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Indexed as:
S.D. (Re)

IN THE MATTER OF an appeal by S.D.
AICAC File No. AC-96-28

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[1996] M.A.I.C.A.C.D. No. 28

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and F.L. Cox

Heard: October 22, 1996.
Decision: December 10, 1996.
(3 pp.)

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Issue(s):

Entitlement to income replacement indemnity.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Keith Addison.

S.D., the appellant, appeared in person.

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MAIC 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 FACTS:

[para1] S.D. appeals from a decision of the Internal Review Officer of Manitoba Public Insurance Corporation ('M.P.I.C.') on the limited ground that, due to the first of two accidents that she sustained during the year 1995, she missed five days of work for a total of 37 hours and 55 minutes. The days in question are October 10th, 17th, 20th, 26th and 31st.

[para2] Our ability to render a decision in this matter has been substantially delayed, due to our inability to obtain, from S.D.'s original physician, Dr. Lisa Lugtig, a response to many requests that we made of her for certain additional, specific information. When Dr. Lugtig's reply finally came to hand, it was not at all responsive to the

questions that we had posed, and we are therefore none the wiser.

[para3] Dr. Lugtig's initial reports to M.P.I.C. indicated that she had prescribed a course of physiotherapy for S.D. but had recommended that her patient return to work. The report of the physiotherapist, which in turn is endorsed with some further comments of Dr. Lugtig, indicates that S.D. seemed to be experiencing an unexpectedly tender response to palpation and was not able to respond well to pain, making some forms of physiotherapy more difficult. An Obus form of seating support was recommended by both the physiotherapist and the physician, with continuation of 'back education, strengthening and stretching'. While Dr. Lugtig obviously encouraged S.D. to return to work, we have no way of knowing the nature of any examinations that Dr. Lugtig conducted, what tests (if any) she administered, her diagnosis of S.D.'s condition nor her prognosis for that condition.

[para4] We do know that S.D. appears to have attempted to comply with Dr. Lugtig's advice, since she reported for work after the October 4th accident on October 6th, 7th, 8th, 13th, 16th, 18th, 21st, 22nd and 24th. Her employer, {text deleted}, confirm that S.D. was also called for full shifts of 7.75 hours on October 20th and 26th, but did not come in. She had also been booked to work on October 10th, 17th and 31st, but called in sick on each of those days when, as before, her hours each day would have been 7.75.

[para5] Despite the earlier reports of Dr. Lugtig, we are of the view that, upon a balance of probabilities, it was indeed her motor vehicle accident of October 4th, 1995 which caused S.D. to be absent from work on the five days to which her Notice of Appeal makes reference, and she is entitled to income replacement indemnity for those five days, calculated at the appropriate rate.

DISPOSITION:

[para6] The matter is therefore referred back to M.P.I.C. for the calculation of income replacement indemnity for the five days referred to above, and for the payment to S.D. of the appropriate sum.

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