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Indexed as:
I.B. (Re)

IN THE MATTER OF an appeal by I.B.
AICAC File No.: AC-97-16

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[1998] M.A.I.C.A.C.D. No. 31

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, and
L. Goodspeed
Heard: September 28, 1998.
Decision: October 19, 1998.
(10 paras.)

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Issues(s):

Causation - whether fibromyalgia syndrome resulted from motor vehicle accident ('mva'), entitling Appellant to benefits.

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Relevant Sections:

Section 136(1) (a) of the MPIC Act and Section 5 of
Manitoba Regulation 40/94.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Joan McKelvey.

I.B., the appellant, represented by Garry Sinnock.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
PERSONAL HEALTH INFORMATINO OF INDIVIDUALS BY REMOVING
PERSONAL IDENTIFERS AND OTHER IDENTIFYING INFORMATION.

REASONS FOR DECISION

[para1] I.B., the Appellant, was [text deleted] years of age at the time of her mva which occurred in Winnipeg on December 24th, 1994. She was apparently travelling in the right-hand lane, with a five ton truck coming up beside her on the left; a vehicle entering the highway from the right failed to stop at a 'yield' sign, cutting her off and forcing her brake suddenly, with the result that the driver's side of her vehicle collided with the right side of the truck, bouncing

off the truck and into a snowbank. Her vehicle was damaged to the extent of about \$4,000.00.

[para2] I.B. first attended upon her family physician on January 9th and was diagnosed with muscular injury on the left side of her neck; she was referred for physiotherapy and prescribed Tylenol No. 3. Her physician noted that she had previous neck injury, more on the left side, resulting from a motor vehicle accident on December 20th, 1992. It was also noted that she was suffering from chronic fatigue syndrome. However, her physician reported that she was capable of resuming her main occupation as a bookkeeper.

[para3] I.B.'s case is complicated by her pre-accident history. We do not think it necessary to describe that history in minute detail. It is enough to note that, in 1983, she required a nephrectomy as a result of recurrent pyelonephritis; in 1988 I.B. was diagnosed with chronic fatigue syndrome, which persists to this day; in the intervening years she has complained of pain in her feet, pain in her legs, pain in her back which radiated to the low back, to the pelvis and to the hips, numbness in her feet and fingertips, sharply decreasing energy, poor memory, significant psychosocial stressors, urinary complaints, headaches and non-restorative sleep pattern. Many of those complaints were documented as early as 1990, when I.B. was prescribed an anti-depressant. In 1991 she was described in her physician's notes as suffering from fatigue, weakness, an inability to concentrate, dizziness and fuzzy vision with headaches, and her physician recommended that she take a leave of absence from work. Almost all of the foregoing complaints continued until and beyond her 1992 mva, when she was still complaining of continuing sleep disturbances, back pain requiring massage, pain in the knees, fingers and myalgia.

[para4] I.B. had been involved in an earlier mva on February 1st, 1984, which is described as being 'almost head on', wearing no seatbelt; she apparently had little memory of what had happened although she had not lost consciousness. Following that 1984 accident she complained of vertigo and an injured right ankle.

[para5] I.B. has been examined and treated by a number of caregivers, including Dr. Fortin, her original, family physician, Dr. Christa Mason, of the Transcona Medical Clinic, who succeeded Dr. Fortin in that capacity, Dr. L. R. Wozney, also of the Transcona Medical Clinic, Dr. Jack Perlov, a specialist in psychiatry, Dr. Regina Taylor, a specialist in rheumatology, Dr. Glen Thomson, another, independent specialist in rheumatology and Dr. Hillel Sommer, a specialist in rehabilitation medicine who is on the Faculty of Medicine at the University of Manitoba and is also attached to the Rehabilitation Hospital and, in 1997, Dr. John Alevizos, her

chiropractor. The majority of those treating her have concluded that I.B.'s symptoms may properly be designated with the label fibromyalgia syndrome, although Dr. Sommer questions that because, in his view, I.B.'s actual signs do not meet the physical criteria of fibromyalgia; he prefers to refer to her condition as, more simply, chronic pain syndrome with indistinct etiology. There also seems to be practical unanimity on the concurrent diagnosis of chronic fatigue syndrome.

[para6] The problem that faces us is the need to decide whether that bundle of symptoms loosely grouped under the label of fibromyalgia syndrome or chronic fatigue syndrome, or both, can properly be attributable to I.B.'s motor vehicle accident of December, 1994. The symptoms for both those syndromes overlap to a major extent, to the point at which it is often difficult to distinguish between the two; in each case, the etiology is unknown.

[para7] In June, 1994, a committee of fibromyalgia experts was convened at the University of British Columbia in Vancouver under the auspices of the Physical Medicine Research Foundation to address issues of diagnosis, testing, assessment and prognosis of fibromyalgia. Their report, published in the Journal of Rheumatology in 1996, describes fibromyalgia as a syndrome of widespread pain, decreased pain threshold and characteristic symptoms that include non-restorative sleep, fatigue, stiffness, mood disturbance, irritable bowel syndrome, headache, paraesthesia and other less common features. Widespread pain has generally been defined by the number of body regions involved or by a pattern of pain complaint that involves all four quadrants of the body and axial skeleton. The report goes on to emphasize that there is insufficient evidence to establish any causal relationship between trauma and fibromyalgia.

[para8] We have no hesitation in saying that we believe I.B.'s evidence completely; we do not suggest that the problems of which she complains are anything other than real. The question before us, however, is whether those problems were caused by a mva and, therefore, compensable under the Manitoba Public Insurance Corporation Act.

[para9] We have reviewed with great care all of the medical reports available to us, including the forms completed by I.B.'s caregivers for MPIC, the more complete, narrative reports presented by all of her doctors, her own evidence and that of Dr. Neil Craton, the Director of the Medical Services team at MPIC. We have also read all of the literature that was supplied to us by counsel and, as well, have reviewed other medical writings available to us. We have concluded, on a strong balance of probabilities, that the symptoms of which I.B. has been complaining since her mva of December 24th, 1994

were not caused by that accident but, rather, represent the continuation of a condition from which she had been suffering for a good many years prior to that accident and which, apparently, have only responded on a temporary basis when treated symptomatically. While it is true that I.B. ceased employment in May of 1995, that was primarily because her term position ended at that point. She has, fortunately, been able to find some new, part-time work since the spring of 1997 and it is our hope and belief that this will help to restore her self esteem. We cannot, however, hold MPIC liable to reimburse her for her claimed loss of income since May of 1995, nor can we require MPIC to reimburse her for the costs of her physiotherapy or chiropractic treatments since that time. At worst, I.B. sustained a Grade II Whiplash Associated Disorder in her 1994 accident; the natural history of that injury, combined with the physiotherapy that she was receiving, would have restored her to pre-accident status within a matter of weeks. I.B. testified that some of her symptoms were more pronounced after her latest accident but, with respect, we have to say that it does not necessarily follow that the accident caused that degeneration. Just because one thing follows another in time does not mean that the later situation was caused by the earlier one. As Dr. Regina Taylor commented, "I strongly question whether her fibromyalgia-like syndrome is not a somatic manifestation of a depression or other psychiatric illness". Dr. Hillel Sommer recommends that I.B. "exercise aerobically despite symptoms...beginning with a five minute walk even with symptoms and to complete her workout by the clock, not by her symptoms. I think this would be the only way of advancing her and gradually increasing her tolerance. I see no physical limitations for this that would preclude her from doing this type of exercise." Dr. Sommer also noted, contrary to the findings of several of his colleagues, that I.B.'s "tender point count is well below that necessary to meet the physical criteria for fibromyalgia. Furthermore, she is tender diffusely over numerous tender points over the back which are unrelated to fibromyalgia tender points."

DISPOSITION:

[para10] Whether the Appellant's condition is properly described as fibromyalgia syndrome, chronic fatigue syndrome or, merely, chronic pain syndrome, we find that, whatever its origins, those origins predated her motor vehicle accident of December 24th, 1994 and we must therefore dismiss her appeal and confirm the decision of MPIC's Internal Review Officer bearing date January 8th, 1997.

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