

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-170**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Neil Cohen

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Bob Tyre of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunnha.

HEARING DATE: June 5, 2007

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits (Does the information support a causal relationship between the Appellant's motor vehicle accident and her ongoing symptoms?)

RELEVANT SECTIONS: Section 136 of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Section 5 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

On June 14, 2004 the Appellant was a seat-belted passenger in a motor vehicle that was struck from behind.

Four (4) days prior, on June 10, 2004, the Appellant had sustained a head injury as a result of being knocked down and trampled by horses.

Following the motor vehicle accident, the Appellant became nauseated and vomited. She was treated in hospital and sent home with medication for her pain.

She returned to hospital the following day complaining of headaches and nausea.

The Appellant applied for compensation under the Personal Injury Protection Plan ('PIPP'). However, on December 29, 2004, she received a letter from her case manager which indicated that the medical documentation did not support a causal relationship between her accident and ongoing symptoms. MPIC took the position that it was the head injury of June 10, 2004, and not the motor vehicle accident, which was responsible for the Appellant's ongoing head injury symptomatology.

The Appellant sought an Internal Review of her case manager's decision. On August 17, 2005 an Internal Review Officer for MPIC reviewed the medical evidence on file and concluded that the Appellant's symptoms were present prior to her motor vehicle accident, as a result of the horse trampling accident of June 10, 2004. She concluded that the Appellant's ongoing health problems were attributable to the horse trampling incident rather than her motor vehicle accident of June 14, 2004.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submissions for the Appellant

The Commission heard testimony from the Appellant and from her sister, the driver of the motor vehicle, [text deleted].

The Appellant gave evidence and described the symptoms which she experienced following the horse trampling incident of June 10, 2004. She suffered from headaches, nausea, emesis, pain in her thigh, photosensitivity, a feeling of pressure and water running in her head, pain with eye movements and amnesia.

The Appellant testified that while some of the symptoms which she felt following the motor vehicle accident were the same as those which she had experienced in the days following the horse trampling, some sensations were different. In particular, she testified that following the motor vehicle accident, she experienced the sensation of water running down the side of her face, in addition to the sensation which she had both prior to and after the motor vehicle accident of water running inside her head. She testified that she spent a lot of time in bed with a towel on her face wiping at the water sensation, although there was really no water there.

In general, the Appellant's recollection of the motor vehicle accident was fairly poor.

The Appellant's sister, the driver of the motor vehicle, testified that on June 14th she had picked-up the Appellant from the hospital, where she had attended in regard to symptoms caused by the horse trampling incident, and was driving her home. They were struck from behind, on the corner of her vehicle's rear bumper. She called for police who attended at the scene.

The Appellant's sister testified that she herself had not been injured in the motor vehicle accident. She described the Appellant as falling forward, vomiting and then leaning back,

resting her head on the seat's headrest. She did not describe any trauma to or blow to the Appellant's head at any point during the motor vehicle accident.

The Commission was also presented with evidence from several of the Appellant's caregivers. Reports were submitted from [Appellant's neurologist], [text deleted], [Appellant's neurosurgeon], [text deleted], and the Appellant's general practitioner, [Appellant's doctor #1]. A report was also submitted from [Appellant's neuropsychologist], [text deleted].

[Appellant's neurologist] set out the following description in a report dated July 6, 2004:

She presents neurologically with difficulty beginning June 10, 2004, she was trampled by nine horses, unconscious for at least fifteen minutes, taken to hospital, kept six days, since then severe headache, shortness of breath, frequent vomiting. The headache is 20% better, the vomiting 30% better.

She is draining yellow clear fluid from her left nostril, she had noticed a change in her sense of smell but not change of taste. After the injury she thinks she was draining something from one of her ears she can't remember which one. She had considerable hematoma around her eyes, I think so called raccoon eyes, and I think she has had a basal skull fracture with CSF leak.

After discharge from hospital she was rear ended, with subsequent slight neck discomfort, necessitating a further two days in hospital at that time. All of this occurred as mentioned about a month ago.

[Appellant's neurosurgeon], examined the Appellant on July 20, 2004 and provided a report dated July 21, 2004. He stated:

I saw her on July 20, 2004 in the Neurosurgery Clinic. Since her accident, she states that she has had continued headache. This is worse when she is active, but tends to be alleviated by lying down. She still has a sensation of "water running down the left side of my face". She has an impaired sense of smell, but this has been improving. She states that the leakage of fluid from her nose has stopped. She has not had a fever or stiff neck. The headache is not suggestive of raised intracranial pressure.

The Appellant provided clinical notes from her family physician, [Appellant's doctor #1], as well as a reports dated May 5, 2005, and November 13, 2006. On May 5, 2005, [Appellant's doctor #1] stated "it is impossible for me to estimate to what extent her present condition has been impacted by the second injury, but I am sure it has contributed to her present condition".

On November 13, 2006 [Appellant's doctor #1] stated:

[The Appellant] had a injury on June 5, 2004, with horses trampling on her head- that is the first concussion and then she was discharged on June 10, 2004 and readmitted to the observation unit in the ER department after she was rear ended. Her head shook backwards and forward and that was the second concussion. Then I was on duty for ER and I saw her in the observation unit for the first time in my life.

With the second injury she had whiplash and she had projectile vomiting in the car. In the clinic I saw her for the first time on June 24, 2004 because she needed forms to be completed and her family doctor [Appellant's doctor #2] was on holiday and she could not wait and because I saw her once in the observation unit, she asked if I could help her with the form completion.

[Appellant's neuropsychologist] provided reports on June 10, 2005 and September 5, 2006. [Appellant's neuropsychologist], in his report dated September 5, 2006, described the Appellant's "wide range of deficits" and reviewed reports from the Appellant's caregivers as well as a report submitted by [MPIC's psychologist], a member of MPIC's Health Care Services Team, which attributed the Appellant's symptoms to the horse trampling incident.

While raising the "possibility that [the Appellant's] initial injury may have been worsened by the mva, based on [Appellant's doctor #1's] diagnosis" and noting that an individual who suffered a concussion might be more susceptible to injury if they suffered another three or four days later, [Appellant's neuropsychologist] was not as certain as [Appellant's doctor #1] that the motor vehicle accident had contributed to the Appellant's present condition. He stated:

. . . I would not be able to be as certain as [Appellant's doctor #1]: I can't say I'm "sure" the MVA contributed to her condition because there wasn't a documented loss of

consciousness, amnesia, etc. but it would certainly be possible that the MVA could have exacerbated her head injury.

[Appellant's neuropsychologist] also stated:

. . . the hospital records did not diagnose [the Appellant] with an additional head injury; there was no significant retrograde amnesia for the MVA; there was not a reported loss of consciousness; and the psychological tests themselves would not be able to differentiate between the two accidents. At the time of my report, there was however the possibility of [Appellant's doctor #1's] "concussion on concussion" diagnosis, and as noted above, I had therefore written for additional records.

[Appellant's neuropsychologist] also noted that the emergency room form of June 14th indicated that the Appellant had not been knocked out and the June 15th form indicated she had no increased intracranial pressure of significance and no new "neuro" symptoms.

Counsel for the Appellant submitted that the motor vehicle accident had not been minor and that it had caused new symptoms for the Appellant and exacerbated her condition and other symptoms. He fully reviewed the medical evidence, highlighting new symptoms from the motor vehicle accident, such as the sensation of water running down the left side of her face. He also referred to the opinions of the Appellant's caregivers, [Appellant's doctor #1] and [Appellant's neuropsychologist], that the motor vehicle accident had or might have contributed to her current symptomology. Accordingly, he submitted that on a balance of probabilities there was a causal relationship between the motor vehicle accident and the Appellant's injuries.

Evidence and Submissions for MPIC

Counsel for MPIC reviewed the medical evidence on the file and relied upon a report provided by [MPIC's psychologist] of MPIC's Health Care Services Team, dated December 17, 2004.

[MPIC's psychologist] noted the Appellant's accident of June 10, 2004 and the fact that she was transported to hospital by ambulance, losing consciousness for approximately fifteen (15) minutes (contrary to the motor vehicle accident where there is no indication that the Appellant lost consciousness). The Appellant was diagnosed with a concussion on June 10th. A CT scan of June 14, 2004, prior to the motor vehicle accident, revealed soft tissue swelling over the frontal lobe but no skull or facial fractures. [MPIC's psychologist] noted that the Appellant had returned to hospital complaining of a headache, photophobia and a feeling of water running in her head. She also complained of nausea.

Following the motor vehicle accident, another CT scan was conducted, which revealed no evidence of intracranial injury or skull base fracture. [MPIC's psychologist] noted that the Appellant became nauseated and vomited and was sent home with pain medication. The following day she returned to hospital with headaches and nausea, but [MPIC's psychologist] noted that no new neurological symptoms were reported at that time.

[MPIC's psychologist] considered [Appellant's neurologist's] reports, as well as the report of [Appellant's neurosurgeon]. These reports ruled out a CSF leak and basal skull fracture, although the Appellant's headache remained the same and was recurring on a daily basis. An MRI scan demonstrated no intracranial abnormality nor intracranial hypotension.

[MPIC's psychologist] concluded that the Appellant's neurological symptoms began immediately following the horse trampling incident and continued to be present continuously until the time of the motor vehicle accident. In his view, the Appellant continued to experience and report the same symptoms on a consistent basis and the ongoing symptoms, on a balance of probabilities were related to the horse trampling incident rather than the motor vehicle accident,

since the type and severity of the motor vehicle accident would not have resulted in any significant neurological symptoms.

[MPIC's psychologist] also reviewed the reports of [Appellant's doctor #1] and [Appellant's neuropsychologist]. He noted, on July 8, 2005, that [Appellant's neuropsychologist] did not attribute the Appellant's neuropsychological symptoms to the motor vehicle accident. He also noted that [Appellant's doctor #1] did not see the Appellant prior to June 24, 2004, approximately ten (10) days after the motor vehicle accident.

Counsel for MPIC also reviewed [Appellant's neuropsychologist's] report of September 5, 2006. She noted that he did not indicate that the second injury so soon after the first was a probable cause of the Appellant's injuries, although [Appellant's neuropsychologist] recognized that it was possible. It was emphasized that [Appellant's neuropsychologist] could not say that he was "sure" the motor vehicle accident contributed to the Appellant's condition, due to the lack of a documented loss of consciousness or amnesia etc.

Counsel for MPIC emphasized that the onus was on the Appellant to show, on a balance of probabilities, that there was a causal relationship between the motor vehicle accident and the Appellant's symptoms. The medical evidence on the file and the testimony at the hearing indicated, on a balance of probabilities, that the Appellant's ongoing health problems were attributable to the horse trampling incident rather than the motor vehicle accident of June 14, 2004.

Discussion

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:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant, to show, on a balance of probabilities, that the injuries complained of were caused by the motor vehicle accident.

The panel has carefully reviewed the medical evidence on file as well as the testimony of the Appellant and her sister.

The panel heard evidence that the Appellant did suffer from some new symptoms after the motor vehicle accident, although they were not all neurological symptoms.

Both before and after the motor vehicle accident, there was evidence the Appellant suffered from headaches, nausea, emesis, pain in the thigh, photosensitivity, a feeling of pressure and water

running in her head, pain with eye movement and amnesia.

New symptoms identified following the motor vehicle accident included discharge of yellow fluid from her nostril, blurred vision, a sensation of water on the left side of her face, chest pain, and right eye twitching.

Although the panel acknowledges the appearance of these symptoms, we are unable to conclude, on a balance of probabilities, that the motor vehicle accident was the cause of the Appellant's symptoms and that they did not result from the horse trampling incident.

The panel is not persuaded that the Appellant's symptoms establish a causal connection between her condition and the motor vehicle accident. Even the new symptoms are consistent with a continuation of the symptoms the Appellant was already experiencing following the incident with the horses.

Due to the poor recollection of the Appellant, it is difficult to rely on her evidence alone regarding the motor vehicle accident. We have considered the evidence of her sister, who was driving the motor vehicle, and her description of the accident. In the panel's view, the evidence established that the sister was not injured during the motor vehicle accident. She did not describe any trauma or blow to the Appellant's head at any point, describing the Appellant as falling forward, vomiting and then leaning back, resting her head on the headrest.

The medical evidence on the file established that the Appellant did not receive a blow or trauma to the head during the motor vehicle accident. The reports indicated that the accident caused no impact to the head, intracranial pressure or loss of consciousness.

Although [Appellant's doctor #1] was of the view that she had suffered a second concussion in the motor vehicle accident, his analysis was very brief, particularly regarding etiology. He did not see the Appellant until June 24, 2004, and although he stated that the motor vehicle accident affected her symptoms, he did not say how much or how.

[Appellant's neuropsychologist] was not prepared to say that the motor vehicle accident was a probable cause of the Appellant's condition; he indicated that it was possible. He indicated that testing could not determine the cause, and although he acknowledged [Appellant's doctor #1's] theory regarding the possible effect of a "concussion upon concussion" he was unable to substantiate this theory based upon the reported medical evidence. He noted that the emergency room form did not indicate she was knocked out and it indicated that there was no increased intracranial pressure of significance and no new neurological symptoms.

The panel notes the comments of [MPIC's psychologist], on December 17, 2004. He indicates:

The available medical evidence indicates that all of the neurological symptoms being reported by the claimant including her headache, nausea, and vomiting, began immediately following the accident involving being trampled by horses, and continued to be present continuously between the time of the latter incident until the time of the motor vehicle accident in question. Available medical reports indicate that the claimant continued to experience and to report the same symptoms on a consistent, although somewhat diminishing basis following the motor vehicle accident. She continues to be investigated for these symptoms. Therefore, it is this writer's conclusion that the available medical evidence indicates that the claimant's neurological symptoms, including her nausea and headaches were present prior to the motor vehicle accident and are, on the balance of probabilities, related to the injuries sustained as a result of being trampled by horses. There is no evidence on the file to indicate any significant changes in the claimant's symptoms following the motor vehicle accident in question. . .

Having reviewed the testimony of the witnesses and the other evidence on file, the panel finds, on a balance of probabilities, that the evidence does not support the Appellant's contention that

her symptoms were caused by the motor vehicle accident. The medical evidence on the file and at the hearing indicates, on a balance of probabilities, that the Appellant's ongoing health problems are attributable to the horse trampling incident rather than the motor vehicle accident of June 14, 2004. As a result, we confirm the Internal Review Officer's decision of August 17, 2005 and dismiss the Appellant's appeal.

Dated at Winnipeg this 16th day of July, 2007.

LAURA DIAMOND

MARY LYNN BROOKS

NEIL COHEN