

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the appellant]
AICAC File No.: AC-11-115**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sharon Macdonald
Ms Linda Newton

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: February 11, 2013

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

RELEVANT SECTIONS: Section 71(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant, [text deleted], was involved in a two-car collision on October 27, 2008. As a result of this accident, the Appellant reported injuries including a soft tissue injury to her neck, back, legs and arms, along with headaches. The Appellant was in a second accident on December 23, 2008. The Appellant reported that the second accident aggravated the injuries which she had sustained in the first accident. Due to the bodily injuries which the Appellant sustained in these motor vehicle accidents, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

To address the Appellant's reported injuries, she was enrolled in a Reconditioning Work Hardening Program which commenced on May 11, 2009. At the time, her symptoms included temporal headaches, neck and shoulder pain, upper and central low back pain, occasional dizziness and bilateral hip pain that was worse on the right side. Although the Appellant did not attend the final week of the reconditioning program, she did attend a follow-up examination on June 9, 2009. At that time, a full return to work was authorized by the treating physiotherapist. He indicated that in the follow-up examination, the Appellant denied any neck, shoulder or back pain, though she continued to experience headaches which she attributed to banging her head one week before. A physical examination revealed full, pain free cervical and thoracolumbar range of motion, with upper extremity resistant testing graded 5/5 and painless throughout. There was no mention of any leg or hip pain in this report.

Diagnostic imaging of the right hip on October 2, 2009 and a 3-phase study of the pelvis and hips revealed no abnormalities. An MRI of the right hip/pelvis conducted in April 2010 also yielded normal findings. Sports medicine physician, [text delted], felt that the pain was likely muscular but he did not know why the Appellant was reporting pain when her MRI was normal.

The Appellant's treating general physician, [text deleted], opined on March 10, 2010 that she did not suffer from physical injuries due to the accident. Having reviewed the medical documentation on file, MPIC's Health Care Services Consultant, confirmed on June 22, 2010 that there was no specific condition occurring as a result of the motor vehicle accident that affected her right hip. Furthermore, there was no causal relationship established between the accidents and the reported symptoms. Ultimately, MPIC's Health Care Consultants observed that the Appellant's position on inability to work was solely based on her own reports of right hip pain.

In a decision dated July 21, 2010, MPIC's case manager confirmed that the medical information on the Appellant's file indicated that there was insufficient evidence to support a causal relationship between her right hip injury and the motor vehicle accidents of October 27, 2008 and December 23, 2008. Therefore, there was no entitlement to PIPP benefits with respect to her current right hip injury.

The Appellant sought an Internal Review of that case manager's decision. The Internal Review Officer, in a decision dated July 27, 2011, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the Appellant's right hip pain was not related to her motor vehicle accidents. As a result, the Internal Review Officer determined that the Appellant did not qualify for PIPP benefits for her right hip pain.

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 PIPP benefits as a result of her right hip pain.

Appellant's Submission:

The Appellant submits that prior to the motor vehicle accident of October 27, 2008, she was healthy and fit. Her physical condition was fine and she did not have any hip problems before either of her motor vehicle accidents. The Appellant claims that following both of her motor vehicle accidents, she developed the symptoms in her right hip and therefore she relates her right hip symptoms to her motor vehicle accidents. She maintains that as a result of the first accident she suffered with migraine headaches and whiplash injuries. Due to the second motor vehicle accident her symptoms got worse. The Appellant argues that she did not feel her hip injuries

because her lower back was in so much pain. It was only when her lower back problems improved that she noticed the hip pain. She feels that the tingling and numbness in her lower back and legs masked her right hip problems. The Appellant argues that her family physician, [text deleted], did not pay appropriate attention to her complaints and therefore his opinion should be given no weight. The Appellant maintains that she developed her right hip problems following the motor vehicle accidents and therefore her injuries are connected to her motor vehicle accidents.

As a result, the Appellant submits that she is entitled to PIPP benefits flowing from her right hip injury and her appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that there is a lack of a temporal connection between the motor vehicle accidents and the reports of the Appellant's right hip pain. Counsel for MPIC argues that the Appellant reported soft tissue injuries from the October 27, 2008 and December 23, 2008 accidents. These injuries did not require attendance at the Emergency Department or at the hospital, nor did they require medication. Counsel for MPIC notes that in the October 27, 2008 accident, right hip injuries were not listed in the Appellant's Application for Compensation submitted to MPIC. Furthermore, the initial chiropractic report of November 19, 2008 also makes no mention of the right hip. Counsel for MPIC notes that the Appellant's first complaint of lower right hip pain was on March 30, 2009, three months following the December 23, 2008 accident.

Counsel for MPIC also relies on the interdepartmental memorandum of [MPIC's doctor], Medical Consultant to MPIC's Health Care Services team of June 22, 2010. As a result of that review, [MPIC's doctor] noted that:

I cannot conclude, on a balance of medical probability that a specific condition occurred as a result of the motor vehicle collision that affected the claimant's right hip. My inability to conclude causation at this time is based upon the lack of a specific diagnosis to account for the symptoms and the marked differences in diagnoses and causation submitted by the claimant's caregivers. In this regard, not being able to account for the symptoms does not disregard their presence. Rather, based on the information submitted, I simply cannot ascribe a probable causal relationship to the condition documented as affecting the claimant's hip and the two reported collisions at this time.

As a result, counsel for MPIC submits that despite the Appellant's self-reported pain, there is a lack of objective evidence on the existence of a right hip condition caused by any motor vehicle accident. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated July 27, 2011 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, on a balance of probabilities, an entitlement to PIPP benefits relating to a right hip injury.

Reason for Decision:

The Commission finds that there is a lack of objective evidence, including medical evidence, to substantiate that the Appellant suffered a right hip injury as a result of either the accident of October 27, 2008 or December 23, 2008. The Commission finds that the Appellant's reporting of her symptoms to her various caregivers has been inconsistent and does not reveal any clear diagnosis of the cause of her right hip symptomatology. The Appellant has not provided

sufficient objective evidence in order to challenge that finding. As a result, the Commission finds that there is a lack of objective evidence to causally relate the Appellant's right hip symptomatology to either of her motor vehicle accidents. Therefore, the Commission finds that the Appellant has not established that she is entitled to PIPP benefits due to her right hip symptomatology.

Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated July 27, 2011 is therefore confirmed.

Dated at Winnipeg this 11th day of March, 2013.

YVONNE TAVARES

DR. SHARON MACDONALD

LINDA NEWTON