

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal By [the Appellant] [Estate of the Deceased]
AICAC File No.: AC-11-144**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Mr. Neil Margolis

APPEARANCES: The Appellant, [text deleted], was represented by Ms Brandi Wilcox by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: October 9, 2014

ISSUE(S): Entitlement to death benefits

RELEVANT SECTIONS: Section 119(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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 is appealing the Internal Review decision dated September 27, 2011 respecting MPIC's decision to deny him death benefits arising from the death of his spouse, [text deleted].

The facts surrounding this matter may be briefly summarized as follows:

1. [The Deceased] was involved in a motor vehicle accident on June 14, 2005. At that time, [the Deceased] was a passenger in a vehicle stopped at an intersection when her vehicle was struck head on by a third party vehicle.

2. As a result of this motor vehicle accident, [the Deceased] sustained injuries including whiplash, neck, shoulder, lower back, right hip, right knee and chest pain, bruising to chest, abrasion to right knee, bruising to right knee.
3. Following the accident, [the Deceased] attended for physiotherapy care and chiropractic care. In December 2005, while attending for chiropractic care, [the Deceased] developed radiation of pain into her right leg and a lumbar radiculopathy was suspected. A CT scan demonstrated a right sided disc protrusion at L5-6.
4. [The Deceased] subsequently had an anterior decompression, discectomy, fusion and fixation at L3-L4 and L4-L5.
5. [Deceased's Doctor #1] provided a report dated July 26, 2010. In that report, [Deceased's Doctor #1] documents that [the Deceased] was seen on July 19, 2010 in regards to her lumbar spine as well as tachycardia. [Deceased's Doctor #1] noted that he did not feel the episodes of tachycardia were related to the motor vehicle accident.
6. [The Deceased] passed away on August 18, 2010. The autopsy report indicated that her cause of death was dilated cardiomyopathy. Secondary causes of death noted on the autopsy report included left bundle branch block and atherosclerotic coronary artery disease.
7. [The Appellant] is the widower of the deceased, [text deleted]. [The Appellant] sought death benefits from MPIC following [the Deceased's] death.
8. On January 12, 2011, [Deceased's Doctor #1] provided a narrative report, including a copy of the autopsy report. [Deceased's Doctor #1] stated that "*I would like to make note of the fact that I think it is likely that [the Deceased's] cardiomyopathy and ultimate cause of death is in part linked to the hardware used to repair the vertebral fracture she sustained in the MVA in 2005*". [The Deceased's Doctor #1] further opined that:

...[the Deceased] had been suffering from residual, interminable pain since the time of her spinal surgery, which was controlled by the use of several different medications. Due to [the Deceased's] lack of response with commonly prescribed pain meds, [the Deceased] was switched to stronger, lesser-prescribed painkillers. Several of the medications she was on have been associated with side-effects after long-term use. Such side-effects include the development of cardiac problems and possible death. I believe these medications may have had unforeseen consequences with the left bundle branch block, and ultimately contributed to [the Deceased's] demise.

9. On March 30, 2011, [the Deceased's] file was reviewed by MPIC's Health Care Services.

The medical consultant concluded that the cause of [the Deceased's] death could not be causally related to the motor vehicle accident in question, based on a balance of probabilities. The medical consultant based his opinion on the following:

Documentation obtained from the autopsy report indicating the cause of death was dilated cardiomyopathy. It is noted that secondary causes included left bundle branch block and atherosclerotic coronary artery disease.

My understanding that the actual cause of cardiomyopathy is unknown.

My review of medical documents relating to dilated cardiomyopathy indicating secondary or intrinsic causes to this condition include endocrine disorders, inflammatory disease, alcohol, nutritional deficiency and drug induced (e.g. Chemotherapy drugs). I was unable to locate information during my search through PubMed and/or in the Compendium of Pharmaceuticals and Specialties indicating medications [the Deceased] was prescribed around the time of her death are commonly associated with dilated cardiomyopathy.

My understanding that complications, which can arise from cardiomyopathy are death due to heart failure as well as abnormal heart rhythms such as left bundle branch block.

My understanding that cardiomyopathy can be a byproduct of atherosclerotic coronary artery disease.

The absence of documentation indicating hardware used to surgically treat back pain has a strong association with dilated cardiomyopathy.

10. On April 7, 2011, MPIC's case manager issued a decision denying death benefits to [the Appellant]. The case manager based her decision on the Health Care Services review and the opinion of the medical consultant that the cause of [the Deceased's] death could not

be causally related to the June 14, 2005 motor vehicle accident, based on the balance of medical probabilities.

11. The Appellant sought an Internal Review of that decision. In an Internal Review decision dated September 27, 2011, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of April 7, 2011. The Internal Review Officer found that [the Deceased] did not die as a result of the motor vehicle accident of June 14, 2005 and therefore there was no entitlement to a death benefit following her death.

The Appellant has now appealed from that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to death benefits as a result of [the Deceased's] death on August 18, 2010.

Relevant Legislation:

The MPIC Act provides as follows:

Definitions

119(1) In this Division,

"**deceased victim**" means a victim who died as a result of the accident;

Appellant's Submission:

The Appellant's representative submits that the motor vehicle accident had a huge impact on [the Deceased]. Prior to the accident she was in good health. Following the accident, she underwent two failed surgeries and was in constant pain. In order to cope with the pain, she was on different types of medications. The Appellant's representative submits that [the Deceased's] use of the pain medication was a contributing factor to her death. The Appellant's representative

claims that if [the Deceased] had not been involved in the motor vehicle accident of June 14, 2005, she would not have sustained injuries and would not have been required to take the prescribed medications, which she contends ultimately contributed to [the Deceased's] death.

In further support of her position, the Appellant's representative relies upon several reports and opinions provided by [Deceased's Doctor #1], [the Deceased's] family physician at the time of her death. In his report dated May 31, 2011, [Deceased's Doctor #1] provided the following opinion:

[The Deceased] became a patient of mine in August of 2000. She was a healthy young woman prior to her MVA of June 14, 2005. She had no previous medical history of note and certainly was in reasonable physical condition prior to the MVA. As you are aware, [the Deceased] required spinal surgery as she sustained a spinal fracture in the vehicle accident. She was followed regularly by [the Deceased's Doctor #2] and eventually a mesh cage was used to stabilize her spine.

[The Deceased] experienced significant pain second to the injuries sustained in the 2005 MVA. She remained on medication for treatment of pain following the accident including Tylenol 3 and Gabapentin. In October, 2010 she was started on Lyrica for neuropathic pain. When she started having episodes of Tachycardia it was thought to be related to her medication and the Gabapentin was stopped and she was promptly referred to [Deceased's Doctor #3] but unfortunately deceased prior to her consultation.

It is interesting that there had been some consumer reporting with regard to the cage device that [the Deceased] had in place, cautioning that there were some significant side effects with its use. [The Deceased] was in fact investigating this prior to her death.

As earlier reported to you, I continue to feel that the regimen of medications that [the Deceased] was taking prior to her death was certainly related to her tachyarrhythmia, which was in part the cause of the cardiac event resulting in her untimely death. Certainly, the cardiomyopathy she suffered from was also causative but she died suddenly which indicates arrhythmia as a final event rather than the slow decline into congestive failure which is the usual path of patients in whom cardiomyopathy is the final and causative episode. I believe that had she not been injured in a motor vehicle accident she would not have suffered the injuries sustained, would not have required surgery and, as such, would not have required a plethora of medication to get through her day. Therefore the accident and hence your partial liability for her early death is directly, though only partially, related to her MVA.

In his report of September 1, 2011, [Deceased's Doctor #1] noted the following:

To clarify my letter of May 31, 2011. As I had previously reported, [the Deceased] was taking Gabapentin, Tylenol 3 and had been started on Lyrica 150mg. twice daily in October of 2009. There has been evidence of cardiac arrhythmia associated with the use of Lyrica. This noted risk, could result in a cardiac event.

Please note, I am not trying to say that the MVA was directly responsible for [the Deceased's] early demise however, I believe that the use of Lyrica could certainly have been a big contributing factor in [the Deceased's] untimely death. Given that she was taking the medication as a result of injuries sustained in the MVA I believe that MPI should take some partial responsibility.

In his report dated August 19, 2013, [Deceased's Doctor #1] provided the following opinion:

As part of [the Deceased's] treatment, pain control was difficult to obtain. She was eventually given Lyrica in October 2010 (sic) for treatment of neuropathic pain. She was also treated with Gabapentin. Both of these medications can, as a side effect, cause cardiac arrhythmia, particularly ventricular arrhythmias, though the link to cardiomyopathy has not yet been proven.

I believe that it is likely that [the Deceased's] cardiac arrhythmia was in part caused by her treatment with Lyrica, as Lyrica is known to cause cardiac arrhythmias, and her death was related to both the cardiomyopathy and arrhythmia, which was in fact the terminal event. As such, I think it appropriate that [the Deceased's] death be considered in part related to the treatment of her accident.

The Appellant's representative relies upon the foregoing reports of [Deceased's Doctor #1] to establish that the Appellant's death was in part caused by the motor vehicle accident of June 14, 2005. Accordingly, the Appellant's representative submits that the appeal should be allowed and an entitlement to death benefits as a result of the motor vehicle accident has been established.

MPIC's Submission:

Counsel for MPIC submits that there is insufficient evidence to connect [the Deceased's] death to the motor vehicle accident of June 14, 2005. Counsel for MPIC argues that [Deceased's Doctor #1's] opinions cannot be relied upon. He contends that [Deceased's Doctor #1] does not provide any details and does not cite any particular studies respecting the risks associated with the medications that [the Deceased] was taking prior to her death. Counsel for MPIC also

submits that [Deceased's Doctor #1's] opinion is not supported by the autopsy report conducted by the medical examiner which stated that [the Deceased's] immediate cause of death was cardiomyopathy and not the tachyarrhythmia.

Counsel for MPIC relies upon the Health Care Services review dated March 30, 2011 undertaken by the Health Care Services medical consultant. Counsel for MPIC reviewed the criteria discussed in that memorandum which was also relied upon by the case manager and the Internal Review Officer in his decision of September 27, 2011.

In conclusion, counsel for MPIC submits that the Appellant has not met the onus of proof required in the circumstances. While [Deceased's Doctor #1] has raised a possibility that [the Deceased's] death could have been associated with the medications that she was taking prior to her death, his opinion does not meet the balance of probabilities test required in these circumstances. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated September 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's representative and of counsel for MPIC, the Commission finds that the Appellant is not entitled to death benefits as a result of [the Deceased's] motor vehicle accident of June 14, 2005.

Reasons for Decision:

Section 119(1) of the MPIC Act defines “deceased victim” as someone who died as a result of the accident. The Commission finds that the Appellant has not met the onus of proof required in this case. [The Deceased] was involved in a motor vehicle accident on June 14, 2005. She died on August 18, 2010. The documentation obtained from the autopsy report confirmed the cause of death was dilated cardiomyopathy. There was no evidence presented to the Commission that the medication which [the Deceased] was taking prior to her death, caused the cardiac condition which led to her death.

The Commission finds that at most the Appellant has raised a possibility that [the Deceased’s] death was associated with the various prescribed medications. [Deceased’s Doctor #1] provides a possible cause for [the Deceased’s] death and how it might be associated with the motor vehicle accident in question. However, his opinion is insufficient to draw the conclusion that [the Deceased’s] death resulted from the motor vehicle accident of June 14, 2005. [Deceased’s Doctor #1] did not provide any basis for his opinion that [the Deceased’s] death was related to the pain medications that she was taking prior to her death. As a result, the Commission is unable to connect [the Deceased’s] death to the motor vehicle accident of June 14, 2005 on the balance of probabilities. As a result, the Commission concludes that there is insufficient evidence to support that [the Deceased’s] death was caused by the motor vehicle accident of June 14, 2005. Accordingly, the Commission finds that the Appellant is not entitled to death benefits in relation to [the Deceased’s] motor vehicle accident of June 14, 2005.

As a result, the Appellant’s appeal is dismissed and the Internal Review decision dated September 27, 2011 is confirmed.

Dated at Winnipeg this 5th day of November, 2014.

YVONNE TAVARES

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NEIL MARGOLIS