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Indexed as:
M.J.P. (Re)

IN THE MATTER OF an appeal by M.J.P.
AICAC File No. AC-99-151

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[2000] M.A.I.C.A.C.D. No. 27

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares,
and C.T. Birt, Q.C.
Heard: April 17, 2000.
Decision: August 18, 2000.
(21 paras.)

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Issues(s):

- (i) Whether Appellant entitled to further therapies; and
- (ii) Whether Appellant's Income Replacement Indemnity ('IRI') terminated prematurely.

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Relevant Sections:

Sections 81(1)(a), 110(1)(a), 138 and 160(f) and (g) of
the MPIC Act.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') was represented
by Keith Addison.

The appellant, M.J.P., appeared on her own behalf, accompanied
by her sister, I.E.

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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, M.J.P., nearly 38 years old at the
time of her first accident, had been employed as a sewing
machine operator in the garment industry for some 20 years.
M.J.P. was involved in two motor vehicle accidents, in each of
which she was a passenger in the right front seat of the
vehicle. Her first accident occurred on March 9th, 1997, when
the truck in which she was riding overturned. She was

subsequently assessed and, in some instances, treated by Dr. Dan Wilson, her chiropractor, Mr. Roland Reenders, an exercise therapist to whom Dr. Wilson had referred her, Dr. Raj Mahay, her family physician, and Dr. F. K. Shariff, an orthopedic specialist to whom Dr. Mahay had referred her. In that first accident she appears to have sustained musculo-ligamentous injuries to her neck and lower back, which became sore and stiff, with accompanying headaches. After some three or four months, most of those symptoms had eased markedly: headaches were only occasional, treatable with Tylenol; neck pain was no longer a problem; lower back pain was improving, at least by September 3rd, 1997, when she first saw Dr. Shariff. By that same time, however, she had developed signs of trochanteric bursitis on the left side, which Dr. Shariff treated by local steroid injection with Xylocaine.

[para2] A bone scan performed on September 8th, 1997, was interpreted as disclosing "unilateral sacroiliitis or post-traumatic changes in that area".

[para3] As a result of that first accident, M.J.P. missed approximately three months of work. She initially returned to work on a part-time basis, worked for about two months and then quit, explaining that she was finding it difficult to work due to pain on the outer side of her left hip and in her lower back.

[para4] M.J.P. had not yet returned to work when, on November 29th, 1997, she was involved in a second motor vehicle accident; the right front fender of her husband's truck struck a deer and overturned. In that second accident she re-injured her neck and low back, with accompanying headaches and, once again, remained off work for an extended period.

[para5] M.J.P. then underwent an extensive rehabilitation program at the Wellness Institute at Seven Oaks Hospital, as well as continuing treatments from Dr. Shariff, Dr. Wilson and Dr. Mahay.

[para6] On completion of her rehabilitation program, she was deemed functional and a gradual return-to-work program was scheduled to begin in the first week of February, 1998. M.J.P. was to have started working three hours per day, increasing until she had finally reached a full working day. Her work station was ergonomically arranged by an occupational therapist at the expense of MPIC, and her coffee breaks were also adjusted to provide her with an earlier break, with the co-operation of her employer, [Text deleted]. During the week of February 2nd to February 13th, 1998, M.J.P. worked a total of 15 hours.

[para7] On February 15th, 1998, she awoke with back pain radiating into her left hip. She claimed that she could not

sleep, could barely walk and had difficulty even dressing herself.

[para8] At this juncture, there appeared to be no objective medical findings to substantiate M.J.P.'s inability to return to work. A CT scan of her lumbar region disclosed totally normal results, other than signs of degenerative disease at the L-3/L-4 level.

[para9] MPIC then referred her to Dr. Gregory Chernish, MD, of the Centre for Pain and Stress Management, who saw her on April 1st, 1998. Dr. Chernish recommended that M.J.P. be given antidepressant medication to help her with sleep and pain control, to be followed by a short course of trigger-point acupuncture for a period of four to six weeks. He felt that she would be able to recommence her return-to-work program on completion of that treatment. On May 27th, 1998, Dr. Chernish indicated that he had done all he could for M.J.P. and recommended that, now that she was sleeping better, she should embark on a gradual return to work, despite the fact that she was still complaining of pain. Blood tests for which Dr. Chernish had arranged did show some possible liver problems. A further report from Dr. Chernish on September 1st, 1998, again indicates that he could find no reason why M.J.P. could not return to work. He felt that further physical therapies were unlikely to be beneficial.

[para10] On September 9th, 1998, MPIC retained the services of D.B. Hanson and Associates, Rehabilitation Consultants, with instructions to conduct a vocational assessment in order to help M.J.P. return to work. Over the course of the next several months, programs to facilitate M.J.P.'s gradual return to the workplace were developed and amended on several occasions due to M.J.P.'s frequent absences. Those absences were sometimes explained by the death of a family member, sometimes by an apparent onset of stomach flu that prevented the Appellant from going to work, sometimes by complaints of pain, and sometimes by reason of intra-family problems related to the separation of M.J.P. from her husband. During that same period, MPIC was either continuing to pay Income Replacement Indemnity to M.J.P. or, during the time that she was actually earning, was topping up her part-time salary to the full level of income replacement.

After several warnings during the period leading up to mid-February, each time M.J.P. missed work thereafter for reasons unrelated to her motor vehicle accident, MPIC reduced her IRI benefits proportionately.

[para11] By March 2nd, 1999, M.J.P.'s case manager at MPIC reached such a peak of frustration in her attempts to help the Appellant that she finally wrote to tell M.J.P. that further IRI and other benefits would not be forthcoming. In that letter, the case manager attempted to summarize all of the attempts that had been made to return M.J.P. to her

pre-accident condition, including payment for medication, transportation, chiropractic treatment, physiotherapy and other rehabilitation modalities, the course of treatment by Dr. Chernish for pain and stress management, the retention of D.B. Hanson and Associates, all against a background of what the case manager perceived to be a consistent lack of co-operation on M.J.P.'s part and an absence of any objective, clinical evidence to support M.J.P.'s complaints. The case manager concluded by advising M.J.P. that IRI benefits would be terminated on March 26th, 1999.

[para12] Despite having written that letter of March 2nd, 1999, MPIC's case manager continued her efforts to reintegrate M.J.P. to the workplace. She met with representatives of [Text deleted] on March 4th, 1999, to discuss any further changes that might be made to M.J.P.'s work station beyond the ergonomically designed chair that MPIC had already provided. Several attempts were made by the case manager to meet with M.J.P. and representatives of the employer at the work site, all of which were frustrated by M.J.P.'s continued absences, of which neither the case manager nor the employer had been made aware ahead of time. As one, simple example, the case manager noted on March 30th that her last conversation with M.J.P. had been on March 15th of 1999, when M.J.P. indicated she would be off for "a couple of days" due to the recent death of her mother-in-law. She was to have returned to work on March 17th but had not done so by March 30th. As the case manager noted, "there has been a lot of effort by all persons involved in this claim to rehabilitate this woman. She, however, continues to put up barriers and as soon as it is time to increase her work hours she misses work."

[para13] On April 26th, 1999, M.J.P. applied for an internal review of the case manager's decision. The Internal Review Officer confirmed that decision by letter of August 30th, 1999. M.J.P. appealed from that decision to this Commission by Notice of Appeal dated November 25th, 1999.

[para14] Meanwhile, M.J.P. had been referred by her family physician, Dr. C. Tran, to Dr. A. Arneja, a specialist in physical medicine and rehabilitation, who had first seen M.J.P. on September 2nd, 1999. He addressed a lengthy and thorough report to MPIC on December 20th. After outlining the history that he had taken from M.J.P. of the complaints with which she presented to him, and detailing his findings on physical examination of the Appellant, Dr. Arneja summarized his clinical assessment as follows:

1. [M.J.P.] has mechanical and regional myofascial neck pain syndrome. She has developed a tension myalgia and headaches due to spasm of the paracervical and shoulder girdle muscles.
2. She has developed some degree of reactive depression

to the long-standing soft tissue pain syndrome and has become emotionally labile.

3. She has reduced functional capabilities and has not been able to return to gainful employment.

Dr. Arneja did not feel that any further radiological investigations were called for. He felt that M.J.P. would require local, trigger-point needling on a weekly basis for three or four weeks, followed by specific stretching exercises to resolve the myofascial trigger points and soft tissue pain syndrome. She was to be given home stretching exercises and, as well, relaxation exercises. He prescribed Amitriptyline.

[para15] Dr. Arneja saw M.J.P. on several subsequent occasions, specifically, on September 7th, 14th and 22nd, November 18th and December 13th, 1999. On this latter occasion, he was able to report that she had made good recovery from her regional myofascial pain of the neck, shoulders, back and hips. She still had low endurance and reduced functional capabilities, for which he recommended four to six weeks of conditioning exercise at PAR Health Services. He felt she would be able to return to gainful employment by the end of January or the first week of February 2000.

[para16] Dr. Arneja examined M.J.P. again on February 3rd, 2000, and his report to MPIC of that date says, in part:

[M.J.P.] tells me that she has not been contacted by PARS [sic] because MPIC has not approved the recommended treatment.

[M.J.P.] was doing well until a week ago when she tried to do sewing for four hours and the second morning she woke up with acute exacerbation of the neck and right hip pain. Since then, the pain has persisted.

[There follows a brief description of Dr. Arneja's findings from a physical examination of the Appellant.]

Impression: Unfortunately [M.J.P.] has developed reoccurrence of regional myofascial trigger points of the right trapezius and piriformis muscle after she worked for four hours.

.....With the appropriate treatments prescribed to her in the past three months, she made significant improvement in her pain syndrome and all the trigger points were resolved. Because of her low endurance for any prolonged static and dynamic activities, she developed reoccurrence of pain when she worked for more than four hours on a sewing machine. I am afraid that if she does not undergo a recommended conditioning exercise program, she may go

into phase of regional myofascial pain syndrome, it will take several weeks before she will improve.

Dr. Arneja's February 3rd report concludes with a request that M.J.P. undergo a conditioning and work-hardening program to improve her endurance and strength so that she might return to her pre-injury occupation.

[para17] This Commission heard M.J.P.'s appeal from the Internal Review Officer's decision on April 19th, 2000. On that same date, we wrote to Dr. Arneja to ask for certain clarification and for an updated assessment. On June 15th we received his reply which, in essence, tells us that as of June 1st of this year, M.J.P. no longer has neck pain when at rest but, when she does any medium to moderate activities, she starts experiencing pain in the neck and shoulder muscles. She has made good recovery but still has low endurance for any repetitive and medium to heavy level of activities and work. As a result, Dr. Arneja is still strongly recommending a four-to six-week conditioning and work-hardening program to be provided by PAR Health Services or some other rehabilitation institute in order to restore her spinal function and improve her endurance. Her treatment, he suggests, should encompass three to five sessions per week for four to six weeks.

[para18] There is no question that MPIC's case manager and other personnel have worked very hard in their attempts to rehabilitate M.J.P. We have no criticism of the way in which this claim has been handled from the beginning. We also tend to agree with the observation of counsel for MPIC, to the effect that Dr. Arneja's first report is almost identical to that of Dr. Chernish when he first saw her. The difference between the two situations appears to be that, whereas M.J.P.'s life was somewhat tumultuous during the time that she was seeing Dr. Chernish, causing a psychological barrier to full co-operation with the people who were trying to help her, she seems now to have reached a point where that co-operation may be possible. The optimism expressed by Dr. Arneja, combined with his cautionary comment, persuades us that it is worthwhile making this one final effort to complete M.J.P.'s rehabilitation and return her to the workplace.

[para19] This matter will therefore be remitted back to MPIC's case manager who, working in conjunction with Dr. Arneja, will arrange for a conditioning and work-hardening program for M.J.P. for a period not exceeding six weeks at PAR Health Services, encompassing three to five sessions per week.

The case manager will need to explain to M.J.P. that any failure to comply fully with that program will, in the absence of reasonable, credible and provable excuse, bring about the immediate discontinuance of any further participation by MPIC in her rehabilitation.

[para20] Since the program described by Dr. Arneja will be

fairly intensive, precluding any work for which M.J.P. might otherwise be suited, her Income Replacement Indemnity will be reinstated, but only for the period during which she is actively participating in that reconditioning and work-hardening program. If, either during or at the conclusion of that program, Dr. Arneja and the therapists at PAR working with M.J.P. are of the view that a graduated return to work ('GRTW') is appropriate (and provided that [Text deleted] or some other suitable garment manufacturer is willing to accommodate her) then she will be entitled to have her earnings 'topped up' to IRI level while she is actively participating in that GRTW, for a period not exceeding six weeks. Any reference to PAR Health Services in this and the preceding paragraph may be interpreted to include the Wellness Centre or other, similar institute able to provide comparable services.

[para21] In all other respects the decision of MPIC's Internal Review Officer is confirmed.

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