

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC- 06-41**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson  
Ms. Leona Barrett  
Ms. Deborah Stewart

**APPEARANCES:** The Appellant, [text deleted], was represented by Ms. Virginia Hnytka, Claimant Advisor Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Danielle Robinson.

**HEARING DATE:** December 16 and 17, 2008

**ISSUE(S):** Entitlement to reimbursement of dental cost for replacing a missing tooth.

**RELEVANT SECTIONS:** Section 136(1)(a) and Section 5 of Manitoba Regulation 40/94 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**

[The Appellant], was involved in a motor vehicle accident on October 27, 2003.

As a result of the accident, the Appellant sustained multiple injuries including: fractures of C1-C7, R10-T12, L1 vertebrae, open right tibia and fibula fractures, left radius and ulna fractures, rib fractures, tracheotomy, open right 5<sup>th</sup> metatarsal fracture, left lower motor nerve paralysis, facial paralysis, vocal cord paralysis, left eye damage, hearing loss, dental damage, lacerated spleen, brain injury, right shoulder and right knee ligament injury, and post-MVA pneumonia and sepsis while hospitalized.

In addition, the Appellant lost three teeth, number 11, 21 and 22 in the motor vehicle accident. Due to the significant injuries the Appellant received in the motor vehicle accident, he was unable to have dental treatment done in respect of these teeth until June 24, 2004 which was approximately eight (8) months after the motor vehicle accident.

[Text deleted], the Appellant's dentist, provided a undated dental report to MPIC wherein he stated:

Considering what he went through, the damage seems to be minimal. Three teeth affected were 11, 21 and 22. They require Endo, post + crown. The rest of the dental restorations – bridge works done over 22 years ago look OK. The broken teeth were crowned on the 7 of June, 1982.

[Appellant's dentist #1] also reported that the Appellant had over the years, taken care of his teeth. [Text deleted], MPIC's dental consultant, approved of [Appellant's dentist #1's] treatment plan and MPIC reimbursed the Appellant for the cost of this dental treatment.

On April 20, 2005 [Appellant's dentist #1] wrote to MPIC's case manager and stated:

[The Appellant] came to my office lately with a tooth (dummy) that came off from a bridge. The bridge extended from the right first molar (16) to the right upper cuspid (13). The tooth in question is the 14, the first premolar. What happened? He was chewing and tooth #13 came off the bridge at the soldered joint.

I was trying to ask myself how could this happen? In my mind, I don't say that I'm right, but there is a possibility (the bridge was inserted on December 14, 1982) that the shock on the teeth at the time of the accident could have stressed the welded joint so much that it gave up after a while.

This is the first time in my 47 years of practice that such a problem has arisen.

I hope and intend to repair this with a simple bridge from 15 to 13. It will not move being attached to other teeth.

I hope for the patient's sake that this "repair" will be covered by the insurance.

(Underlining added)

MPIC provided its dental consultant, [text deleted], with a copy of [Appellant's dentist #1's] letter of April 20, 2005 for his review. [MPIC's dentist], reviewed the correspondence from [Appellant's dentist #1] and advised MPIC that he did not see this problem being motor vehicle accident-related and would not advise coverage by MPIC.

#### CASE MANAGER'S DECISION

On April 29, 2005, the case manager wrote to the Appellant stating that [Appellant's dentist #1's] letter dated April 20, 2005 requesting coverage for dental work, was reviewed by MPIC's dental consultant who reported that he was unable to relate the dental work required in 2005 to the injuries sustained in the motor vehicle accident of October 27, 2003.

[Appellant's dentist #1] was provided with a copy of this letter and he wrote to the case manager on June 20, 2005. In his letter [Appellant's dentist #1] stated that after receiving MPIC's letter dated April 29, 2005, he discussed this matter with the dental laboratory that had done the work for him in respect of the Appellant's bridge approximately twenty-five (25) years earlier.

[Appellant's dentist #1] further stated:

Discussing [the Appellant's] case, we talked back and forth with multiple details, and with his years of experience he was of the same opinion that I was. The bridge that was in place since Dec. 24, 1982 (sic) would have been successful to the end unless something tragic would occur. And this is exactly what happened. My own experience tells me the same. A severe shock was the only reason that the weld was submitted to such a violent pressure. It did not break immediately, but with time it gave up.

[Appellant's dentist #1's] letter of June 20, 2005 was provided to [text deleted], MPIC's dental consultant for his review. In his response, [MPIC's dentist] stated:

I do not concur with the observations expressed in the letter. The circumstances would indicate in that in all probability the reason for the fracture is due to

repetitive stress of the bridge from normal function. There was not any indication of any damage at the time of the motor vehicle accident and to attribute the fracture almost 2 years after the motor vehicle accident is not justified.

On August 16, 2005, the case manager wrote to the Appellant and stated:

We are in receipt of another letter from [Appellant's dentist #1], dated June 20, 2005 requesting coverage for dental work. This has been reviewed by our dental consultant of our Health Care Services Department. It is the consultant's opinion that in all probability, the reason for the fracture is due to repetitive stress of the bridge from normal functions. He outlined that there was no indication of any damage at the time of the motor vehicle accident to attribute to this fracture. He concludes again the dental work required in 2005 is not related to the injuries sustained in the motor vehicle accident of October 27, 2003.

#### INTERNAL REVIEW OFFICER'S DECISION

On October 17, 2005, the Appellant filed an application for review of the case manager's decision. On December 19, 2005 the Internal Review Officer wrote to the Appellant confirming the case manager's decision dated August 16, 2005 and rejected the Appellant's application for review. In her report the Internal Review Officer stated:

#### ISSUE

The only issue on this review is whether you are entitled to PIPP coverage as a result of tooth number 13 breaking away from the bridge at the soldered joint.

#### REVIEW DECISION

In my view, the totality of dental information on your file does not establish your entitlement to benefits relating to your damaged bridge. A causal relationship has not conclusively been established.

#### REASONS FOR REVIEW DECISION

Section 136(1) of the Act provides that a victim of an automobile accident is entitled to reimbursement of expenses incurred for medical and paramedical care required as a result of the accident. Section 5 of Manitoba Regulation 40/94 provides that Manitoba Public Insurance shall pay an expense incurred by a victim for the purpose of receiving dental care when that care is medically required as a result of the accident.

To qualify for the specific PIPP benefit currently sought, you need to establish – on the balance of probabilities – that the existing and “potential” dental problems are causally related to your motor vehicle accident. In other words, it must be more probably that not that the injuries sustained in the accident have led to the current situation with your bridge.

I can appreciate your very firm conviction that the requisite causal connection exists, however when viewed objectively, the evidence simply does not satisfy this “balance of probabilities” test. There was no indication of any damage to the bridge at the time of the motor vehicle accident and to attribute the fracture some 1.5 years later is not, in my opinion, realistic.

I am, therefore, confirming the decision of August 16, 2005, as it is in accordance with both legislation and evidence, and no basis has been shown for interfering with the decision under review.

The Appellant filed Notice of Appeal on February 27, 2006.

### APPEAL

The relevant provisions of the MPIC Act in relation to this appeal are:

Section 136(1) of the Act

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Manitoba Regulation 40/94

5(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;

On September 8, 2006 MPI’s legal counsel provided the Commission with a summary of [MPIC’s dentist’s] expected testimony along with a copy of an article from the *Journal of Prosthetic Dentistry* to which he intended to refer to during the course of his testimony. In his summary [MPIC’s dentist] stated:

The determination of fatigue properties is of considerable importance for certain types of dental restorations subjected to alternating forces during mastication. Structures such as complete dentures, implants, bridges and metal clasps of removable partial dentures, which are placed in the mouth by forcing the clasps over the teeth, are examples of restorations that undergo repeated loading. It has been estimated that alternate stress applications occurring during mastication may amount to approximately 300,000 flexures per year.

Bridge Survival

Literature review on longevity shows that there is a 15% failure rate at 10 yrs and a 33 % failure rate by 15 yrs. Therefore estimates of survival would predict that less than 50% of bridges would survive to 20 yrs.

Failures can be categorized into biologic (involving the tooth or the periodontal tissues) or technical (involving materials). Technical failures make up approx. 25% of all failures and fracture of the actual framework make up approx 2% of all failures.

Therefore there has been demonstrated in the literature that there is a direct relationship between failure and time in service. A failure after more than 20 yrs service would be a common occurrence.

Fracture of a metal component is probably due to repetitive stress rather than an isolated instance of stress beyond the strength limit of the alloy/metal.

It is apparent from the report Tab 20 that the portion of the bridge that broke was a cantilever, an unsupported extension of the bridge, an area inherently subjected to more stress. Connectors between adjacent teeth in a bridge are the narrower areas in the bridge. Also if, as reported in TAB 15, the break occurred at a welded (solder) joint then the break occurred at the weakest area in the structure. The literature states that solder joints are more prone to failure because of differences in composition of alloys and the solder making the area susceptible to corrosion.

(Underlining added)

On November 21, 2007 the Commission was provided with a copy of a letter from [Appellant's dentist #2] which was written to the Claimant Advisor Office. In this letter [Appellant's dentist #2] stated:

I have received your letter, and I've reviewed the case for [the Appellant]. I've practiced for 18 years. I've been aware of [the Appellant's] case before and after his accident and have examined his teeth. The bridge in [the Appellant's] mouth needs to have had an extreme stress to have broken the way it did. It's rare that you see the metal from a bridge actually break from wear and tear. After seeing the condition of his mouth after the accident, I am convinced that the broken bridge on his upper right teeth was casually related to the motor vehicle accident that occurred on October 27, 2003. The lab that fabricated the bridge that was cemented on February 26, 1982 is called [text deleted].

[Appellant's dentist #2] further indicated that the charges incurred to the broken bridge amounted to \$3654.35.

At the appeal hearing which commenced on December 17, 2008 the Appellant was represented by Virginia Hnytka of the Claimant Advisor Office and MPIC's legal counsel was Danielle Robinson.

The Appellant testified at the hearing and described the significant injuries in the motor vehicle accident. He further testified that:

1. As a result of the motor vehicle accident he lost three teeth and one side of his mouth was paralyzed which made it extremely difficult to chew.
2. Due to significant injuries in the accident he was unable to see his dentist to repair the lost teeth until the month of June 2004.
3. [Appellant's dentist #1] had been his dentist for many years and had inserted the original bridge in 1982.
4. In the month of April 2005 a tooth located on his bridge that had been repaired by [Appellant's dentist #1] as a result of the motor vehicle accident fell off.
5. As a result he attended at [Appellant's dentist #1's] office for dental treatment.
6. [Appellant's dentist #1] repaired the bridge but that MPIC refused to pay for the cost involved in repairing the bridge.
7. The loss of the tooth was a result of the motor vehicle accident.
8. He wished to be reimbursed for the cost of the dental treatment involved in repairing his bridge.

Unfortunately, [Appellant's dentist #1] was unable to testify because he was ill. His daughter, [Appellant's dentist #2], who has been a dentist for eighteen (18) years, testified on behalf of the Appellant and stated:

1. In her eighteen (18) years experience it was weird to see a metal from the bridge actually break away and tear.
2. After examining the Appellant's mouth and the bridge she is convinced that the broken bridge on his upper right teeth was causally related to the motor vehicle accident that occurred on October 27, 2003.
3. The Appellant had always looked after his teeth and they were in good condition at the time of the motor vehicle accident.
4. X-rays taken at the time of the motor vehicle accident did not demonstrate that there was anything wrong with the bridge.

In cross examination [Appellant's dentist #2] testified that:

1. In the past she had never provided a forensic opinion as to a causal relationship between a dental injury and a motor vehicle accident.
2. She had not examined the bridge in question at the time of the motor vehicle accident.
3. Her father [Appellant's dentist #1] had repaired the bridge approximately one and one-half (1 ½) years after the motor vehicle accident.
4. The first time she did see the bridge was on September 13 and October 3, 2006 which was approximately one and one-half (1 ½) years after the bridge had been repaired.
5. She acknowledged that she was unable to state the condition of the bridge at the time it was repaired by [Appellant's dentist #1].
6. She also acknowledged that she was unable to state that to her knowledge that an x-ray could detect a defect in the Appellant's bridge.
7. She rejected [MPIC's dentist's] opinion that the break in the Appellant's bridge occurred at a welded (solder) joint.

8. She did acknowledge that the report from [Appellant's dentist #1] in his letter to MPIC date April 30, 2005 indicated that in his view it was a possible shock on the teeth at the time of the motor vehicle accident which could have stressed the welded joint so much that it gave up after awhile. (underlining added)

### SUBMISSIONS

The Claimant Advisor Officer, in her submission, stated that:

1. [MPIC's dentist's] erred in concluding that reason for the bridge failure was due to the repetitive stress of the bridge from normal function.
2. The dental research provided by [MPIC's dentist] quoted that the fracture of an actual framework would make up approximately two percent (2) of all failures.
3. A report cited by [MPIC's dentist], entitled "*Clinical complication in fixed prosthodontics*" stated:

#### **Prosthesis fracture**

Eight studies <sup>5,20,23,25,32-35</sup> assessed the incidence of framework fracture with 24 prostheses fracturing from a combines study group of 1192 prostheses. The mean incidence was 2%, with a range from 0.7% to 4%. The studies in which framework fractures occurred involved mostly long span prostheses, and many of the prostheses had cantilevered pontics (single and double cantilevers).

The Claimant Advisor Officer also submitted that:

1. Since the fracture of the actual framework made up only twenty-two percent (22) of all failures it was not probable that the dental failure in question was due to a fracture from repetitive stress of the bridge from normal function, but was due to the motor vehicle accident.
2. The testimony of the Appellant who had suffered severe injuries in the motor vehicle accident and lost three (3) front teeth as a result of the accident.

3. The Appellant was satisfied that the blow he received in the accident caused an initial break in the bridge which ultimately resulted in the tooth falling off his bridge.
4. [Appellant's dentist #2] who is an experienced dentist testified that she had examined the bridgework and concluded that there was a causal relationship between the motor vehicle accident and the loss of the tooth in question.

MPIC's legal counsel, not surprisingly disagreed with the submission of the Claimant Advisor Officer and submitted that upon a review of all of the documentary evidence, the testimony of the Appellant and [Appellant's dentist #2], the Appellant had failed to establish in the balance of probabilities there was a causal relationship between the motor vehicle accident and the bridge failure and requested the Commission to dismiss the Appellant's appeal.

#### DISCUSSION

The Commission acknowledges that the Appellant had suffered a horrible accident which had a traumatic effect on his life. However, after a careful review of the documentary evidence, the testimony of the Appellant and [Appellant's dentist #2], and the submissions of both parties' representatives, the Commission has concluded that the Appellant has failed to establish on the balance of probabilities that there was a causal relationship between the bridge failure and the motor vehicle accident.

The Commission notes that:

1. [MPIC's dentist] was acknowledged by [Appellant's dentist #2], to be an experienced prosthodontist [text deleted].
2. [MPIC's dentist] is an experienced forensic prosthodontist who on many occasions has provided forensic opinions to the Commission with respect to the causal relationship between a dental injury and a motor vehicle accident.

3. [Appellant's dentist #2] acknowledged in her testimony that this was the first occasion that she was providing a forensic opinion as to the causal relationship between a dental injury and a motor vehicle accident.
4. [Appellant's dentist #2] erred in concluding that the Appellant's bridge had no soldered parts.
5. Her testimony in this respect is contradicted by the report of [Appellant's dentist #1] dated April 20, 2005 that referred to a welded joint in the Appellant's bridge.
6. [Appellant's dentist #2] had not seen the Appellant's original bridge prior to the motor vehicle accident and only examined the bridge after it had been repaired by her father, [Appellant's dentist #1].

For these reasons, the Commission gives greater weight to the dental opinion of [MPIC's dentist] than it does give to the dental opinion of [Appellant's dentist #2].

The Commission notes that the bridgework in question was originally done in 1982, approximately twenty-one (21) years prior to the motor vehicle accident. [MPIC's dentist], in his written summary, indicated that less than 50% of bridgework survived in twenty (20) years. In his opinion, there was a direct relationship between the bridge failure and the passage of twenty-one (21) years when the bridgework had been done. [MPIC's dentist] concluded that failure of the bridgework after more than twenty (20) years was a common occurrence.

[MPIC's dentist], in his report, further stated that [Appellant's dentist #1's] report dated April 20, 2005 indicated that the break in the Appellant's bridge occurred at a welded (solder) joint which is the weakest area in the structure. In his examination of [Appellant's dentist #1's] initial

dental report, it clearly indicated to him that the portion of the bridge that was broken was a cantilever, which is an unsupported extension of the bridge in an area inherently subjected to more stress. The Commission notes that [MPIC's dentist], in his second review of the Appellant's file, in a report dated June 27, 2005 stated the following:

I do not concur with the observations expressed in the letter. The circumstances would indicate in that in all probability the reason for the fracture is due to repetitive stress of the bridge from normal function. There was not any indication of any damage at the time of the motor vehicle accident and to attribute the fracture almost 2 years after the motor vehicle accident is not justified.  
(underlining added)

For the reasons set out herein, the Commission accepts the testimony of [MPIC's dentist] and finds:

1. The Appellant's bridgework was done twenty-one (21) years prior to the motor vehicle accident.
2. [Appellant's dentist #1] found no damage to the Appellant's bridgework at the time of the motor vehicle accident.
3. The fracture to the bridgework occurred almost two (2) years after the motor vehicle accident had occurred.
4. The break in the Appellant's bridgework occurred at a welded (solder) joint which is the weakest area in the structure.
5. Failure of the bridgework is a common occurrence after twenty (20) years.

For these reasons the Commission accepts [MPIC's dentist's] dental opinion that in all probability the reason for the fracture to the Appellant's bridgework was due to repetitive stress of the bridge from normal function. The Commission finds that MPIC was correct

in concluding that there was no causal relationship between the loss of the Appellant's tooth and the motor vehicle accident.

The Commission determines that the Appellant has failed to establish on the balance of probabilities that there was a causal relationship between the fracture to the Appellant's bridgework and the motor vehicle accident. The Commission therefore, rejects the Appellant's appeal and confirms the decision of the Internal Review Officer dated December 19, 2005.

Dated at Winnipeg this 14<sup>th</sup> day of January, 2009.

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**MEL MYERS, Q.C.**

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**LEONA BARRETT**

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**DEBORAH STEWART**