

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-00-15

PANEL: Mel Myers, Q.C., Chairman
Laura Diamond
F. Les Cox

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

HEARING DATE: March 26th, 2001

ISSUE(S): Whether the Appellant was entitled to income replacement indemnity or other benefits under Personal Injury Protection Plan

RELEVANT SECTIONS: Section 81(1) of the MPIC Act ('the 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

ISSUE:

The Appellant, [text deleted], is appealing an Internal Review Decision of MPIC dated November 10th, 1999, wherein the MPIC denied the Appellant income replacement indemnity benefits ('IRI') and other therapeutic intervention on the grounds that the

Appellant had not established a cause/effect relationship between her low back condition (i.e. disc herniation) and an automobile accident which she was involved in on October 3rd, 1995.

The accident giving rise to this claim occurred when the bicycle that the Appellant was riding was pushed from behind by a motor vehicle into a parked car in front of her. As a result of that impact, the Appellant was propelled over the handlebars of the bicycle and hit her face on the trunk of a parked vehicle.

The Appellant testified before the Commission that as a result of the accident she sustained a herniated disc which prohibited her from continuing full-time employment for approximately 2 1/2 years after the accident occurred. She has requested IRI from MPIC but her claim was denied for the reasons set out above.

Section 81(1) of the MPIC Act states:

"81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;....."

The Appellant is entitled pursuant to Sections 81(1)(a) of Act to an income replacement indemnity if she can establish that she suffered a herniated disc as a result of being involved in the above-mentioned automobile accident and, as a result thereof, was unable to continue full-time employment.

THE EVIDENCE:

After the accident, the Appellant attended [hospital] for treatment. The hospital records indicated that her complaints were limited to a laceration of her lower lip and nose and she was treated by having the lower lip sutured. [Text deleted], who was the attending physician, confirmed this treatment in a report to MPIC dated November 2nd, 1995.

A written file report from an MPIC adjuster dated October 30th, 1995, indicated that the adjuster had spoken to the Appellant on October 30th, 1995, and she reported that she had received three stitches to her lower lip and that she had obtained a prescription for drug in respect of an infection which had developed as a result of the injury to her lower lip. However, the Appellant did not indicate to the adjuster any complaint about any lower back injury.

[Text deleted], a staff adjuster, for MPIC indicated in a written file report dated November 7th, 1995, that on November 1st, 1995, [the Appellant] attended at his office for the purposes of signing an Application for Compensation and providing the adjuster with a prescription receipt. This report notes that the Appellant described the automobile accident to [MPIC's staff adjuster] and indicated that she had suffered a cut to her lower lip requiring three stitches. The cut later became infected and as a result she required the prescription to clear up the infection. There is no report by the Appellant to [MPIC's staff adjuster] of any lower back pain at that time.

The Appellant also visited her doctor, [text deleted], on October 6th, 1995, and October 10th, 1995, in respect of the injuries she had sustained in the accident. The clinical notes of [Appellant's doctor #2] dated October 6th, 1995, and October 10th, 1995, indicate that the Appellant reported the injury to her lower lip. However, there is no reference to any symptoms or injury to her lower back.

The first complaint that the Appellant made in respect of her back to [Appellant's doctor #2] is noted in his clinical notes on November 8th, 1995. These notes indicated that the Appellant was having a problem getting out of bed due to an acute onset of pain on that date.

[Appellant's doctor #2's] clinical notes also indicate that on January 17th, 1995, the Appellant had complained about chronic right-sided back pain which was radiating into her right leg. As a result of those symptoms, a CT Scan was ordered.

The report of the CT Scan dated March 5th, 1995, stated:

"Clinical History:

Sciatic pain for 5 years radiating to right ankle. Mild signs of L5 entrapment of the right leg."

The CT scan indicated that there was mild disc annular bulging without herniation at the L4-L5 level as well as minimal annular bulging at L3-L4."

(Underline added.)

As a result of this CT Scan report arrangements were made for the Appellant to see [text deleted], an orthopaedic surgeon, who performed a discectomy at L4-5 level on January 30th, 1996.

[Appellant's orthopaedic surgeon] was asked to comment upon the possible relationship between the Appellant's lower back problems and the herniation. In his report dated February 8th, 1996, [Appellant's orthopaedic surgeon] stated:

"It is hard to say whether these symptoms are truly related to her accident. She may have had an annular tear or a secondary disc herniation or may have been predisposed to getting one in the future. Whether the accident changed that natural course of events is difficult to say for her (sic) sure and the possibility of her having had a disc herniation despite the accident would obviously not be unheard of. There may have been a relationship to the accident with the bike and vehicle, but I think overall this would be difficult to say for sure with any conviction."

(Underline added.)

The MPIC adjuster also sought a consulting opinion from [text deleted], a consultant with the Medical Services of the MPIC Team. [MPIC's doctor] in his report dated January 28th, 1999, indicated upon a review of this file that the medical evidence failed to establish a cause/effect relationship between the Appellant's lower back condition (i.e. disc herniation) and the accident of October 3rd, 1995. Based on [MPIC's doctor's] opinion, MPIC denied the Appellant's claim.

The Appellant appealed the adjuster's decision to the Internal Review Officer. The Internal Review Officer obtained [Appellant's doctor #2's] medical file including his clinical notes and referred the file to [MPIC's doctor] for further review. [MPIC's

doctor] provided the Internal Review Officer with a further report dated October 25th, 1999 which read in part, as follows:

"If [the Appellant] was experiencing chronic back pain prior to the motor vehicle/bicycle collision and the collision exposed her back to a load of some type, it is reasonable to conclude that the pre-existing back symptoms might have been exacerbated to some degree. The absence of documentation identifying an exacerbation of a back condition leads me to conclude that [the Appellant's] back was not exposed to a force that would have compromised her pre-existing back condition. The information indicates that [the Appellant] did not develop an acute episode of back pain until the early part of November 1999. At that time the clinical findings noted are in keeping with her pre-existing back condition. The CT Scan done in December 1995 identified a disc herniation at a level where the previous CT Scan only identified mild diffuse annular bulging. If the motor vehicle/bicycle incident resulted in the development of a disc herniation, one would expect an acute increase in back and right leg pain. It is not probable that an incident such as this would not result in an increase in symptomatology if it were determined that the incident caused a significant alteration to a disc. There is insufficient medical documentation supporting the hypothesis that [the Appellant's] pre-existing back condition was compromised by the motor vehicle/bicycle incident to the extent that the potential for a disc herniation to occur at a time distant to the incident was increased. In other words if the documentation identified an increase in [the Appellant's] back symptoms following the motor vehicle/bicycle incident and on subsequent examinations noted a worsening of her condition then it would be reasonable to conclude that the incident might have compromised her pre-existing condition and in turn rendered [the Appellant's] abnormal disc more vulnerable to herniation. This possible scenario could not be extracted from the information I reviewed.

It is possible that [the Appellant's] motor vehicle/bicycle incident compromised the L4-L5 disc to a level where it herniated. It is also possible that [the Appellant's] chronic discogenic back condition progressed over time to the level where a herniation took place. After closely reviewing the information provided to me, it is my opinion, based on a reasonable degree of medical certainty that a probable cause and effect relationship between [the Appellant's] back condition which [Appellant's orthopaedic surgeon] performed surgery on and the motor vehicle/bicycle incident she was involved in, in October 1995 cannot be established."

(Underline added.)

However, [Appellant's doctor #2], in a medical report dated December 17th, 1998, stated at page 3 thereof:

"She was examined on October 10, 1995. The major complaint at the time was back pain. Following the examination I diagnosed her as having a herniated disc on the lumber (sic) spine. During the month of November, 1995, I prescribed Demerol and Lenotec for relief of back pain. As you are well aware, this led to back surgery in February 1996 by [Appellant's orthopaedic surgeon]."

There appears to be a conflict between [Appellant's doctor #2's] written comments in his clinical notes dated November 8th, 1995 and his comments in his December 17th, 1998 medical report. In [Appellant's doctor #2's] clinical notes, he indicates that the first time he received complaints from The Appellant about her lower back was on November 8th, 1995. This statement contradicts his letter of December 17th, 1998, approximately three years later when he asserts that the first time he received a complaint from the Appellant about her back was on October 10th, 1995.

At the conclusion of the hearing on March 26th, 2001, the Commission adjourned the proceedings. On March 27th, 2001, the Commission wrote to [Appellant's doctor #2] requesting clarification with respect to his comments. On April 19th, 2001, [Appellant's doctor #2] wrote to the Commission and stated:

"Thank you for your letter dated March 27, 2001.

It is an error on my part in stating that she was complaining of back pain on October 10, 1995. Her initial complaint of back pain was in fact on November 8, 1995.

I hope this will clarify this matter."

At the hearing before the Commission on March 26th, 2001, [the Appellant] testified under oath that she did not experience any back pain until approximately three weeks after the accident (which occurred on October 3rd, 1995).

DECISION:

A review of the evidence at the appeal hearing indicates:

1. that [Appellant's orthopaedic surgeon] and [MPIC's doctor] agree there is no causal relationship between the Appellant's lower back condition (i.e. disc herniation) and the motor vehicle accident which occurred on October 3rd, 1995;
2. the hospital reports from the [hospital] dated October 3rd, 1995 confirm that [the Appellant] only complained about her lower lip and did not complain about her lower back;
3. [the Appellant] testified before the Appeal Commission that after the accident she did not suffer any lower back problem until approximately three weeks after the accident;
4. [Appellant's doctor #2's] clinical notes confirm that the initial complaint that she made to [Appellant's doctor #2] on October 6th and October 10th, 1995, related only to her lower lip and she did not complain about her lower back until November 8th, 1995;

5. the notes from the MPIC adjusters dated October 30th, 1995 and November 7, 1995, indicate that the only complaint [the Appellant] related was to her lower lip and she did not complain about her lower back at that time.

Having regard to the totality of the evidence, [the Appellant] has not established, on the balance of probabilities that her lower back condition (i.e. disc herniation) was caused by the automobile accident which occurred on October 3rd, 1995. As a result, the Commission finds:

- (a) that the Appellant's appeal is dismissed; and
- (b) the decision of MPIC's Internal Review Officer, dated November 10th, 1999, is confirmed.

Dated at Winnipeg this 24th day of April 2001.

MEL MYERS, Q.C.

LAURA DIAMOND

F. LES COX