

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-48**

PANEL: Mr. Mel Myers, Chairperson
Mr. Wilf DeGraves
Dr. Sharon Macdonald

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: November 8, 2010

ISSUE(S): Entitlement to Personal Injury Plan ("PIPP") benefits.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was involved in a motor vehicle accident on December 11, 2002 and complained of pain to the back of her head and to the left side of her body. The Appellant's pre-existing medical conditions include rheumatoid arthritis. The Appellant required surgeries for the fusion of joints, including her right ankle and forefoot, right wrist as well as C1-C2 vertebrae. As well, the Appellant had been a CPP disability recipient for many years due to her disabling rheumatoid arthritis.

The decision of the Internal Review Officer dated January 19, 2006 succinctly summarizes the medical background of the Appellant. In her decision, the Internal Review Officer stated:

“In a report dated June 5, 2003, written by [Appellant’s Neurologist], M.D., and addressed to [Appellant’s Orthopaedic Surgeon], he advised that an MRI of the cervical spine revealed the previous C1-2 fusion and showed marked degenerative changes at C5-6 with a small posterior disc herniation. There was no definite evidence of spinal stenosis, spinal cord or nerve root compression.

An X-ray report for examination date of October 2, 2003, notes that there is an anterolisthesis of L4, the displacement approximately a centimeter. Degenerative changes were noted at the L4, L5 and S1 areas. The report also advised a quite advanced degenerative narrowing at the L4-L5 and L5-S1 discs.

On November 5, 2003, [Appellant’s Neurologist] documented that a recent nerve conduction study was normal with no definite evidence of carpal tunnel syndrome or cervical, root lesion.

Documentation on file indicates [Appellant’s Neurologist’s] evaluation did not reveal evidence of cervical radiculopathy or neuropathy. The MRI of the cervical spine noted degenerative disc changes at the C5-6 level, but no evidence of central spinal stenosis.”

[Appellant’s Physiatrist], was treating the Appellant in respect of low back complaints. In a report to [Appellant’s Rheumatologist] dated February 19, 2004, [Appellant’s Physiatrist] reports he offered a trial of caudal epidural steroids but at that time the Appellant appeared reluctant to undertake this treatment without full clarification of options.

In a note to file dated June 11, 2004 the case manager reports a discussion with the Appellant who advised that she had seen [Appellant’s Orthopaedic Surgeon] on March 1, 2004 and had attended the [text deleted] Clinic on the same date for free hand injection into the spine. The Appellant further advised the case manager that she was no longer seeing [Appellant’s Physiatrist] and she was under the care of a rheumatoid arthritis specialist, [Appellant’s Rheumatologist], at the [Hospital].

In a report to the case manager on August 25, 2004, [Appellant's Orthopedic Surgeon] indicated that he was not aware that the Appellant was still complaining of symptoms with respect to her left arm and left leg.

“She is being evaluated currently for neurogenic claudication to undergo a course of epidural steroids for numbness in the legs with ambulation. These symptoms started in September 2003 remote from her motor vehicle accident. This lady does have degenerative changes seen in her cervical spine which are likely due to her pre-existing rheumatoid arthritis.” (underlining added)

On June 3, 2005 [Appellant's Orthopaedic Surgeon] provided a further report to the case manager and stated:

“[The Appellant] was seen and assessed in my clinic on the 24th of August 2004 and the 3rd of December 2004. Her complaint on the 24th of August 2004 was that of back and leg pain, that affecting the right leg and on the 3rd of December 2004 she again did complain of pain in the back and right leg. Her CT scan shows severe spinal stenosis at the L4-5 level and to a lesser degree at the L3-4 level and the Technetium 99 bone scan revealing increased uptake at the right hand side at the L4-5 level.”

On June 1, 2005 [Appellant's Rheumatologist] wrote to the case manager and indicated that the Appellant's rheumatoid arthritis was well controlled on the current therapeutic regimen and noted that the Appellant's current problems in regard to pain, narcotic use and injection of epidural steroids related directly to the severe spondylolisthesis and spinal stenosis in her lumbar spine.

[Appellant's Rheumatologist] further stated:

“Rheumatoid arthritis does not typically affect the lumbar spine and I have every reason to suspect that currently the majority of her symptoms that clearly relate to the well-documented pathology that she has in her lumbar spine relate directly to the motor vehicle accident in December 2002.”

[MPIC's Doctor], [text deleted], was requested to provide a detailed review of all the medical documentation on the Appellant's file and to advise whether in his opinion there was a causal link between the Appellant's current symptoms and the motor vehicle accident.

Upon reviewing the medical reports, [MPIC's Doctor] noted that:

1. The Appellant had originally complained of left upper and lower limb pain and numbness in association with a cervical disc herniation.
2. The cervical radiculopathy was considered as the cause of the Appellant's present complaints.
3. Subsequently, sometime between June 2003 and November 2003, the Appellant's condition "improved remarkably".
4. The Appellant's complaints changed sometime between June 2003 and February 2004. During that period the Appellant complained of low back pain and bilateral lower limb pain.

[MPIC's Doctor] further stated:

"A causal link between the claimant's current symptoms of bilateral lower limb claudication and low back pain and the motor vehicle collision has not been established as medically probable. This is based on the following reasons:

- The temporal relationship between the documented current clinical presentation and the motor vehicle collision (estimated to be between 6-14 months after the collision) is inappropriate.
- Spinal stenosis, with neurogenic claudication, is not a medically probable effect of a motor vehicle collision."

[MPIC's Doctor] concluded:

"Inasmuch as the claimant's current medical expenses appear to relate to treatment of conditions other than neck and left upper limb pain, it is medically improbable that they are causally linked to the motor vehicle collision."

Case Manager's Decision:

The case manager wrote to the Appellant on August 17, 2005 and stated:

“All medical information on your file was reviewed by a member of our Health care Services Team. A copy of their review is attached for your information. Our position is that your complaints are not causally related to the motor vehicle accident of December 11, 2002.

On October 6, 2005 the Appellant made an Application for Review of the case manager’s decision.

On January 4, 2006, the Internal Review Officer wrote to [MPIC’s Doctor] and brought to his attention [Appellant’s Rheumatologist’s] report dated June 1, 2005. In support of causation the Appellant provided a copy of an MRI – Lumbrosacral Spine for examination date of February 14, 2004. [MPIC’s Doctor] was requested to review the file and advise whether his previously rendered opinion remained consistent.

In an inter-departmental memorandum dated January 9, 2006 [MPIC’s Doctor] reviewed [Appellant’s Rheumatologist’s] report and the MRI report and stated:

“...the MRI findings support [Appellant’s Physiatrist’s] clinical impression of neurogenic claudication (lower limb symptoms resulting from impaired blood supply to the spinal nerves) due to spinal stenosis (narrowing of the spinal canal due to bony and soft tissue impingement).

While [Appellant’s Rheumatologist] has correctly noted that lumbar spinal joint involvement is atypical of rheumatoid arthritis (RA), in the claimant’s particular case, her MRI has confirmed that RA has in fact affected her facet joints. The erosions and widening documented are not the result of trauma.

Neither the L4-5 listhesis (forward slippage of the L4 vertebrae on L5) nor the narrowing of the spinal canal is an effect of spinal trauma. Rather they occur gradually over time.

While it is possible that either of the 2 documented lumbar disc herniations were precipitated by motor vehicle collision-related trauma, this is medically improbable for the following reasons:

- disc herniations are improbable effects of a motor vehicle collision.
- The temporal relationship for the emergence of a disc herniation as documented on file is medically improbable.

- There are two disc herniations documented; one right sided, and one on the left. These are improbably the result of a single traumatic event since different forces are required to produce each one. In addition disc herniations can occur spontaneously and occasionally be irrelevant clinically.”

[MPIC’s Doctor’s] previously rendered opinion with respect to causation remained unchanged with this review.

Internal Review Officer’s Decision:

On January 19, 2006 the Internal Review Officer issued her decision confirming the case manager’s decision of August 17, 2005 and dismissed the Appellant’s Application for Review. The Internal Review Officer reviewed the medical reports of [Appellant’s Neurologist], [Appellant’s Orthopaedic Surgeon], [Appellant’s Physiatrist], [Appellant’s Rheumatologist], and the MRI and X-ray reports that were on the Appellant’s file. The Internal Review Officer concluded:

“As you are aware, in accordance with Section 136(1)(a) of the Act, the benefits you seek must be as a result of expenses incurred because of the motor vehicle accident (i.e. The treatment, expenses or the need for personal care assistance must be required as a result of the injuries sustained in the accident).

Although I can appreciate your very firm conviction that a causal relationship exists, the objective medical documentation fails to support your view. I agree with the opinions expressed by [MPIC’s Doctor] and, therefore, I am unable to conclude that [Appellant’s Case Manager’s] decision of August 17, 2005 was made incorrectly based upon the provisions of the Personal Injury Protection Plan.

The file material simply fails to establish that your current symptoms and subsequent request for the reimbursement of various expenses are as a result of the accident in question. Therefore, I am confirming the decision of the case manager at this time.”

Notice of Appeal:

The Appellant filed a Notice of Appeal dated April 17, 2006.

At the Commission's request, [Appellant's Orthopaedic Surgeon], in his letter dated May 23, 2009 responded to a number of questions put to him by the Commission, and he stated:

1. "Please state whether, on the balance of probabilities, [the Appellant's] symptoms relating to her "bilateral lower limb claudication and low back pain" are causally related to, or accelerated by, or exacerbated by her December 11, 2002 motor vehicle accident. Please provide objective evidence and fully explain your conclusion.

[The Appellant] had undergone a previous C1-C2 fusion for her rheumatoid arthritis involvement at the atlantoaxial joint by myself in June 1999. She was involved in a motor vehicle accident in December 2002 with complaints of numbness in her arms and legs.

2. Please state whether you are in agreement with the following conclusions made by [MPIC's Doctor] (January 9, 2006 report). Please fully explain your conclusion.

[MPIC's Doctor's] Conclusions

{The previously expressed opinion of "*a causal link between the claimant's current symptoms of bilateral lower limb claudication and low back pain and the motor vehicle collision has not been established as medically probable*" remains unchanged by the current review. The reasons previously listed as supporting this conclusion still apply.

The reasons he outlines (1) disc herniations are improbable effects of a motor vehicle collision; (2) the temporal relationship for the emergence of a disc herniation documented on file is medically improbable; (3) there are two disc herniations documented; one right sided, and one on the left – these are improbably the result of a single traumatic event since different forces are required to produce each one. In addition, disc herniations can occur spontaneously and occasionally be irrelevant clinically.}

I agree with [MPIC's Doctor's] conclusion that the symptoms of bilateral limb claudication and low back pain are not causally related between the motor vehicle accident of 2002 and [the Appellant's] symptoms. Certainly, lumbar disc herniations can occur after a motor vehicle accident. The issue here is that [the Appellant] did not have any complaints related to the right lower extremity or her back when seen by me in January 2003. Her symptoms were related to her neck, her left arm, and her left leg. Therefore, I do not believe that the current symptomatology that [the Appellant] complains of are causally related to her motor vehicle accident.

- a. Her MRI has confirmed that RA has in fact affected her facet joints. The erosions and widening documented are not the result of trauma.

I agree that the widening of the facet joints are related to osteoarthritic changes and are not related to trauma or her rheumatoid arthritis.

- b. Neither the L4-L5 listhesis (forward slippage of the L4 vertebrae on L5) nor the narrowing of the spinal canal is an effect of spinal trauma. Rather they occur

gradually over time.

I agree with this comment that this is not an effect of a motor vehicle accident or trauma to the spine; rather this is related to degenerative conditions occurring over many years.

- c. While it is possible that either of the two documented lumbar disc herniations were precipitated by the motor vehicle collision-related trauma, this is medically improbable for the following reasons:
- Disc herniations are improbable effects of the motor vehicle collision.
 - The temporal relationship for the emergence of a disc herniation as documented on file is medically improbable.
 - There are two disc herniations documented; one right sided, and one on the left. These are improbably the result of a single traumatic event since different forces are required to produce each one. In addition, disc herniations can occur spontaneously and occasionally be irrelevant clinically.

I agree with all of these points with the exception of “disc herniations are improbable effects of a motor vehicle collision”. Certainly, I have seen these occur temporarily related in the past. A motor vehicle accident can create an exacerbation of a pre-existent condition. Those facts stated, [the Appellant] did not complain of right leg pain nor back pain during her January 2003 evaluation by myself.”

On January 8, 2010 the Claimant Adviser Office wrote to [Appellant’s Rheumatologist] and provided him with a summary of [MPIC’s Doctor’s] report of June 1, 2005 and asked him to respond to it. [Appellant’s Rheumatologist] replied on February 1, 2010 and stated:

“I am responding to your letter of January 13 in regard to [the Appellant]. Basically, I have no new information that can be brought to bear concerning the question of the cause and effect basis of the motor vehicle accident in December 2002. I have been following her for her rheumatoid arthritis and have essentially provided you with my best opinion.

In regard to your questions, on the balance of probabilities, I continue to support the view that despite the fact that there are changes in her lumbar spine that may have been associated with rheumatoid arthritis, again as mentioned, an unusual complication, despite the MRI findings, I believe that the trauma of the motor vehicle accident in 2002 precipitated the progression of the spinal stenosis and the narrowing of the spinal canal associated with the disc herniation.

I disagree with [MPIC’s Doctor’s] January 9th, 2006 report because there is essentially no way of knowing whether a weakened spine related to the underlying rheumatoid arthritis was indeed adversely affected by the motor vehicle accident, which I believe is the case. [MPIC’s Doctor] is free to pontificate as he wants in this particular case on the basis of the MRI findings. Nevertheless, the symptomatology that the patient is experiencing was clearly precipitated by the motor vehicle accident suggesting to me that there was a major anatomical change that occurred in the spinal cord as a result of this event.”

On April 29, 2010 the Claimant Adviser again wrote to [Appellant's Rheumatologist] providing a copy of [Appellant's Orthopaedic Surgeon's] report of May 23, 2009 and asked for his response. [Appellant's Rheumatologist] responded on June 4, 2010 indicating that he had no further comment to make.

Appeal

The Relevant Provisions of the MPIC Act are:

[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;

Sections 136(1) provides the benefits the Appellant is seeking must be as a result of injuries caused by a motor vehicle accident.

The Appellant testified at the hearing that:

1. Before the motor vehicle accident she suffered from rheumatoid arthritis and never had a problem with her back.
2. As a result of the motor vehicle accident she started having problems with her back 6 to 14 months after the motor vehicle accident.
3. As a result of the pain into her back she received epidural injections at the [text deleted] Clinic on March 1, 2004 which is a period of approximately 14½ months after the motor vehicle accident.

4. In her view since her back complaints were a result of the motor vehicle accident as they did not commence until after the motor vehicle accident and she therefore was entitled to PIPP benefits.

Appellant's Submission:

The Claimant Adviser submitted that:

1. Prior to the motor vehicle accident the Appellant had no back problems whatsoever.
2. Subsequent to the motor vehicle accident the Appellant did have significant lower back problems which were caused by the motor vehicle accident.
3. Based on the medical opinion of [Appellant's Rheumatologist], who had concluded that in his view the trauma of the motor vehicle accident in 2002 precipitated the progression of the spinal stenosis and the narrowing of the spinal canal associated with the disc herniation.
4. [Appellant's Rheumatologist] had indicated that he did not agree with [MPIC's Doctor's] report of January 9, 2006 and that in his view the symptomatology that the Appellant was experiencing was clearly precipitated by the motor vehicle accident suggesting that there was a major anatomical change that occurred in the spinal cord as a result of the accident.

MPIC's legal counsel on the other hand relied on the medical report of [MPIC's Doctor], a physiatrist, whose medical opinion was corroborated by [Appellant's Orthopedic Surgeon].

The Commission notes that the Appellant, who was a candid witness, and testified that the back complaints did not commence until at least 6 months after the motor vehicle accident. As well, she testified that as a result of her back complaints she did receive epidural injections into her spine at the [text deleted] Clinic commencing on March 1, 2004 which is a period of 14½ months after the motor vehicle accident. [MPIC's Doctor] was of the view that there was no temporal relationship to the motor vehicle accident because the Appellant's back complaints commenced a period of 6 to 14 months after the motor vehicle accident.

[Appellant's Orthopedic Surgeon] reported that:

1. The Appellant did not have any complaints relating to her right leg or extremity of her back when he saw her in January 2003 and that her symptoms related to her neck, left arm and left leg.
2. The current symptomatology of the Appellant's complaints was not causally related to the motor vehicle accident.
3. Although [Appellant's Orthopedic Surgeon] did not agree with [MPIC's Doctor] that disc herniations are improbable effects of a motor vehicle accident, he opined that he had seen disc herniations occur temporarily related in the past.
4. The motor vehicle accident could create exacerbation of her pre-existing condition.
5. The Appellant did not complain of right pain or back pain during her January 3, 2003 evaluation by him.

6. The disc herniations she complained about were not caused by the motor vehicle accident.

[Appellant's Rheumatologist], who is an expert in rheumatoid arthritis, did not conclude that the Appellant's complaints relating to her back and leg were a result of an exacerbation of the rheumatoid arthritis by the motor vehicle accident. He concluded that the trauma of the motor vehicle accident precipitated the progression of the spinal stenosis and the narrowing of the spinal canal associated with the disc herniations.

The Commission gives greater weight to the medical opinion of [Appellant's Orthopedic Surgeon], who is an orthopaedic surgeon with expertise in the area of spinal stenosis and disc herniation, than it does to the opinion of [Appellant's Rheumatologist] who is an expert in this area.

The Commission further notes that [Appellant's Orthopedic Surgeon's] opinion that there was no causal connection between the motor vehicle accident and her back complaint is consistent with that of [MPIC's Doctor], a physiatrist who has experience in dealing with problems relating to spinal stenosis. [MPIC's Doctor] set out in detail the reasons why, in his view, there was no causal connection between the motor vehicle accident and the Appellant's low back complaints. [MPIC's Doctor] like [Appellant's Orthopedic Surgeon] concludes that it was medically improbable for the motor vehicle accident to cause the Appellants back pain 6 to 14 months after the motor vehicle accident.

Decision

Based on the medical opinions of [Appellant's Orthopedic Surgeon] and [MPIC's Doctor] that there was no causal relationship between the motor vehicle accident and the Appellant's back complaints, the Commission rejects the medical opinion of [Appellant's Rheumatologist]. The Commission therefore concludes that the Appellant has failed to establish on a balance of probabilities that there was a causal connection between the Appellant's complaints to her low back and leg and the motor vehicle accident. As a result the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated January 19, 2006.

Dated at Winnipeg this 8th day of December, 2010.

MEL MYERS, Q.C.

WILF DEGRAVES

DR. SHARON MACDONALD