

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-110**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Neil Margolis
Ms Lorna Turnbull

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Lyle Smordin;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Leanne Zabudsky.

HEARING DATE: March 3, 2010

ISSUE(S): Entitlement to Permanent Impairment Benefits for loss of fetus.

RELEVANT SECTIONS: Sections 127 and 129 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 1 and Schedule A of Manitoba Regulation 41/94

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, [text deleted], was involved in a motor vehicle accident on October 6, 2006. She was the front seat passenger of a vehicle which T-boned a second vehicle. At the time of the motor vehicle accident, the Appellant was approximately 15 weeks pregnant.

Following the collision, the Appellant was taken to the [Hospital] by ambulance. Generalized abdominal pain was reported by the Appellant along with neck pain radiating down the back and

slight dizziness. There was no vaginal bleeding or other obvious injuries present. The diagnosis was documented as “soft tissue injuries”. The Appellant was advised to return to the Emergency Department if vaginal bleeding or increased abdominal pain occurred. A fetal heart rate was obtained at 160 beats per minute.

On October 16, 2006, the Appellant attended upon [Appellant’s Doctor #1] reporting pain relating to the neck, intrascapular region and mid back. The Appellant reported the motor vehicle collision of October 6, 2006 as the cause of the symptoms. Examination noted no abnormalities detected with respect to the neck, shoulders and back. The diagnosis was documented as muscle strain relating to the neck and middle back, classified as a WAD 1 cervical disorder. The fetal heart rate was taken at 147 beats per minute with notation that the Appellant was at 17 weeks gestation.

On October 17, 2006, a blood sample from the Appellant was received at [Lab] for prenatal screening for chromosomal defects. The results of this test noted low levels of several factors. The physician interpreting the test felt that the Appellant remained above the screening cut-off level and counselling regarding the risks and benefits of amniocentesis was suggested.

On October 31, 2006, the Appellant attended [Appellant’s Geneticist], for counselling regarding the maternal blood screen that noted increased risk for the fetus having Down Syndrome. [Appellant’s Geneticist] noted a history of three spontaneous abortions. As such, chromosomal studies were recommended on both the Appellant and her husband. The option of amniocentesis was discussed. After considering the information, the Appellant declined amniocentesis. [Appellant’s Geneticist] indicated that he had arranged for a dating scan meant to more

accurately date the pregnancy. This ultrasound was undertaken on November 7, 2006 and confirmed a single live fetus at 19 +/- 1 week gestation.

[Appellant's Doctor #1] reassessed the Appellant on November 16, 2006 at which time headache was reported along with soreness relating to the neck and back. There were no specific objective findings relating to the neck. [Appellant's Doctor #1] documented that a fetal heart beat was present at 141 beats per minute with the size of the uterus estimated at 22 weeks gestation. [Appellant's Doctor #1] noted that the Appellant had been off work since October 16, 2006, due to her symptoms.

On December 7, 2006, the Appellant attended [Appellant's Obstetrician #1], on referral from her family physician. On that date, [Appellant's Obstetrician #1] was unable to obtain a fetal heart beat. The Appellant was immediately sent to the [text deleted] for an ultrasound. The ultrasound confirmed that intrauterine death had occurred along with what appeared to be some fetal abnormalities on fetal assessment. A D and C was later carried out without complication. The measurements of the fetus estimated gestation at 20+ weeks.

The Appellant was of the opinion that the death of the fetus was directly related to the October 6, 2006 motor vehicle accident and not due to a miscarriage. She requested compensation from MPIC for the loss of the fetus. In a letter dated November 9, 2007, MPIC's case manager advised the Appellant that there was no entitlement for a permanent impairment benefit for the loss of the fetus. The case manager further noted that the available medical information on the Appellant's file had been reviewed by MPIC's Health Care Services team. The review concluded that, in view of the fact that subsequent to the October 6, 2006 collision, continued uterine growth and the presence of a fetal heart beat was documented through to November 16,

2006, a direct cause and effect relationship between the abdominal trauma sustained at the time of the October 6, 2006 collision and the unfortunate fetal death was not probable.

The Appellant sought an Internal Review of that decision. In a decision dated August 20, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of November 9, 2007. The Internal Review Officer found that the medical evidence on the Appellant's file overwhelmingly indicated that the motor vehicle accident of October 6, 2006 did not result in the death of the Appellant's unborn child. As a result, the Internal Review Officer found that she was not entitled to a permanent impairment benefit with respect to same.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether or not the Appellant is entitled to a permanent impairment benefit for the loss of the fetus.

Appellant's Submission:

Counsel for the Appellant submits that the loss of the Appellant's unborn child was, on a balance of probabilities, related to the motor vehicle accident of October 6, 2006. He argues that the Appellant had abdominal pain and back pain after the motor vehicle accident. He claims that the medical evidence is more consistent with the cause of death resulting from the motor vehicle accident, rather than a miscarriage. In this regard, counsel for the Appellant relies on the report of [Appellant's Doctor #2], who comments in her report dated October 27, 2009 that:

According to [the Appellant], her pregnancy was progressing normally and very happy to become a future parent. The day of the accident, she had an upper and lower back ache and severe abdominal pain. The Emergency doctor suggested that [the Appellant]

be on bed rest because she may lose her baby. One week after the accident, she couldn't tell if the baby was moving or no because of pelvic pain. Eventually an Obstetric Ultrasound was done on November 07, 2006 and the baby was alive. One month later, a second ultrasound demonstrated that the baby was dead (December 07, 2006).

[The Appellant] believes that the reason of the intrauterine death was a direct cause from the MVA. Medically speaking, she may be correct because MVA causes trauma and death even to the fetus.

Referring to that medical opinion, counsel for the Appellant maintains that it is medically probable that the death of the Appellant's unborn child is related to the motor vehicle accident. He also argues that the opinion of [Appellant's Doctor #2] should be preferred to that of [MPIC's Doctor], of MPIC's Health Care Services team. He notes that [Appellant's Doctor #2] had the opportunity to personally treat and assess the Appellant, while [MPIC's Doctor] just did a paper review of the Appellant's file. As a result, counsel for the Appellant submits that the Appellant is entitled to a permanent impairment benefit for the loss of the fetus.

MPIC's Submission:

Counsel for MPIC submits that the medical evidence on the file does not establish, on a balance of probabilities, that the death of the Appellant's unborn child was related to the motor vehicle accident of October 6, 2006. Rather, counsel for MPIC maintains that the available medical documentation supports that the death of the Appellant's unborn child does not relate to the collision of October 6, 2006.

In support of her position, counsel for MPIC relies on the reports of the Appellant's attending physicians, [Appellant's Obstetrician #2] and [Appellant's Emergency Doctor], who note as follows:

1. In his report dated March 17, 2008, [Appellant's Obstetrician #2], obstetrician and gynaecologist, opined that:

I do not believe that a motor vehicle accident on October 6, 2006 would have resulted in the fetal death of [the Appellant's] pregnancy. If this was the case, then significant pelvic trauma would have had to have taken place to [the Appellant] and the fetus would have died fairly quickly. Of note is that an ultrasound on November 7, 2006 indicated a single live intrauterine pregnancy. She subsequently went on to be diagnosed with an intrauterine fetal death in or around about December 7 or 8, 2006. Certainly, a minor injury which may have occurred on October 6 would not have resulted in a normal ultrasound on November 7 and a subsequent death on December 7. It appears as though this patient may have had a fetal anomaly which resulted in the eventual demise of her pregnancy. I do not see any evidence whatsoever that her motor vehicle accident on October 6, 2006 resulted in her pregnancy loss.

2. In her report dated May 26, 2008, [Appellant's Emergency Doctor], Emergency Physician, notes that:

In general 20% of pregnancies are miscarried in the first trimester. After an injury, spontaneous abortion can occur in a small percentage of patients during their first trimester. Usually, miscarriage happens within a few days after trauma and is associated with vaginal bleeding and abdominal pain. Upon discharge from the [Hospital] Adult Emergency Department on October 6, 2006, [the Appellant] was still pregnant with a viable foetus. Taking into account that foetal demise occurred two months after the car accident it is less likely that the miscarriage is related to the motor vehicle accident.

Counsel for MPIC maintains that those opinions concur with that of [MPIC's Doctor], that there is no connection between the motor vehicle accident and the loss of the fetus. Further, counsel for MPIC submits that the opinions of [Appellant's Obstetrician #2] and [Appellant's Emergency Doctor] should be preferred to that of [Appellant's Doctor #2] since they were the Appellant's attending physicians and [Appellant's Doctor #2] did not commence treating the Appellant until 2007.

In summary, counsel for MPIC submits that the fetal demise was not caused by the motor vehicle accident of October 6, 2006, on a balance of probabilities. Therefore, she requests that the Commission dismiss the Appellant's appeal.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and oral and documentary evidence filed in connection with this appeal and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that the loss of her unborn child was caused by the motor vehicle accident of October 6, 2006.

Reasons for Decision:

The Commission finds that the available medical documentation does not support that the loss of the Appellant's unborn child was caused by the motor vehicle accident of October 6, 2006. Subsequent to the motor vehicle accident, the Appellant attended upon [Appellant's Doctor #1] on October 16 and November 16, 2006, and on both occasions, a fetal heartbeat was present and the size of the uterus was progressively increasing. As well, an ultrasound obtained on November 7, 2006 confirmed a single live fetus at approximately 19 +/- 1 week gestation, which was consistent with progressive fetal growth subsequent to the motor vehicle accident. On this basis, intrauterine fetal death occurred sometime between November 16 and December 7, 2006. In view of the fact that subsequent to the October 6, 2006 collision, continued uterine growth and the presence of the fetal heart beat was documented through to November 16, 2006, a direct cause and effect relationship between the October 6, 2006 motor vehicle accident and the unfortunate fetal death is not probable.

The Commission also accepts the opinion of [Appellant's Obstetrician #2] that the motor vehicle accident on October 6, 2006 would not have resulted in the death of [the Appellant's] unborn child. As a result, the Commission finds that the Appellant has not established that the loss of the fetus was, on a balance of probabilities, caused by the motor vehicle accident of October 6, 2006.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated August 20, 2008 is therefore confirmed.

Dated at Winnipeg this 27th day of April, 2010.

YVONNE TAVARES

DR. NEIL MARGOLIS

LORNA TURNBULL