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Indexed as:  
G.P. (Re)

IN THE MATTER OF an appeal by G.P.  
AICAC File No.: AC-97-66

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[1997] M.A.I.C.A.C.D. No. 48

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Manitoba Automobile Injury Compensation Appeal Commission  
C.T. Birt, Q.C., Chairperson, L. Goodspeed and F.L. Cox  
Heard: November 12, 1997.  
Decision: December 19, 1997.  
(7 pp.)

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Issue(s):

Whether the Appellant is entitled to further income replacement indemnity after the termination date of December 14th, 1995.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c. 36, ss. 81(1)(a) and 110(1)(a).  
Regulation 37/94, s. 8.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC')  
represented by Tom Strutt.  
The appellant, G.P., 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] The Appellant, G.P., sustained an injury as a result of motor vehicle accident she was involved in on November 30th, 1995 in which her 1996 half-ton pickup truck was written off in the accident. At the time of the accident G.P. and her husband were operating a [text deleted].

[para2] She immediately phoned her medical doctor in Winnipeg, Dr. I. Reich, but was not able to speak to her personally. G.P. asked Dr. Reich's assistant if she should see Dr. Toth, a Winnipeg chiropractor, who was suggested to her by her daughter. G.P. was advised by Dr. Reich's assistant that this was the best course of action to obtain relief for her injury.

[para3] The Appellant attended at Dr. Toth's office for treatment and then continued to see him at least twice a week for the next several months. She had to travel to Winnipeg from [text deleted] which was over a 100 kilometres each way and arranged these trips to coincide with job-related pickups in Winnipeg similar to the activity she was following on November 30th, 1995, prior to the accident.

[para4] G.P. was told by Dr. Toth and MPIC to continue the chiropractic treatments although she felt they were not helping her. Her primary problem was ongoing numbness in her arms and loss of strength in her upper extremities. As a result she could not control the heavy trucks while driving and could not lock and unlock the trailers from the cabs as was required when hauling peat moss. Despite her continuing concern about this problem she did not seek another medical opinion until July 2nd, 1996 when she went to see Dr. Reich for her annual checkup. Dr. Reich examined her and recommend a physiotherapy treatment plan.

[para5] Dr. Toth provided a chiropractic report to MPIC dated, September 3rd, 1996 stating that G.P. "warrants no activity restrictions in her duties at work or leisure". G.P. did not share this point of view and in October commenced the recommended physiotherapy program which resulted in dramatic changes. By late December she had recovered 100 %, reaching pre-accident status.

[para6] G.P. is appealing from the decision of the acting review officer who held that her I.R.I. was properly terminated on December 14th, 1995. G.P.'s position is that the termination of her benefits was premature, as she had not reached her pre-accident status by the date of termination.

[para7] In 1995 the Appellant and her husband operated a small [text deleted] in [text deleted] Manitoba and they had three trucks hauling peat moss, one hauling wood chips and one sitting in their yard. Their primary work involved hauling peat moss from the excavation site to the processing factory with each truck making five trips per day. One full time driver would make three trips which took approximately ten hours and a part time driver would make the final two trips. G.P. was one of the full-time drivers and hauled three loads per day, five days a week.

[para8] In addition to driving full time she would do office work at the end of the day, assist her husband to do light maintenance work on the vehicles and make trips into Winnipeg to pick up parts and necessary supplies. The length of her average work day was 14 to 16 hours, six days a week with her primary work being driving the large trucks, Monday to Friday.

[para9] The peat moss season, depending on the weather, goes from early March to late November or early December. Once this season is over the Appellant and her husband would service the vehicles, complete their office work and go away for a four week holiday until late January. The Appellant was injured near the end of the peat moss season in 1995. She and her husband did go on a holiday in December but only after she spoke with and received the approval of her chiropractor.

[para10] In 1996, the season started on March 1st and G.P., because of her physical problems, was not able to operate a truck for hauling peat moss. This necessitated hiring a full-time driver to cover her normal shift of ten hours. Although the Appellant was not able to perform the essential duties of her employment, she could do office work and light vehicle maintenance that did not require any lifting.

[para11] On June 25th 1996 G.P.'s replacement driver abandoned the truck, loaded with peat moss, in the Appellant's yard and announced that he was quitting his job. G.P. was unsuccessful in finding another driver to finish the shift and out of desperation G.P. drove the loaded truck to the factory. She advised that she drove slowly and stopped to do her prescribed stretching exercises when her arms began to bother her. She reasoned that it was better to get the load to its destination late than not at all. In total she made two runs that day and one on each of the following days, June 26th and 27th, because she was unable to get a replacement driver. G.P. advised that she did not do any hauling again until she was required to fill in for missing drivers and made one trip each on August 16th and 20th and again a month later on September 19th and 20th. The Appellant stated that she returned to full-time driving when she regained her normal condition in late December 1996.

#### THE LAW:

[para12] G.P.'s entitlement to I.R.I. is governed by Section 81(1) of the Act. The question that needs to be addressed is whether G.P. was unable to continue the employment or to hold employment that she would have held during the first 180 days following the accident, if the accident had not occurred.

[para13] Section 81(1)(1) of the MPIC Act reads as follows:

"Entitlement to I.R.I.

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;"

[para14] Section 8 of Regulation 37/94 reads as follows:

"Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident."

[para15] Section 110(1)(a) of the MPIC Act reads as follows:

"Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

- (a) the victim is able to hold the employment that he or she held at the time of the accident;"

[para16] At the time of the accident G.P.'s essential daily duties required to perform her job were truck driving, office administration and light vehicle maintenance. She worked at least 14 hours per day, six days a week and drove a truck 10 hours per day, Monday to Friday.

[para17] We are of the opinion that her primary work, the essential duties of her employment, were centred around driving a truck. Because of the nature of her injuries she could not perform these duties, necessitating hiring a replacement driver at the commencement of the peat moss season to carry out that portion of her job. We are of the view that G.P. was substantially unable to perform her essential duties, namely truck driving, after the accident for the period of March 1st to August 31, 1996.

[para18] The peat moss season started on March 1st, 1996 and G.P. was not able to drive until the emergency situation

occurred in late June. She took on some driving shifts and increased the amount of driving to two trips per day in late August and September. In light of this demonstration of a driving capability, we find that by September 1996, G.P. had effectively recovered from the MVA injuries and that she was substantially able to perform the full time essential duties that she had performed at the time of the accident.

DISPOSITION:

[para19] Based on the above findings, G.P. is entitled to I.R.I. from March 1st, 1996 until August 31st, 1996, inclusive, together with interest at the statutory rate.

[para20] The decision of MPIC's acting review officer be varied accordingly.

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