

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-08-071**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Irene Giesbrecht

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Matthew Maslanka.

HEARING DATE: April 23, 2013

ISSUE(S): Entitlement to reimbursement of the cost of orthopedic
shoes.

RELEVANT SECTIONS: Section 136(1)(b) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 11 of Manitoba
Regulation 40/94

**AICAC: 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 January 20, 2007 when his vehicle was t-boned by a third party vehicle that entered the intersection against a red light. As a result of this accident, the Appellant sustained a soft tissue injury to his neck, back and left hip. Due to the bodily injuries which the Appellant sustained in this motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

On May 28, 2007, the Appellant's treating physiotherapist provided the Appellant with a Patient Footwear Prescription recommending orthopedic shoes. On July 6, 2007, MPIC's case manager advised the Appellant that his request for reimbursement for the cost of orthopedic shoes was denied. The case manager found that the requirement for the orthopedic shoes was not related to the motor vehicle accident of January 20, 2007 and that prescribed orthopedic shoes were an elective treatment strategy. As the orthopedic shoes were not medically required, MPIC would not consider reimbursement of the cost for same.

The Appellant sought an Internal Review of that case manager's decision. The Internal Review Officer, in a decision dated April 16, 2008, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the orthopedic shoes were not medically required in regard to an injury sustained in the motor vehicle accident of January 20, 2007.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to reimbursement of his expenses for orthopedic shoes.

Appellant's Submission:

The Appellant submits that his foot problem, necessitating the orthopedic shoes, is related to the motor vehicle accident of January 20, 2007. The Appellant argues that he never had any problems with his foot before that accident. The Appellant contends that his foot problems started shortly after the motor vehicle accident and accordingly the accident is the most likely cause. As a result, the Appellant submits that he is entitled to reimbursement of the cost of his orthopedic shoes and that his appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that no causal relationship can be established between the motor vehicle accident of January 20, 2007 and the Appellant's left foot problems. Counsel for MPIC argues that on a balance of probabilities, other factors including degenerative changes, most probably caused the Appellant's foot problems and the requirement for orthopedic shoes. Counsel for MPIC submits that the onus is upon the Appellant to establish that the motor vehicle accident caused his foot condition. Counsel for MPIC contends that the Appellant has not met that onus. He argues that there was no documented evidence of foot problems until more than two months following the motor vehicle accident, in or about April of 2007. Prior to that, the Appellant's complaints were of a sore neck, sore back and sore chest. Counsel for MPIC maintains that none of the Appellant's caregivers provide objective findings connecting the foot condition to the motor vehicle accident. Counsel for MPIC argues that the preponderance of the evidence supports that there are non-accident causes for the Appellant's left foot problems which necessitated the orthopedic shoes.

As a result, counsel for MPIC submits that there is a lack of objective evidence to connect the Appellant's foot complaints and the motor vehicle accident of January 20, 2007, on a balance of probabilities. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated April 16, 2008 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to reimbursement of the cost of orthopedic shoes.

Reasons for Decision:

The Commission finds that there is a lack of objective evidence to connect the Appellant's left foot problems to the motor vehicle accident of January 20, 2007. The Commission finds that the Appellant has failed to establish that it is more likely than not that his left foot problems were connected to the motor vehicle accident of January 20, 2007. At the hearing, the Appellant advised that he recently had surgery to his left foot. The surgeon advised that he had a detached tendon and removed a bone fragment. The Appellant has not provided sufficient evidence to connect these findings to the motor vehicle accident of January 20, 2007. Therefore, the Commission finds that the Appellant has not established that he is entitled to reimbursement of the cost of orthopedic shoes.

Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated April 16, 2008 is therefore confirmed.

Dated at Winnipeg this 16th day of May, 2013.

YVONNE TAVARES

NEIL COHEN

IRENE GIESBRECHT