

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by M.V.P.
AICAC File No.: AC-98-115**

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
Ms Joan McKelvey
M.V.P., the Appellant, appeared on her own behalf, accompanied
by Dr. Steven Craig Gilbert, DC

HEARING DATE: December 11th, 1998

ISSUE: Whether income replacement indemnity and other benefits
properly terminated by MPIC.

RELEVANT SECTIONS: Sections 81(1), 110(1)(a), 110(2)(d) and Section 115 of the MPIC
Act, and Section 8 of Manitoba Regulation 37/94

**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

M.V.P. was involved in a motor vehicle accident on December 6th, 1994. M.V.P. has a lengthy medical history, primarily related to her back, involving stenosis (a narrowing of the spinal canal) and severe degenerative changes throughout her back, all predating her motor vehicle accident.

She has been assessed and, in several instances, treated by general practitioners and by specialists in the fields of neurology, rehabilitative physiotherapy, orthopedic surgery, occupational therapy, psychology and by members of the Pain Clinic at the Health Sciences Centre.

M.V.P. received income replacement indemnity as well as payment for all of her chiropractic, medical and paramedical care. In addition, she received a reconditioning program at PAR Health Services, acupuncture treatments, dietary counseling, two gradual return-to-work programs, a comprehensive work-hardening program through the Redboine Clinic, which encompassed physiotherapy and occupational therapy, and a key functional assessment on December 11th, 1996 by Northern Rehabilitation Services. From the seventh day following the date of her accident, M.V.P. received income replacement indemnity at a rate of \$[text deleted] bi-weekly.

We do not believe that any useful purpose will be served in a detailed recital of M.V.P.'s medical history. It is enough to say that, on February 17th, 1997, her Case Manager at MPIC wrote to M.V.P. to say, in effect, that the Corporation had reached a conclusion that she had attained pre-accident status and had also reached maximum therapeutic level required for her return to work in her previous work capacity. However, by that time she had lost her employment with [text deleted], bringing into play Section 110(2)(d) of the MPIC Act. (A copy of that section and of the other relevant statutory and regulatory provisions are attached to these Reasons.) M.V.P. therefore continued to receive income replacement indemnity for a further year, until January 19th, 1998 - she had been advised, orally, of the Corporation's decision on January 19th, 1997, of which the February 17th letter was merely confirmatory.

An examination of M.V.P.'s medical and paramedical records relating to the few weeks and months immediately following her motor vehicle accident persuades us that the trauma of that accident was of a comparatively mild nature. There were no recorded signs of even moderate trauma, let alone

severe one. There were no bruising, swelling, inflammation - none of the usual signs that might have been expected. The result of that accident was, merely, an aggravation of a pre-existing condition.

We shall attach to these Reasons a copy of the decision of Manitoba Public Insurance Corporation's Acting Review Officer since, in large measure, we adopt that decision. We differ from the Acting Review Officer's rationale only in one area which, in the event, does not bring us to a different conclusion than his. We refer to his dismissal of the evidence of M.V.P.'s chiropractor, Dr. Gilbert. This Commission has had the benefit of Dr. Gilbert's oral testimony which, we have to say, was thoughtful, well presented and strongly supportive of M.V.P.'s position. Dr. Gilbert acknowledged that it was difficult, if not impossible, to prove by physical evidence that M.V.P.'s continued problems with her lower back and left leg resulted from her motor vehicle accident, or whether they are merely continuances of her pre-existing conditions. Dr. Gilbert expressed the view that, while it was highly probable that M.V.P. would have reached her present state of partial disability eventually, her motor vehicle accident of December 6th, 1994 almost undoubtedly, in his view, hastened that deterioration.

As Dr. Michael MacKay, MPIC's medical consultant to its Claims Services Department, puts it: "Dr. Gilbert's theories pertaining to forces that the spine may be exposed to during a motor vehicle collision sound reasonable, but it would be impossible to determine if, in fact, [M.V.P.'s] spine was subjected to such forces and if disruption of soft tissue structures and intervertebral disks occurred".

A careful examination of all of the other medical evidence on M.V.P.'s quite voluminous file

persuades us that she had, indeed, overcome the physical effects of her motor vehicle accident by January of 1997, at the latest, and, with deference to Dr. Gilbert, we are not persuaded that the nature of M.V.P.'s motor vehicle accident was such as to cause the dramatic change and acceleration of her condition of which she now complains. Fortunately, M.V.P. has been able to return to the workforce on a full-time, but temporary, seasonal basis. We are of the view that there are psychological barriers to be overcome if she is to be reintegrated into the workforce on a full-time basis, and that those barriers predated her motor vehicle accident.

We are therefore obliged to confirm the decision of the Acting Review Officer and to dismiss M.V.P.'s appeal.

Dated at Winnipeg this 14th day of December 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED