 21, 1999 (a copy of which was provided to the Appellant). The Internal Review Officer states:

You will note that [MPIC's doctor #1] is firmly of the view that the use of Dimetapp for these conditions is simply not indicated. The medication has no known analgesic properties and there is no literature which suggests that it is appropriate for either soft tissue injuries or chronic pain.

In the circumstances, I am unable to conclude that the adjuster made any error in refusing to fund this medication under PIPP, and I am, therefore, confirming that decision.

The Appellant filed a Notice of Appeal dated September 1, 1999 in respect of the Internal Review Officer's decision dated June 1, 1999.

Case Manager's Decision – Entitlement to Income Replacement Indemnity Benefits

On March 18, 1999 the Appellant made application to MPIC for Income Replacement Indemnity ('IRI') benefits in respect of the two motor vehicle accidents.

On September 15, 1999 the case manager wrote to the Appellant advising him that he had had an opportunity of reviewing the Appellant's files concerning his claim for loss of income and

informed the Appellant that his claim was rejected. The case manager stated:

Information reveals that you were unable to work before the above noted accidents due to reasons not related to these accidents of June 26/98 and Nov. 16/98.

We quote the Manitoba Public Insurance Corporation Act, Section 105:

No entitlement to I.R.I.

105 Notwithstanding sections 81 to 103, a victim who is regularly incapable before the accident of holding employment for any reason except age is not entitled to an income replacement indemnity.

As such, it is our opinion that you are not entitled to an income replacement indemnity.

In an application dated November 15, 1999 the Appellant made Application for Review of the case manager's decision to deny his claim for IRI.

Internal Review Decision – Income Replacement Indemnity Benefits

On August 11, 2000 the Internal Review Officer wrote to the Appellant and confirmed a telephone discussion with the Appellant on August 10, 2000 wherein the Appellant indicated he was not going to withdraw his Application for Review of the case manager's decision but he did not wish to proceed with the Application at that time. However, the Internal Review Officer, in his letter to the Appellant, advised the Appellant that he intended to render a decision in respect of the pending Internal Review and the Appellant would be free to appeal that decision to the Automobile Injury Compensation Appeal Commission. The Internal Review Officer further stated:

ISSUES

As noted above, the only issue on this review is whether you were regularly incapable of holding employment prior to your 1998 car-bicycle accidents for any reason except age and, therefore, not entitled to an Income Replacement Indemnity ("IRI") and PIPP.

REVIEW DECISION

The case manager cited Section 105 of the *Act* (copy enclosed) and concluded that you were not entitled to IRI. I agree with that decision and I am, therefore, confirming it at this time.

FACTS & RATIONALE FOR DECISION

At the time of your two car-bicycle accidents in 1998, you were [text deleted] years of age.

In the Application for Compensation which you submitted in connection with the June 26, 1998 accident, you described yourself as “disabled since 1983” due to “untreated + undiagnosed whiplash injuries”. You noted that you had been involved in a number of motor vehicle accidents between 1983 and 1991, and indicated that you had last worked in September, 1990.

In our telephone conversation, you concurred with my observation that – at least from your perspective – you were indeed regularly incapable of holding employment for reasons other than age at the time of the 1998 accidents.

In these circumstances, Section 105 of the *Act* is clearly applicable and the effect of its operation is to disentitle you to IRI in relation to your 1998 accidents.

The Appellant filed a Notice of Appeal dated November 7, 2000 in respect of the Internal Review Officer’s decision denying IRI benefits to the Appellant.

APPEAL

The appeal issues are governed by the following provisions of the MPIC Act and Regulations:

Section 105 of the MPIC Act

Persons Incapable of Employment

No entitlement to I.R.I. or retirement income

105 Notwithstanding sections 81 to 103, a victim who is regularly incapable before the accident of holding employment for any reason except age is not entitled to an income replacement indemnity or a retirement income.

Section 136(1)(d) of the MPIC Act

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.

Manitoba Regulation 40/94, Section 38

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.

Submission – IRI Entitlement

The Appellant, in his Notice of Appeal, sets out a lengthy submission in respect of a motor vehicle accident which he was involved in on September 19, 1983. He alleges that he was struck by a stolen car being pursued by the [text deleted] Police. The [text deleted] Police Service has failed to provide him with the identity of the police officer who was involved in this motor vehicle accident. The Appellant stated, as a result of the motor vehicle accident, he suffered injuries to his spine, head, shoulders and stomach and there has been a refusal by certain members of the medical profession to properly treat him to assist him in returning to his pre-accident status.

He further asserted in his Notice of Appeal that MPIC had breached its fiduciary duty to assist him and has failed to protect his right as a former policyholder with MPIC. He also asserted that there was a conflict of interest between the police service, MPIC and members of the medical and legal professions resulting in an abuse of power exercised by these bodies or persons. The Appellant therefore concluded that he was a victim of crime who had been treated unjustly and unreasonably by these bodies and by the Province of Manitoba.

The Appellant made a verbal submission to the Commission reiterating in substance his submission as set out in his Notice of Appeal. The Commission advised the Appellant that the jurisdiction of the Commission, pursuant to Section 71(1) of the MPIC Act, permitted the Commission to deal only with bodily injuries suffered by the Appellant in a motor vehicle accident that occurred on or after March 1, 1994. As a result the Commission informed the Appellant it did not have authority to deal with the Appellant's submission relating to the motor vehicle accident on September 19, 1983 and the manner in which various authorities dealt with the motor vehicle accident and his medical injuries.

The Commission urged the Appellant to address the appeal issues that were before the Commission and the Appellant refused to do so. The Appellant continued to focus his submission only on the September 19, 1983 accident and did not address either the legal issues or the factual issues relating to the two matters that were under appeal.

The Appellant, in his verbal submission to the Commission, referred to:

1. the legal text *International Human Rights Law*, by Professor Anne F. Bayefsky, and in particular Appendix 1 in respect of the role of law enforcement officers under Section 7(12) of the *Canadian Charter of Rights* relating to the conduct of law enforcement officials;
2. the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment referred to in Professor Bayefsky's text under Appendix 1 in respect of Section 12 of the Charter of Rights and Liberties;
3. the Human Rights Quarterly in respect of an article that dealt with the philosophy of the Universal Declaration of Human Rights;
4. a treatise in respect of the Unclean Hands doctrine;
5. the decision of the Supreme Court of Canada in *Re MacIntyre*, 132 DLR, (3rd) 385 in respect of Section 2(d) of the Charter.

In response to the Appellant's entire submission MPIC's legal counsel submitted that:

- (a) the Commission did not have jurisdiction to deal with the injuries which the Appellant alleged were sustained by him in the September 19, 1983 motor vehicle accident and the Commission only had jurisdiction to deal with the Appellant's bodily injury claims after March 1, 1994;
- (b) the entire submission of the Appellant relating to the misconduct of the [text deleted] Police Service, specific members of the medical and legal profession, the conduct of employees of MPIC were not relevant to the matters under appeal before the Commission which related to two motor vehicle accidents in 1998;
- (c) the evidence that was before the Commission demonstrated that the Appellant was unable to be regularly employed for reasons other than age prior to the motor vehicle accident and, therefore, pursuant to Section 105 of the MPIC Act he was not entitled to IRI benefits;
- (d) the Internal Review Officer was therefore correct in determining that pursuant to Section 105 of the MPIC Act, the Appellant was not entitled to IRI benefits.

The Appellant, in his verbal reply to the Commission, did not dispute MPIC's legal counsel's factual submission relating to his employment status prior to the two accidents in June and November 1998, nor did he dispute MPIC's legal counsel's legal interpretation relating to Section 105 of the MPIC Act which prevented the Appellant from obtaining IRI benefits.

Submissions in respect of Dimetapp Medication

In respect of the Appellant's appeal relating to MPIC's refusal to pay for Dimetapp medication the Appellant submitted that:

- 1. as a result of the 1983 motor vehicle accident he suffered a basal fracture of the skull but acknowledged there was no medical evidence to confirm this;
- 2. he suffered other injuries as a result of his accident and the only medication that relieves his pain, headaches and inability to sleep is Dimetapp;
- 3. the Dimetapp medication provided ten to twelve hours relief of pain and headaches;
- 4. as a result MPIC was required to reimburse him for the cost of purchasing this

medication.

In response MPIC's legal counsel made two submissions as follows:

1. that the Appellant's present medical complaints were related to injuries which pre-existed the motor vehicle accidents of June 26, 1998 and November 16, 1998 and that the Appellant's medical complaints had no causal connection to these accidents;
2. that the Dimetapp medication was not a recognized treatment relating to the injuries the Appellant sustained in the 1998 motor vehicle accident.

In respect of causation, MPIC's legal counsel referred to [MPIC's doctor #1's] Inter-Departmental Memorandum dated May 21, 1999 wherein [MPIC's doctor #1] cited to the medical opinions of [Appellant's physiatrist] and [Appellant's doctor #1] as follows:

- (a) [Appellant's physiatrist] in his medical report dated February 5, 1999 concluded that the x-rays in respect of the Appellant's cervical spine revealed ". . . *relatively severe degenerative changes at the mid to lower cervical segments.*" These x-rays also revealed "*nuchal ossification.*" [Appellant's physiatrist] concluded ". . . *that the numerous injuries that he sustained over many years had contributed to and accelerated the degenerative process.*"
- (b) [Appellant's doctor #1] in his report to MPIC dated April 14, 1999 referred to the extensive history of neck, back, whiplash and other injuries sustained by the Appellant in a series of car accidents over an eight year period between 1983 and 1999. [Appellant's doctor #1] documented the Appellant's degenerative changes on the Appellant's cervical spine x-ray were of a long standing duration.

MPIC's legal counsel also referred to the comments of [MPIC's doctor #1] in his Inter-Departmental Memorandum dated May 21, 1999 wherein [MPIC's doctor #1] indicates that it is documented that the Appellant had chronic neck and back symptoms prior to the 1998 bicycle accidents. [MPIC's doctor #1] further stated:

After reviewing the information obtained from the medical documents and articles provided to me, it is my opinion that [the Appellant] mildly exacerbated his pre-existing chronic symptoms involving his cervical spine as a result of his bicycle accidents in 1998. There is no documentation identifying a structural change to his spine or medical conditions arising from these accidents that resulted in permanent worsening of his

chronic pain symptoms or a more rapid progression of his pre-existing degenerative changes. It is my opinion that the natural history of an exacerbation is full recovery as indicated by [Appellant's doctor #1]. In other words, the bicycle accidents [the Appellant] was involved in did not alter the long-term prognosis of his pre-existing chronic symptoms.

In respect of the Dimetapp medication Dr. McKay stated in his Inter-Departmental Memorandum dated May 21, 1999:

It is also my opinion that Dimetapp is not a recognized treatment in the management of soft tissue symptoms involving the neck and back regions. It is [the Appellant] belief that this medication helps minimize his symptoms. This has not been identified objectively in any way.

DECISION

The Commission, after reviewing all of the documentation that was presented to it, carefully considered the testimony of the Appellant and the submissions of both the Appellant and MPIC's legal counsel, determines:

IRI Benefits

- (a) MPIC has established, on the balance of probabilities, that the Appellant was unable to be regularly employed for reasons other than age prior to the motor vehicle accidents of June 26, 1998 and November 16, 1998 and, therefore, pursuant to Section 105 of the MPIC Act the Appellant was not entitled to IRI benefits. The Commission therefore confirms the decision of the Internal Review Officer, dated August 11, 2000, and dismisses the Appellant's appeal in this respect.

Dimetapp Medication

- (b) the Appellant has not established, on a balance of probabilities, that there is a causal connection between the Appellant's pre-existing chronic neck and back symptoms and the 1998 bicycle accidents. The Commission accepts [MPIC's doctor #1]'s medical opinion that the 1998 bicycle accidents mildly exacerbated the Appellant's pre-existing chronic symptoms involving his cervical spine and that these injuries did not materially contribute to a permanent worsening of the Appellant's chronic pain symptoms or a more rapid progression of his pre-existing degenerative changes.
- (c) The Appellant has not established, on a balance of probabilities, that Dimetapp medication was required for medical reasons resulting from the accident. The

Commission accepts [MPIC's doctor #1's] medical opinion that Dimetapp is not a recognized treatment in the management of soft tissue symptoms involving the neck and back regions. It is for these reasons that the Commission rejects the testimony of the Appellant in this respect and accepts the medical opinion of [MPIC's doctor #1] in respect of this issue.

The Commission therefore finds that the Appellant has not established, on the balance of probabilities, pursuant to Section 38 of Manitoba Regulation 40/94, that MPIC is required to reimburse the Appellant for the Appellant's costs of purchasing Dimetapp. The Commission therefore rejects the Appellant's appeal in respect of this issue and confirms the decision of the Internal Review Officer dated June 1, 1999.

DECISION

In summary the Commission rejects the Appellant's two appeals relating to entitlement to IRI benefits and the entitlement to a reimbursement for the cost of Dimetapp medication and confirms the two decisions of the Internal Review Officer dated June 1, 1999 and August 11, 2000 respectively.

Dated at Winnipeg this 5th day of January, 2004.

MEL MYERS, Q.C.

PAUL JOHNSTON

WILSON MACLENNAN