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Indexed as:
K.A.S. (Re)

IN THE MATTER OF an appeal by K.A.S.
AICAC File No.: AC-98-126

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[1999] M.A.I.C.A.C.D. No. 19

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and
L. Goodspeed
Heard: May 19, 1999.
Decision: May 25, 1999.
(12 paras.)

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Issue(s):
Meaning of "relapse".

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Relevant Sections:
Manitoba Public Insurance Corporation Act, S.M. 1993,
c. 36, ss. 84(1), 106 and 117.

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Appearances:
Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.
The appellant, K.A.S., appeared on her own behalf accompanied
by her husband, L.S.

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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

[para1] One of the grounds upon which K.A.S.'s appeal was originally based related to the fact that, for about two years during the five years immediately before her last accident, K.A.S. had been a homemaker, not gainfully employed outside the home. The calculation of her income replacement indemnity had been adjusted to take that fact into account and this, in her submission, was an unfair discrimination in that it placed no value at all upon the work of a wife and mother. However, in the course of the hearing of her appeal, K.A.S.

acknowledged that MPIC had, in fact, been applying the Act and Regulations correctly. She merely wanted to record her philosophical objections to that facet of the legislation.

[para2] The only issue before this Commission, therefore, is the proper meaning of the word "relapse" as it appears in Section 117 of the Act. The relevant facts giving rise to this appeal may be summarized very simply:

[para3] 1. K.A.S. was the victim of an automobile accident on April 17th, 1996, when her vehicle was rear-ended. She sustained musculoligamentous injuries, resulting in pain to her neck, shoulder and low back, with headaches and occasional nausea. Her medical history in the ensuing months reflects a return to work for a while but, after a deterioration, she was obliged to quit work in about mid-September, 1996 and she stayed off work until

[para4] 2. December 18th, 1996, when she sustained a second, similar accident. The December accident seems to have caused a temporary flare-up, but K.A.S. commenced a graduated return to work in January of 1997 and, by some time in early February, appears to have resumed her original duties as a program co-ordinator at [text deleted], instructing in crafts, selling crafts and, despite continuing bouts of pain and discomfort, occasionally lifting containers of foodstuffs coming into the [text deleted] from Winnipeg Harvest.

[para5] 3. On March 4th, 1997 K.A.S. was examined by Dr. Gregory Chernish, a physician specializing in pain management, who noted that she was experiencing sleep disturbance and myofascial pain in the neck and shoulder. Dr. Chernish expressed the opinion that K.A.S. was capable of "full function with symptoms" and had the capacity of working her full duties.

[para6] 4. On March 20th, 1997, the car that K.A.S. was driving sustained yet a third rear-end collision, and in her report of that accident to MPIC she describes her injuries as "neck, back injury aggravation, TMJ (temporomandibular joint injury), headaches". She was referred by MPIC to Dr. Hillel Sommer for an independent medical examination. The symptoms that she described to Dr. Sommer, as recorded in his report of October 20th, 1997, reflect, in part:

Right sided neck and shoulder pain with occasional radiation as far down the back as the upper lumbar spine. The left side aches along the shoulder, neck as well but less so. She complains of left foot swelling and pain over the dorsum of the foot and leg. The right temporomandibular joint is frequently painful and occasionally leads to right sided temporal headache. Her right arm aches with activity and both hands tingle

especially at night. She has been treated with wrist splints for this. Intermittently she has awoken at night because of "the whole back locks up".

[para7] It is K.A.S.'s submission, voiced on her behalf by her husband, L.S., that the injuries she sustained in her accident of March 20th, 1997, constituted a relapse, and should be treated as such within the meaning of Section 117, which reads as follows:

Entitlement to IRI after relapse

117(1) If a victim suffers a relapse of the bodily injury within two years

(a) after the end of the last period for which the victim received an income replacement indemnity, other than an income replacement indemnity under Section 115 or 116; or

(b) if he or she was not entitled to an income replacement indemnity before the relapse, after the day of the accident;

the victim is entitled to an income replacement indemnity from the day of the relapse as though the victim had been entitled to an income replacement indemnity from the day of the accident to the day of the relapse.

Victim entitled to greater IRI

117(2) The victim is entitled to an income replacement indemnity computed on the basis of the greater of

(a) the gross income used by the corporation immediately before the end of the period referred to in clause (1) (a); and

(b) the gross income of the victim at the time of the relapse.

Relapse after more than two years

117(3) A victim who suffers a relapse more than two years after the times referred to in clause (1) (a) and (b) is entitled to compensation as if the relapse were a second accident.

[para8] K.A.S.'s position, as we understand it, is that she had never fully recovered from either of her first two accidents - the second one, in particular - and that her third accident really produced no new injuries but merely served to exacerbate her pre-existing condition. This, it is

argued, is at least one of the reasonable interpretations of the word 'relapse'. A ruling in K.A.S.'s favour would result in a finding that she was entitled to an immediate continuance or resumption of her IRI as of March 20th, 1997 (the date of her third accident), despite the fact that she was then a part-time earner.

[para9] Counsel for MPIC, on the other hand, argues that, while an event other than a motor vehicle accident might well, under some circumstances, cause a relapse or exacerbation of a prior condition, if the event in question is a new motor vehicle accident then it falls within the definition of "accident" contained in the Act and the result is a "bodily injury caused by or by the use a motor vehicle", bringing that incident squarely within the contemplation of Section 71(1). While respectful of the arguments advanced on behalf of K.A.S., we have to agree with the position of MPIC. As well, it has to be said that K.A.S.'s third accident appears to have done substantially more damage than the mere exacerbation of her pre-existing condition. The report of Dr. Hillel Sommer, referred to above, indicates that, in addition to some of the problems of which K.A.S. had complained after her first and second accidents, she had sustained some new injuries. For example, she was now suffering bilateral pain at the shoulder and neck, left foot swelling and pain over the dorsum of the foot and leg and the TMJ problem. These, along with an aching right arm and tingling of the hands, are not matters that had been described in earlier medical reports. MPIC paid bills for two dentists, Drs. Gerry Abells and Lanny Jacob for injuries that did not exist prior to the 1997 accident and were apparently caused by that accident.

[para10] In sum, then, we find that K.A.S.'s third accident gave rise to injuries that had not existed before March 20th, 1997 and which could not, in any event, fall within the meaning of the word "relapse". As well, and of greater significance, we share the view of MPIC's Internal Review Officer that, if a victim sustains injuries in one or more motor vehicle accidents and even if the same or similar injuries are caused or aggravated by a subsequent motor vehicle accident, those subsequent injuries would not fall within the meaning of "relapse" as it appears in the MPIC Act. Rather, they would fall within the definition of "accident" contained in Section 70(1) of the Act, namely "any event in which bodily injury is caused by an automobile".

[para11] It follows, then, that MPIC was correct in completing for K.A.S. a 180-day determination under Section 84(1) of the MPIC Act for each of her second and third motor vehicle accidents of April 17th, 1996 and March 20th, 1997 respectively. These were two, separate accidents with separate sequelae; the injuries sustained in the one were not merely a relapse of the injuries sustained in the other.

[para12] We are obliged, therefore, to dismiss K.A.S.'s appeal.

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