

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by A.M.R. (formerly B.)

AICAC File No.: AC-97-108

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Mr. Dean Scaletta
the Appellant, A.M.R., appeared on her own behalf

HEARING DATE: April 14, 1998

ISSUE: Whether income replacement indemnity ('IRI') terminated prematurely.

RELEVANT SECTIONS: Section 110(1)(a) of the MPIC Act

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 Appellant, a resident of [text deleted], [text deleted], at the time, was visiting her mother in Manitoba when, on September 15th, 1996, the vehicle that she was driving was in collision with another vehicle which collided with hers from the right after running a red light. As a result, she sustained a fracture of the medial malleolus, fractured left ankle, a fracture of the distal left radius and fracture of the 9th right rib with multiple abrasions all over her body; she also sustained lacerations to her head, wrist, back and left upper and lower extremity. She was unable to walk until, on or about the day before she returned to [text deleted] on September 30th, 1996, the earlier, heavy

cast was removed from her left leg and replaced with a walking cast. Although she was advised to try using crutches, particularly because of the elbow gutter that had been applied to accommodate her left wrist fracture and because her left ankle fracture precluded any weight bearing on that leg, she had great difficulty using crutches partly because of the rib fracture and partly because of the wrist fracture.

The cast was removed from her leg on or about the 11th of November of 1996 and MPIC, who paid her income replacement indemnity from September 23rd, 1996 through November 13th, decided upon what, to this Commission, appeared to be somewhat flimsy evidence, that she was now capable of returning to her former employment and discontinued the IRI benefits.

The Appellant's primary source of income, at the time of the accident, was in the field of direct sales in what she, herself, describes as an operation akin to that of the [text deleted] except that, in her case, the product being sold consisted of prepaid telephone cards. The fact is that those sales required a substantial amount of organization, including direct sales on a person-to-person basis and the holding of meetings attended by from 50 to 70 people. Her evidence was that she spent a great deal of her time travelling around [text deleted] and other provinces.

The only evidence of any consequence that we were given as to the date when the Appellant was able to resume her former employment was that of the Appellant herself. She testified that it was on or about December 7th of 1996 that she felt stronger - not completely fit again, patently, but strong enough to resume a more normal business pattern. She was not travelling as much, but was at least

able to do more useful work. After the removal of her cast, her leg swelled; she had put on weight which, she testified, did not help her ability to get around; the pins that had been surgically installed in her ankle were not removed, in fact, until August of 1997.

We are satisfied, on a strong balance of probabilities, that it was not until December 7th of 1996 that the Appellant was able to resume her former occupation, and we find that she is entitled to the additional income replacement indemnity from November 14th to December 6th of 1996, both inclusive, with interest on that sum at the prescribed rate from December 6th, 1996 to the date of actual payment.

Dated at Winnipeg this 15th day of April 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED