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Indexed as:
H.V. (Re)

IN THE MATTER OF an appeal by H.V.
AICAC File No.: AC-99-79

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[2000] M.A.I.C.A.C.D. No. 13

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C. and
C.C. Settle, Q.C.
Heard: April 7, 2000.
Decision: April 10, 2000.
(11 paras.)

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Issues(s) :

- (i) whether Appellant entitled to reinstatement of Income Replacement Indemnity ('IRI'); and
- (ii) whether Appellant entitled to reimbursement for chiropractic or physiotherapy treatments, or both.

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Relevant Sections:

Section 110(1) and Section 5(a) of Manitoba Regulation
40/94.

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Appearances:

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

The appellant, H.V., appeared on her own behalf.

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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] The Appellant, H.V., sustained injuries in motor vehicle accidents in February 1992, November 1995, on June 16th, 1997, and on December 22nd, 1998. We are concerned, in this appeal, with the question whether, on June 17th, 1998, there were sufficient grounds for the total termination by MPIC of the Appellant's benefits under Part II of the MPIC Act.

[para2] In her 1992 accident, H.V. sustained some soft tissue injuries but, following physiotherapy, analgesics, and short periods of rest, she is reported by Dr. A. Arneja (a specialist in physical medicine and rehabilitation at the Department of Medicine, University of Manitoba) to have made significant improvement, enabling her to return to work and to continue her job and activities of daily living.

[para3] In her second motor vehicle accident, on November 20th, 1995, H.V. suffered neck strain but again, with physiotherapy and massage therapy she was able to continue working full-time and made no claim for income replacement.

[para4] H.V.'s accident of June 16th, 1997, gave rise to new soft tissue injuries, apparently affecting much the same areas of her body as had been the case with her prior accidents. The result was diagnosed by Dr. Arneja as "soft tissue pain syndrome with regional myofascial trigger points affecting trapezius, sternocleidomastoid gluteii and piriformis muscles." The evidence indicates that, on a reasonable balance of probabilities, despite the fact that she had been working full-time, H.V. had not completely recovered from the effect of her two earlier accidents when the third one occurred on June 16th, 1997. That third accident exacerbated almost all of the old symptoms, to the point at which she had to take some weeks away from work and then start a graduated return to work, along with physiotherapy, chiropractic manipulations, acupuncture and medications. After seven weeks of absence from the workplace, H.V. was able to work up to six hours per day, five days a week, by December 22nd, 1998, when she was involved in yet another, fourth, motor vehicle accident. The benefits, if any, to which she may be entitled as a result of that most recent accident are not the subject of this appeal.

[para5] Following her motor vehicle accident of June 16th, 1997, the Appellant received Income Replacement Indemnity until June 17th, 1998, although at a lesser amount during the weeks when H.V. returned to work for a reduced work week. In addition, she received home care allowance, travel allowance, ergonomic equipment, payment for some of her medication, and for both physiotherapy and chiropractic care.

[para6] As of June 17th, 1998, MPIC terminated all further benefits, upon the basis that she was no longer suffering from the effects of her 1997 MVA. The Corporation's decision was founded largely upon the opinion of Dr. Michael MacKay, who was of the view that the Appellant had had a chronic musculotendinous strain involving her cervical spine since February 1992, a resultant chronic pain condition, and an exacerbation of her chronic cervical symptoms as a result of the 1997 MVA, but that the exacerbation had resolved.

[para7] With deference, we are not able to find that the adverse effects of the 1997 MVA had, in fact, resolved by June 17th, 1998. While it may be true that the Appellant had developed chronic problems of her cervical and upper back regions even prior to her 1997 and 1998 collisions, she had been working full-time and enthusiastically, had been able to earn additional monies by working overtime, and had been named as Employee of the Month for April 1997 by her employer, the [text deleted]. It was only after her 1997 MVA that she had become unable to perform her full eight-hour shifts and this, in turn, apparently lost her the opportunity of a 2 percent wage increase and other incentive monies. A careful reading of the reports of Dr. Tracy Hamin, chiropractor, dated November 22nd, 1999, of Dr. Brian Lukie, M.D., of November 26th, 1999, and of Dr. Arneja, of January 20th, 2000, each of which contains, to a greater or lesser degree, an historical review of the Appellant's medical history, persuades us that there were insufficient grounds for the total termination of the Appellant's benefits under Part II of the MPIC Act on June 17th, 1998. She had been showing a gradual improvement by that date, and was in the middle of a graduated return to work program but was still not restored to full earning capacity; she was apparently still in need of physiotherapy and chiropractic treatments, both of which (somewhat unusually) appear to have been recommended concurrently by Dr. Lukie.

DISPOSITION:

[para8] H.V. is claiming Income Replacement Indemnity covering the normal hours of work that she missed between June 17th, 1998, and December 22nd, 1998, for which we find her to be entitled, along with the cost of chiropractic and any physiotherapy treatments that she may have received during that same time frame. Similarly, she is entitled to be reimbursed for the cost of any medications prescribed for her by Drs. Arneja or Lukie as part of her rehabilitation program.

[para9] H.V. is also claiming additional monies, in the form of vacation pay, pay raises to which, she alleges, she would have been entitled had she been working full-time, an unspecified sum for lost overtime opportunities, as well as \$546.17 for massage treatments and \$25 for "mineral spa visits." We make no comment as to the extent (if any) to which a victim of a motor vehicle accident may be entitled to any of the foregoing. We content ourselves with noting that none of these latter aspects of H.V.'s claim has been dealt with by her adjuster at MPIC, let alone by the Internal Review Officer, and we are therefore without jurisdiction to deal with them.

[para10] The matter is therefore referred back to MPIC's case management team for the calculation, and payment to H.V.,

of Income Replacement Indemnity based upon the number of regular working hours that she missed from her workplace after June 17th, 1998, up to, and including, December 21st, 1998, other than any normal, paid vacation.

[para11] MPIC shall also pay to H.V., upon production of satisfactory evidence of their payment, the cost of chiropractic treatments, physiotherapy treatments and medications expended by H.V. between June 18th and December 21st, 1998, both inclusive, plus transportation costs incurred in attending any of the foregoing treatments.

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