

## **AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION**

**IN THE MATTER OF an appeal by D.L.M.**

**AICAC File No.: AC-97-93**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C.  
Mr. F. Les Cox

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC')  
represented by Ms Alexander Nelson  
Appellant, D.L.M., represented herself

**HEARING DATE:** March 11th, 1998

**ISSUE(S):** Claim for:  
1. Re-instatement of Income Replacement Indemnity;  
2. Payment of present and future chiropractic treatments.

**RELEVANT SECTIONS:** Sections 81 and 136(1) of the MPIC Act ('the Act') and Section 5(a) of Regulation 40/94

**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:**

The Appellant, a courier driver for [text deleted], was driving the company truck east on Notre Dame in Winnipeg at 6:08 A.M., December 19th 1995, when a car cut in front of her. She tried to stop but her vehicle struck the rear driver's side of the car. She did not experience any immediate physical problems but within two days she began to experience pains in her neck and back.

D.L.M. consulted her chiropractor, Dr. Thompson, two days after the accident and he diagnosed her

condition as a Whiplash Associated Disorder (WAD) Type 11 and advised her to stay off work for 3-4 weeks. A program of chiropractic adjustments was started and she was given an exercise program to increase the range of motion in the cervical and lumbar areas of her spine.

Dr. Thompson, in a report to MPIC advised that the Appellant "had previous neck & back injuries due to work related accidents and athletic injuries. Prior to the accident of December 19th, 1995 she was last treated at this office on June 29th, 1995".

D.L.M. also consulted Dr. Ormiston, a family physician, on January 22nd, 1996 and he advised her to take a program of physiotherapy and apply heat to the affected areas. She was also restricted from lifting, bending or sitting for prolonged periods of time. D.L.M. enrolled at River East Physiotherapy and after learning about the program and its length decided she did not want to take it as she was anxious to return to work. She informed her Adjuster of her feelings and he had her assessed by the Canadian Back Institute on January 11th, 1996. They provided her with a program that was designed to increase her lifting tolerance and how to properly lift large objects.

Due to D.L.M.'s motivation and her commitment to her rehabilitation programs she was able to return work on February 12th, 1996. While away from work MPIC paid D.L.M. Income Replacement Indemnity ('IRI') for the period of December 22nd, 1995 to February 12th, 1996. A short time after her return to work MPIC closes their file on this case.

However, things did not go as planned as far as D.L.M. was concerned. On her return to work she

began to experience problems in her back with muscle spasms under her left shoulder and across her upper back. She started to experienced pain down her arm, in her lower back and over her left hip. These problems developed shortly after her return to work and gradually developed to the point that she could no longer stand or work with the pain and had to consult her chiropractor on April 23rd, 1996. Dr. Thompson describes her condition as "she was experiencing mild lumbosacral discomfort, middorsal tension and occasional headaches". He provided treatment which gave her temporary relief. The problems persisted and she had to again seek relief from Dr. Thompson on July 31st, four times in August, once in September, five times in November and three times in December of 1996.

D.L.M. continued to do her home exercises throughout this period but by August she advised she had to take pain medication in order to allow her to do her daily work. Even with all of the chiropractic treatments and pain medication her back went into spasm on December 12th, 1996 and she was forced to leave work part way through the day. She advised that just prior to this her neck and shoulder pain became so intense that she could not turn her head. D.L.M. saw her family doctor about her problems and was told to stay off work until January 7th, 1997 which she did. Since her return to work she had not had any other relapses or spasm.

#### **THE ISSUES:**

1. D.L.M. wants to be paid IRI for the period of December 12th, 1996 to January 7th, 1997 because she believes the pain and spasms that forced her to lose this time from work were a

direct result of the December 19th, 1995 car accident.

D.L.M.'s evidence is very compelling and it, along with the medical evidence, supports her contention that she suffered a relapse of her injuries. She detailed an increasing problem with her shoulder or neck and back and the steps taken to keep her pain and her back spasms under control but to no avail. The problems started just after she returned to work and despite chiropractic treatments, medication and home exercise her back finally seized upon her on December 22nd, 1995 and forced her to leave her job.

Her evidence is corroborated by her chiropractor, Dr. Thompson, in his health care report of December 23rd, 1996 wherein he states that the "Patient has recently suffered a relapse of lumbosacral and middorsal pain and has been unable to work as a result. Significant muscle spasm and tenderness are noted in the lumbosacral and dorsal regions".

In another written report by him to MPIC dated January 7th, 1997 he states:

It is this writer's opinion that her present problems are due at least in part to the accident of December 19th, 1995 for two reasons:

1. The present symptoms have been persisting in varying degrees of severity ever since the accident. Prior to the accident she had been symptom free for six months.
2. The objective findings of paraspinal hypertonicity and multiple site vertebral fixations have been recurrent ever since the accident.

While there is no doubt that injuries suffered by the patient in past years have predisposed her to further injury, her present difficulties cannot be attributed solely to these previous problems. It is the writer's opinion that [D.L.M.'s] present symptoms

are due to a combination of predisposition aggravated by the accident.

We are also provided with a medical report, dated July 20th, 1997, from Dr. Christa Mason, the Appellant's physician, and it states in part:

On December 12th, 1996, [D.L.M.] noticed an increase in her neck and shoulder pain. The pain was similar to the pain she suffered after her motor vehicle accident. I saw her on December 16th and advised her to remain off work, to attend the Canadian Back Institute for physiotherapy and to take Voltaren.

Dr. Mason goes on to state in the same report:

On review of Dr. Ormiston's notes (he saw her after the accident as I was on a medical leave of absence) it is apparent that her original signs and symptoms were similar to those she had with the exacerbation. At each occasion, she complained of non-radicular neck pain. She is tender in the same area and had the same restriction of movement. There was no other event that occurred in December, 1996 that could account for the symptomatology.

Dr. Mason also reports that an X-ray was taken on April 25th, 1997 and it showed some mild to moderate degenerative changes at C5/C6 and C6/C7 but can not say whether they relate to the auto accident or they predate it as there were no earlier X-rays to refer to.

After reviewing and considering all of the evidence we are of the opinion, based on a balance of probabilities, that the Appellant's absence from work for the period of December 12th, 1996 to January 7th, 1997 was due to a relapse of the medical problems she received in the December 19th, 1995 auto accident. She is therefore entitled to receive IRI for this period at the same rate of her earlier compensation.

2. The Appellant wants MPIC to pay for her chiropractic care from March 1997 until she no longer required it as she feels it will prevent the re-occurrence of the problems that caused her to miss work in December 1996.

In short D.L.M. wants MPIC to take financial responsibility for preventive medicine.

Dr. Thompson in his report dated November 12th, 1997 advises that after the Appellant's return to work on January 7th, 1997 she has only consulted him for treatments on May 7th, June 3rd, August 21st and 26th, September 2nd and October 10th and 17th. D.L.M.'s evidence was that she was only seeing her chiropractor once every 6 weeks. She consulted Dr. Mason only once after she returned to work on January 7th, 1997, and that was on June 25th, 1997. She was complaining of intermittent neck pain but no additional treatment was provided apart from encouragement to continue her exercises and use a cervical pillow.

This frequency of treatments can best be described as maintenance chiropractic care and not part of a rehabilitation program. D.L.M. advised she frequently used chiropractic care prior to the auto accident to treat various problems and as a preventive measure. There is no medical evidence to support the contention that she is on or requires a remedial program of chiropractic treatments. We are of the opinion that the current level of minimal chiropractic treatments are for maintenance care only and are not needed as a result of the auto accident of December 1995. Therefore MPIC does not and will not have to pay for this type of requested service.

**DISPOSITION:**

For the foregoing reasons, we vary the Acting Review Officer's decision of August 7th, 1997 and award payment of IRI to D.L.M. for the period of December 12th, 1996 to January 7th, 1997 plus interest.

Dated at Winnipeg this 7th day of May 1998.

**J. F. REEH TAYLOR, Q.C.**

**CHARLES T. BIRT, Q.C.**

**F. LES COX**