

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-012**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sheldon Claman
Mr. Neil Margolis

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

HEARING DATE: November 26, 2009, September 26, 2011 and October 18,
2011.

ISSUE(S): Entitlement to reimbursement of out-of-province medical
expenses.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 5(b) 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

On September 30, 2006, the Appellant [text deleted], was involved in a head-on collision with another vehicle. As a result of that accident, the Appellant sustained serious multiple injuries, including bilateral ankle fractures, left hip/pelvis fractures, a collapsed lung, bruising of the shoulders and numerous cuts and abrasions, as well as a left rotator cuff tear. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan benefits in accordance with Part 2 of the MPIC Act.

Initially, the Appellant was treated for a possible rotator cuff sprain but made no progress with physiotherapy. Further investigations revealed that he had sustained three badly torn tendons in his shoulder. [The Appellant's] family physician in [text deleted], Manitoba, [Appellant's Doctor], made referrals to two orthopaedic specialists in [Manitoba], [Appellant's Orthopaedic Surgeon #1] and [Appellant's Orthopaedic Surgeon #2], but they were unable to see [the Appellant]. The Appellant then attended on his own to the [text deleted] Clinic on April 4, 2007, and a referral was made for him to see [Appellant's Orthopaedic Surgeon #3], for an assessment of the rotator cuff tear. The earliest appointment that the Appellant could obtain with [Appellant's Orthopaedic Surgeon #3] was October 17, 2007. The Appellant was advised that he could expect to wait a further six months for the actual surgery (if the decision following the initial consultation, was to proceed with the surgery).

At the hearing, the Appellant testified that he was told by several doctors that the rotator cuff surgery to repair the torn tendons had to take place within six months of the date of the injury in order to be successful. Thereafter, his chances of even partial recovery would diminish. The Appellant also testified that he inquired about the possibility of having the surgery performed at the [text deleted] Clinic in [Manitoba], but was informed that was not an option for him.

The Appellant testified that, by this time, it had been seven months since the date of the accident. Since it appeared that he did not have much chance of having the surgery within the recognized time frame for the type of surgery he required and feeling that he had exhausted all options in Manitoba, he decided to pursue the possibility of having surgery elsewhere. Based on discussions with his primary care physician, [Appellant's Doctor], the Appellant decided to undergo surgery with [Appellant's Orthopaedic Surgeon #4] at the [text deleted] Clinic in [North Dakota]. The Appellant attended upon the surgeon, [Appellant's Orthopaedic Surgeon #4], on

April 30, 2007 in [North Dakota]. He was advised that it was “just a given” that two of the damaged tendons would inevitably be lost if the surgery was not done immediately. The Appellant underwent the surgery in [North Dakota] on May 15, 2007 and returned for a follow-up consultation in January 2008.

A report from [Appellant’s Doctor] dated August 22, 2007 advises that, “The reason he opted to [undergo surgery in the U.S.] was because the waiting list in Manitoba was unacceptable to him. Recent studies published in the American Journal of Sports Medicine support the fact that early repair of rotator cuff tears decrease the incidence of muscle atrophy and provide better results than late repair.”

MPIC covered the cost of the Appellant’s post-operative physiotherapy to the left shoulder, which was done concurrently with the ongoing treatment of his other injuries. The Appellant has essentially regained full use of his left arm, although some residual weakness remains. He considers the surgery to have been very successful.

On August 27, 2008, MPIC’s case manager wrote to the Appellant to advise that MPIC would not provide reimbursement of his surgical and travel costs related to rotator cuff surgery in [North Dakota].

The Appellant sought an Internal Review of that case manager’s decision. In a decision dated January 13, 2009, the Internal Review Officer dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. The Internal Review Officer found that MPIC was not obligated to reimburse the Appellant for the expenses he unilaterally and voluntarily incurred in relation to the rotator cuff surgery.

The Appellant also sought reimbursement from Manitoba Health for his expenses. His request was denied by Manitoba Health as the funding requirements set out in *The Health Services Insurance Act* had not been met. *The Health Services Insurance Act* requires that there must be a referral from an appropriate Manitoba specialist, in this case an orthopaedic surgeon. Since the Appellant did not have a referral from an appropriate specialist in Manitoba, Manitoba Health determined that the criteria for funding had not been met and it was unable to provide benefits for care obtained outside the province.

It was accepted, that the procedure that was performed in [North Dakota] is available in Manitoba. There are orthopaedic surgeons practising in Manitoba who are fully qualified to undertake and perform the surgical repair of a rotator cuff.

The Appellant has now appealed the Internal Review Decision of January 13, 2009 to this Commission. The Commission initially convened the hearing of this matter on November 26, 2009. At that hearing, the parties requested an adjournment of the hearing in order to determine whether a resolution of the matter could be achieved directly between the parties.

As a result of those discussions, MPIC determined that it would cover a portion of the Appellant's expenses representing reimbursement for the portion of the costs associated with the treatment that he received in North Dakota, that were over and above what Manitoba Health would have funded if it had accepted his claim for the out-of-province care. This case manager's decision was communicated in a letter to the Appellant dated February 9, 2010. The Appellant sought an Internal Review of that decision. In a decision dated May 4, 2010, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the case manager's decision letter of February

9, 2010 was quite generous and that no reimbursement need be paid under law. He therefore found no reason to interfere with the case manager's decision and accordingly confirmed the decision of February 9, 2010.

The Appellant has now appealed the Internal Review Decision of May 4, 2010 to this Commission. The issue which requires determination on this appeal, arising out of the two Internal Review Decisions, is whether the Appellant is entitled to reimbursement of his out-of-province medical expenses.

Relevant Legislation:

Section 136(1)(a) of the MPIC Act provides as follows:

Reimbursement of victim for various expenses

[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;

Section 5(b) of Manitoba Regulation 40/94 provides as follows:

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 dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

Appellant's Submission:

The Appellant submits that he was not aware that he had to deal with Manitoba Health and follow their protocol in order to obtain coverage for his out-of-province medical expenses. According to the Appellant, during the time he was seeking medical services for his shoulder injury, he was under the impression that he was only dealing with MPIC. It was only after submitting invoices to MPIC for reimbursement of the costs he incurred for the medical services he received at the [text deleted] Clinic in [North Dakota], that he learned that he would have to submit those invoices to Manitoba Health first.

Further, and in any event, the Appellant argues that he couldn't get a referral from a specialist to meet the requirements of Manitoba Health in a timely manner. The Appellant maintained that he was advised that maximum success with the rotator cuff surgery would occur within six months of injury. His first appointment with [Appellant's Orthopaedic Surgeon #3] was not until October 2007 and then he was advised that it would likely take another six months before he was scheduled for surgery. Given the urgency of the rotator cuff surgery, the Appellant simply felt that the delay to consult with an orthopaedic surgeon in Manitoba was unacceptable. The Appellant submitted that because he had explored all reasonable options and was unable to have the rotator cuff surgery in Manitoba within the timeframe required in order to have the best chance of having a successful surgery and not risk losing the use of his arm, the medical services he required were not adequately available to him. Therefore, he felt that he had no other option but to have the surgery in [North Dakota].

The Appellant maintains that his healthcare expenses were reasonable and they should be covered by MPIC, since ultimately they did arise as a result of a motor vehicle accident.

MPIC's Submission:

Counsel for MPIC submits that Manitobans injured in motor vehicle accidents are eligible for benefits provided under *The Health Services Insurance Act*. Therefore, Manitoba Health is the first payer of insured medical services and is the primary insurer in terms of coverage for medical care. The coverage provided under the MPIC Act is secondary to that provided under *The Health Services Insurance Act*, in regards to payment of expenses which are insured under *The Health Services Insurance Act*. Counsel for MPIC maintains that MPIC is not allowed to pay medical costs under those circumstances where an individual does not follow the procedures and the protocol required by Manitoba Health for coverage of out-of-province medical expenses.

Additionally, counsel for MPIC submits that MPIC does not become obligated to reimburse the Appellant's expenses in a situation where the Appellant has chosen to seek care outside Manitoba, where that care would normally be covered under *The Health Services Insurance Act*, if the care was obtained within Manitoba. Counsel for MPIC submits that the Appellant chose to avail himself of the option to have the surgery performed out-of-province and MPIC is not required to cover the costs of his medical care.

Counsel for MPIC maintains that the coverage provided by MPIC is secondary to that provided by Manitoba Health. MPIC's responsibility in such a situation would extend only to any costs associated with the treatment that would have been over and above what Manitoba Health would have funded if it had accepted the Appellant's claim. Counsel for MPIC submits that since Manitoba Health did not accept the Appellant's claim, MPIC is not obligated to fund any expenses incurred by the Appellant in this situation. However, counsel for MPIC confirmed that MPIC has extended certain benefits in this situation, acknowledging the unique circumstances of the Appellant's case.

Accordingly, counsel for MPIC submits that the Internal Review Decisions of January 13, 2009 and May 4, 2010 should be confirmed and the Appellant's appeals should be dismissed.

Decision:

Upon hearing the testimony of the Appellant, and after 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 is not entitled to reimbursement of expenses for his out-of-province medical care.

Reasons for Decision:

The Commission finds that *The Health Services Insurance Act* and the *Canada Health Act* provide an exclusive scheme for the provision of insured healthcare benefits. To the extent that coverage is provided under those Acts, those benefits are primary. Manitoba Health provides primary healthcare coverage on behalf of Manitoba residents and is the primary funding body for insured medical services. MPIC is the provincial auto insurer that administers the Personal Injury Protection Plan ("PIPP"). PIPP provides benefits to Manitobans who are injured in a motor vehicle collision and extends coverage for expenses which are not covered by any government healthcare program. The primary obligation for funding insured medical services through Manitoba Health is not displaced in the event of a bodily injury caused by a motor vehicle. That obligation remains exclusively with Manitoba Health.

As a result, we find that Manitoba Health is the primary funding body for insured medical services for Manitobans and that obligation does not transfer to MPIC when the injuries are

caused by a motor vehicle accident. In this case, the Appellant does not become entitled to reimbursement of his out-of-province medical expenses because Manitoba Health has denied reimbursement. The Appellant is bound by the provisions of *The Health Services Insurance Act* and MPIC does not become obligated to reimburse the Appellant's expenses in a situation where the Appellant has chosen to seek care outside of Manitoba, which would normally be covered under *The Health Services Insurance Act*.

As a result, the Appellant's appeals are dismissed and the Internal Review Decisions dated January 13, 2009 and May 4, 2010 are confirmed.

Dated at Winnipeg this 6th day of December, 2011.

YVONNE TAVARES

DR. SHELDON CLAMAN

NEIL MARGOLIS