

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-136**

PANEL: Ms Laura Diamond

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson and Ms Jillian Nichols.

HEARING DATE: June 27, 2011

ISSUE(S): Entitlement to reimbursement for ambulance costs.

RELEVANT SECTIONS: Sections 5, 21 and 26 of Manitoba Regulation 40/94.

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 was injured in a motor vehicle accident on January 10, 2007 when she sustained soft tissue injuries to her neck, low back and right knee. She reported a past history of diabetes and high blood pressure and received physiotherapy treatment for cervical strain/sprain, cervicogenic headaches, lumbar strain/sprain and a possible PCL sprain of the right knee.

She also saw her doctor who documented a past history of diabetes and hypertension along with previous C6 and C7 fractures and reported a diagnosis of whiplash.

On February 20, 2007, the Appellant blacked out at home and was transferred by ambulance to [Hospital #1], where she reported increased headaches and dizziness over the past week, with fainting spells.

On March 20, 2007, the Appellant contacted her case manager to request that MPIC pay the ambulance bill as she felt the headaches suffered from the accident caused her to black out.

Her case manager wrote to her on July 20, 2007 indicating that a review of her file by MPIC's Health Care Services Team indicated that there was insufficient evidence to support a causal relationship between her need for the ambulance on February 20, 2007 and the motor vehicle accident of January 2007. Therefore, the case manager indicated that MPIC was unable to approve funding for this ambulance billing.

The Appellant sought an Internal Review of this decision. On November 5, 2007, an Internal Review Officer for MPIC reviewed the Appellant's file, including a report dated June 26, 2007 from [MPIC's Doctor], a Medical Consultant with MPIC's Health Care Services Team. [MPIC's Doctor] indicated that there was insufficient evidence to support a causal relationship between the need for the ambulance and the motor vehicle accident.

The Internal Review Officer concluded that based on the totality of the medical evidence on the Appellant's file, she concurred with the opinion of [MPIC's Doctor] that the medical evidence does not support a causal relationship between the need for an ambulance on February 20, 2007 and the motor vehicle accident of January 10, 2007. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal. She described the motor vehicle accident, indicating that she hit her head on the windshield and guessed that she may have had a concussion. She saw her doctor in [text deleted] and was told that she was alright but she was sent to another doctor, at [text deleted] Clinic, to see her about her knee.

The Appellant described talking on the phone in her home to an employee with [text deleted], in February 2007, when she passed out. She indicated that she does not know who called the ambulance, but that she had not called it.

The Appellant indicated that she was diagnosed as a Type II diabetic in 1970. She is aware of her diabetes and sees to it that she eats regularly and carefully at the same time every day. On cross-examination, she maintained that she takes her medication and was not aware that she had high or low blood sugar at the time she was admitted to hospital. Nor did she recall, as counsel for MPIC suggested, telling her case manager that the [Hospital #1] told her she had high blood pressure when admitted. She did admit that she had had some dizzy spells but indicated that she tested her blood sugar three times a day to make sure that it is okay.

The Appellant indicated that she has had terrible headaches since the accident. She also believed that a CT scan performed at [Hospital #2] indicated that she was having mini strokes.

The Appellant took the position that she had passed out because of the bump on her head and concussion resulting from the motor vehicle accident. She reiterated that she did not know who called the ambulance, and noted that when the ambulance came to take her to the hospital they did not tell her that she would have to pay for this.

She submitted that she had been feeling dizzy since the motor vehicle accident and believed that this was due to hitting her head or the whiplash, and that her passing out on February 20, 2007 was a result of her motor vehicle accident injuries.

Evidence and Submission for MPIC:

Counsel for MPIC indicated that the question on this appeal is whether the Appellant's fainting, which caused the need for transport by ambulance, is related to the motor vehicle accident. Under the MPIC Act and Regulations, MPIC is required to reimburse the Appellant for this transportation if there is a causal connection between the motor vehicle accident and the need for care. However, it was MPIC's position in this case that there was no evidence regarding the cause of the Appellant's fainting spell in February of 2007. Although the Appellant stated that she was having headaches, none of the doctors' reports in evidence before the Commission have provided an opinion that headaches were the cause of her fainting. For example, the triage report from [Hospital #1] did not mention headaches, noting that the Appellant had increased dizziness and appeared confused and stressed.

In addition, counsel submitted that there are alternate explanations for the Appellant's fainting, such as her diabetes and her indication to the case manager that she was advised she had high blood pressure while at the [Hospital #1]. The Appellant also enumerated the numerous stresses in her life that could have contributed to these headaches.

Counsel submitted that nothing in the evidence shows that the Appellant attended at her doctor after the fainting symptoms occurred and there is no report setting out what her doctor's opinion was of her condition at that time. The Appellant had spoken to a physiotherapist in January 2007 about dizziness and headaches, but there is no indication that there were fainting symptoms

connected with this. There is simply no medical explanation as to how headaches could have caused her fainting. Although the Appellant believed she suffered a concussion, this is not noted in any of the medical documents on the file and any headaches that were noted by the physiotherapist were specified as cervicogenic.

Counsel pointed to [MPIC's Doctor's] opinion of June 26, 2007 that there was no medical documentation to relate the need for the ambulance to the injuries sustained in the motor vehicle collision. [MPIC's Doctor] is the only doctor who provided evidence on the Appellant's file specifically addressing the question of what caused the Appellant to faint. He reviewed the file and did not find a causal connection between the dizziness and fainting and the motor vehicle accident.

Counsel submitted that the Appellant has failed to meet the burden of showing, on a balance of probabilities, that on the evidence, her fainting spell and need for the ambulance was connected to the motor vehicle accident, and accordingly, submitted that the Appellant's appeal should be dismissed.

Discussion:

Manitoba Regulation 40/94 provides:

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;

Ambulance

21 Where a physician, nurse practitioner, clinical assistant or physician assistant requires that a victim be transported by ambulance for the purpose of receiving care, the corporation shall pay the expense incurred by the victim for the transportation.

Emergency transportation

26 The corporation shall pay an expense incurred by a victim for expenses incurred for emergency transportation when circumstances warrant its use.

The onus is on the Appellant to show, on a balance of probabilities, that the need for ambulance transport on February 20, 2007 was the result of injuries sustained in the motor vehicle accident on January 10, 2007.

The Commission has reviewed the evidence of the Appellant, the medical and other evidence on the Appellant's file and the submissions of the Appellant and counsel for MPIC.

Having regard to all of this evidence, the Commission finds that the Appellant has failed to show, on a balance of probabilities, that the fainting episode which necessitated the Appellant's transport to hospital by ambulance was caused by injuries sustained in the motor vehicle accident. While the ambulance and [Hospital #1] reports refer to the Appellant's experience of dizziness and headaches, as well as her stressed condition and her diabetes, they do not make any reference to her motor vehicle accident injuries. Although the Appellant is convinced that the incident was connected to the motor vehicle accident, she has failed to provide evidence which would meet the onus upon her to show that the incident was connected to injuries sustained a month earlier in the motor vehicle accident, and not to other pre-existing conditions of diabetes and hypertension. While it may be possible that the incident resulted from the motor vehicle accident injuries sustained a month earlier, the Appellant has failed to provide evidence which would support a probable causal relationship between the need for the ambulance on February 20, 2007 and injuries sustained in the motor vehicle accident of January 10, 2007.

Accordingly, the Commission finds that the Appellant has failed to meet the onus upon her of showing on a balance of probabilities that the need for the ambulance was connected to the motor vehicle accident. The Appellant's appeal is dismissed.

Dated at Winnipeg this 20th day of July, 2011.

LAURA DIAMOND