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Indexed as:  
M.R.C. (Re)

IN THE MATTER OF an appeal by M.R.C.  
AICAC File No.: AC-99-15

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[1999] M.A.I.C.A.C.D. No. 29

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Manitoba Automobile Injury Compensation Appeal Commission  
R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.  
(Chairperson), and L. Goodspeed  
Heard: June 21, 1999.  
Decision: July 27, 1999.  
(13 paras.)

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Issue(s):

Termination of Income Replacement Indemnity ('IRI')  
- whether justified.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993,  
c. 36, ss. 110(1) and 110(2).

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Appearances:

The appellant, M.R.C., appeared on her own behalf.  
Manitoba Public Insurance Corporation ('MPIC') represented by  
Tom Strutt.

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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

[para1] The appellant was driving her 1987 Dodge Caravan on August 27th, 1994 at approximately 30 kms per hour in moving traffic, when her vehicle was struck from the rear by an allegedly impaired woman driving a 1985 Ford Tempo vehicle. The collision caused approximately \$700 dollars worth of damage to the appellant's vehicle and caused injuries to her neck and back. The injuries were all of a soft tissue nature, including strain to her neck and upper back resulting in muscular spasms.

[para2] Throughout the nearly five years that have intervened since the date of M.R.C.'s accident, she has been seen, examined and, in many cases, treated by a great number of caregivers, including general practitioners, orthopedic, neurological and rheumatological specialists, physiatrists, a chiropractor, a massage therapist, rehabilitation specialists from Northern Rehabilitation & Consulting Services Inc., a psychiatrist, a clinical psychologist and physiotherapists. In addition, M.R.C. has received numerous and extensive blood tests, X-rays, magnetic resonance imaging and physical and psychological testing.

[para3] We do not believe it would be useful to analyze, in detail, the multitude of medical and paramedical reports made available to us, all of which we have examined with care. It is, we believe, sufficient to say that, by May of 1998, MPIC was faced with the anomaly - not unusual - that although a strong majority of medical reports, based upon objectively observed signs, indicated substantial improvement in M.R.C.'s functional capacity, the continuing symptoms that she was reporting subjectively remained severe.

[para4] Up to the time of her accident, M.R.C. had been working for one of the chartered banks as a Customer Assistance Officer, and the primary issue before us is whether, by June 26, 1998 she had, as her adjuster at MPIC decided, become "able to hold the employment that she held at the time of the accident". On this latter date, her adjuster and case manager, Mr. John Walters, determined that she had become able to hold that employment again but that, since she had been in receipt of Income Replacement Indemnity for more than 2 years, she was entitled to the continuance of her IRI for a further one year or until she had recommenced gainful employment, whichever first occurred. MPIC offered to assist in her search for employment, if she wished it. M.R.C., formerly M.R.M., was married on [text deleted] and gave birth to a baby in December 1998. She testified that she had returned to work for about one week immediately following her accident but was only able to work sporadically for the rest of that year until October 5. She testified that she cannot do her normal household work such as making beds, cleaning and the like. When she wakes up, she says, her neck and lower back are in pain, sometimes even her lower jaw gives her such problems that "I have to take my jaw in both hands and straighten it."

[para5] It should, perhaps, be noted that, during the period of M.R.C.'s fulltime employment by the bank, she was covered by a group insurance policy with Sunlife Insurance Company. On March 5, 1996 the Sunlife discontinued her benefits under that coverage, upon the basis that;

-...the medical as well as non-medical evidence provided to us does not support continuous total disability which would thereby prevent her from performing any occupation beyond March 5, 1996. ... (her) medical condition retroactive to March 1996, when benefits were last paid, is mainly subjective and lacks objective medical findings to support continuous total disability. In addition, non-medical evidence would indicate that she is quite active and does not demonstrate the restrictions of movement or other limitations mentioned throughout her file.

[para6] [Text deleted], the Appellant's employer at the time of the accident, took the position that her fulltime employment status ended with the decision of the Sunlife to cease disability benefits some 2 1/2 years after the appellant's accident. At that point, therefore, M.R.C.'s status was changed to that of a casual employee - that is to say, she was on call for work whenever the bank happened to need her and if she was then available. M.R.C. did, apparently, attempt a graduated return to work in May or June of 1997, but that only lasted a very short time. M.R.C.'s evidence was that, apart from her shortlived attempt to return to work with the bank, the only other work that she had undertaken since her motorvehicle accident of August 27, 1994 was a volunteer job for a couple of weeks in early 1997, helping to conduct a telephone survey.

[para7] The overwhelming body of medical and paramedical evidence makes it clear that M.R.C. is physically capable of a graduated return to work - perhaps, even, fulltime employment - in any occupation akin to that which she had performed while employed while at the [text deleted]. No one denies that she has pain and discomfort, but few, if any, of her caregivers are prepared to say that those symptoms preclude her employment which, after all, was not physically demanding.

[para8] On June 26, 1998, when Mr. Walters wrote to tell her that she was deemed capable of resuming her former employment, M.R.C. had received a total of \$[text deleted] of income replacement, together with a further \$[text deleted] for travel expenses, medication, medical reports, physiotherapy, chiropractic and rehabilitation, for a total of \$[text deleted]. As noted above, since she had received IRI for more than two years she became entitled to a further twelve months of income replacement, from June 26, 1998 to June 25, 1999, by virtue of section 110 (2) of the MPIC Act. Mr. Victor Andres, rehabilitation consultant with Northern Rehabilitation & Consulting Services Inc., wrote to M.R.C. on July 22, 1998 to confirm that NRCS had been requested by the insurer to assist her in her search for employment. NRCS had therefore opened a new file for her and offered to provide a

job search program. Details of that program were set out in Mr. Andres letter. It seems clear from subsequent correspondence between M.R.C. and Mr. Walters that the primary reason why M.R.C. has not taken advantage of the job search program proposed by NRCS is that, had she been able to find gainful employment through that medium, it would have been difficult for her to argue before this Commission that she was disabled from working.

[para9] M.R.C. seeks an order from this Commission that termination of her benefits on June 26, 1998 was unwarranted, that she was not capable of a return to the workplace on June 26, 1998, is not capable of a return to work even now and should therefore be entitled to continued Income Replacement up to the present date and beyond, until she has achieved full functional capacity.

[para10] Upon a review of all of the evidence including, of course, the testimony of M.R.C. herself, we find that the appellant was, in fact, capable by June 26, 1998, if not well before that date, of fulfilling substantially all the duties of her pre-accident employment. We must therefore confirm the decision of MPIC's Internal Review Officer dated December 7, 1998.

[para11] This is not to say that the appellant is entitled to no further benefits at all. The termination of Income Replacement Indemnity does not preclude the continuance of a reconditioning program and the pursuit by M.R.C. of the job search program outlined in Mr. Andres letter to her of July 22, 1998.

[para12] There is one other issue raised in this appeal, and that is a claim by M.R.C. that she should be referred to the Mayo Clinic in Rochester, Minnesota, for further assessment and the prescription of a plan for M.R.C.'s future treatment. We do not find sufficient basis upon which to decide to refer this matter for specialized investigation outside the province and are therefore not prepared to make that order.

[para13] Subject, then, to the foregoing recommendations related to reconditioning and job search programs, we must confirm the decision of the Internal Review Officer.

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