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Indexed as:
M.L.D. (Re)

IN THE MATTER OF an appeal by M.L.D.
AICAC File No.: AC-00-90

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[2000] M.A.I.C.A.C.D. No. 45

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Manitoba Automobile Injury Compensation Appeal Commission
Y. Tavares, (Chairperson), F.L. Cox, and W. MacLennan
Heard: October 12, 2000.
Decision: December 4, 2000.
(21 paras.)

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Issues(s):

Entitlement to income replacement indemnity benefits.

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Relevant Sections:

Section 110(1)(a) of the MPIC Act.

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Appearances:

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

The appellant, M.L.D., 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

The Facts:

[para1] The Appellant, M.L.D., was involved in a motor vehicle collision on November 6, 1997, at which time she was the driver of a vehicle without her seatbelt on when she collided with another vehicle at an intersection. From this collision, M.L.D. developed symptoms in multiple regions of her body. She was initially assessed by a chiropractor, Dr. Mitchell, who documented in a report dated November 29, 1997 that M.L.D. had symptoms and signs in keeping with a Whiplash Associated Disorder II ("WAD II") involving her cervical and lumbar regions. He also documented that M.L.D. had sustained contusions to her left knee, left elbow and left hand. It was

Dr. Mitchell's opinion that, because of her multiple symptoms, M.L.D. was unable to perform her work as a home care attendant and would be unable to return to work until late January of 1998.

[para2] M.L.D. subsequently attended her general practitioner, Dr. Price, who told her that she should stay off work until January 1998. He also referred her to physiotherapy. M.L.D. was assessed by Ms. Suzanne Funk (physiotherapist) on December 15, 1997. In a report dated December 22, 1997, Ms. Funk outlined M.L.D.'s areas of complaint as: low back pain, sub-occipital pain, left sided upper trapezius discomfort, left medial elbow pain, left sided pain and stiffness of the spine and scapula, left patellar discomfort and lower quadriceps pain, left medial and lateral wrist and lower hand discomfort, left ankle medial and lateral sharp pain. It was Ms. Funk's opinion that M.L.D. had sustained the following:

1. joint restriction C1-C2;
2. myofascial pain/muscular strain in the sub-occipitals, upper fibers of trapezius, left more so than right scalenes;
3. adverse neural tension/brachial plexus irritation on the left;
4. possible left scaphoid fracture;
5. hypomobility left innominate;
6. facet irritation of the lower lumbar spine;
7. patellar femoral pain; and
8. compression injury left talocrural joint.

[para3] She commenced treatments of M.L.D.'s varying symptoms. In a follow-up report dated January 30, 1998, Ms. Funk documented that M.L.D. had a 90% resolution of her left elbow, left knee, left wrist and left ankle symptoms. Examination of M.L.D.'s lower back revealed full range of motion. It was Ms. Funk's opinion that M.L.D.'s subjective complaints did not correlate with the objective findings Ms. Funk had documented.

[para4] Dr. Price provided a report dated January 14, 1998 at which time he documented information that was present on the physiotherapy report he received from Ms. Suzanne Funk. It was Dr. Price's opinion that M.L.D. was capable of working in a modified capacity.

[para5] The file was then referred to MPIC's Medical

Services Team for an opinion as to M.L.D.'s condition. After reviewing the medical information present in M.L.D.'s file and after speaking with Ms. Funk, Dr. Michael MacKay provided a memorandum dated February 20, 1998. It was Dr. MacKay's opinion that M.L.D. had developed soft tissue symptoms involving various areas of her body as a result of the motor vehicle collision in question. The cervical and lumbar symptoms were in keeping with a WAD II and the symptoms involving her peripheral joints were in the form of contusions; no structural abnormalities had been noted pertaining to the various joints. Dr. MacKay noted that M.L.D. had progressed well through the treatments she received from Ms. Funk to the point that no objective physical findings were noted that would indicate M.L.D. had an impairment of function to a level that would prevent her from returning to her work as a home care attendant.

[para6] Dr. MacKay concluded that M.L.D. was capable of returning to her work as a home care attendant and that she should continue to attend for physiotherapy treatments until the end of February 1998 with Ms. Funk. He also recommended that a home site assessment of one of M.L.D.'s client's living environment should be conducted to determine if modifications could be made. The ergonomic setting for that particular client had apparently made it difficult for M.L.D. to perform proper lifting techniques when assisting this individual out of bed.

[para7] Meanwhile, M.L.D. had returned to work on February 2, 1998. She had worked four shifts when she apparently re-injured herself at work doing a lifting and turning procedure with her client. For reasons that were not completely clear, the Appellant did not file a Workers Compensation claim at this point, but continued her claim with MPIC. Since MPIC did not question or investigate the cause of her re-injury, but instead continued to pay her Income Replacement Indemnity ('IRI') benefits and assist with her rehabilitation, we must assume the insurer concluded that M.L.D.'s ongoing problems were caused by her motor vehicle accident.

[para8] Following up on the recommendations of Dr. MacKay, M.L.D.'s adjuster arranged for a home site assessment to be carried out for M.L.D.'s home care client, E.R. on April 29, 1998 by Ms. Marte Bachynski, occupational therapist. The purpose of the visit was to determine a care plan for the standing pivot transfer of E.R., from wheelchair to bed or stationary commode, and to determine M.L.D.'s ability to perform the transfer safely. In her report dated April 29, 1998, Ms. Bachynski recommended several solutions and techniques to assist with the safe transfer of E.R. She also suggested that in the event that a transfer could not be negotiated safely, a hooyer lift should be installed in E.R.'s home. Relating to M.L.D.'s readiness for patient handling,

she recommended that M.L.D. undergo a standardized lifting assessment.

[para9] The lifting assessment was carried out on June 17, 1998 by Ms. Bachynski to determine M.L.D.'s general readiness for return-to-work as a home care attendant. At the time of the assessment, M.L.D. reported a current episode of low back pain which had started one and a half weeks prior to the visit, brought on by getting up in the morning. She reported that the pain limited her ability to perform a number of functions, including standing to wash dishes, repetitious pushing/pulling such as vacuuming, carrying laundry upstairs, and getting into and out of lying positions. Similarly, M.L.D. reported being limited by pain when performing a sustained squat during the care of other home care clients, particularly in cramped quarters where her position was awkward.

[para10] In her report dated June 22, 1998, Ms. Bachynski concluded that M.L.D. did not demonstrate the capacity to lift and handle patients when using squat or trunk flexion. Her functional presentation did have the features of a discogenic pain pattern. She suggested that M.L.D. return to physiotherapy for a review of extension protocol. She concluded that M.L.D. could return to work with clients where sustained or loaded flexion (in the form of sitting, squatting, bending) could be modified or avoided. However, she would be able to care for patients like E.R., who use a mechanical assist, or for patients who are walking.

[para11] M.L.D. subsequently attended Ms. Funk's office on July 27, 1998 for further physiotherapy treatments. In a report dated July 29, 1998, Ms. Funk reported that M.L.D. did have some subjective complaints of pain, but in her opinion this should not limit her functionally. She prescribed a treatment plan to consist of three treatments, to focus on lumbar stabilization and to instruct on home exercises.

[para12] On August 10, 1998, M.L.D. was seen by Dr. Price for an assessment of her functional ability, as well as to see if there were any positive physical findings. After consultation with Ms. Funk, it was Dr. Price's impression that M.L.D. had no physical findings but multiple subjective complaints. He noted that although she may have some sacroiliac joint pain responsible for her symptoms, it didn't appear that these symptoms should necessarily result in any functional impairment. With regards to treatment, he suggested nothing specific other than a home exercise program and chiropractic manipulations as needed. He concluded that she must learn to live with her discomfort as much as possible and that a weight loss program would certainly improve things.

[para13] Based on this latest medical information, MPIC determined that there were no objective physical findings that

would functionally impair her from performing her pre-accident occupation of a home care attendant. In a letter dated September 14, 1998 and signed by her adjuster, Mr. Jim Miller, M.L.D. was advised that no IRI benefits would be paid to her beyond September 20, 1998.

[para14] On November 8, 1999, M.L.D. filed an Application for Review of MPIC's decision to terminate her IRI effective September 20, 1998. M.L.D. submitted that she was still unable to return to her pre-accident employment as a home care attendant as she could not perform essential requirements of the position.

[para15] Notwithstanding that M.L.D.'s Application for Review was approximately one year out of time, the Internal Review Officer accepted the Application and proceeded with the review. In her decision dated April 7, 2000, the Internal Review Officer concluded that, "As there are no objective medical findings that indicate that you have any functional limitations, you would therefore not be entitled to any income replacement indemnity benefits." Accordingly, she upheld the claims decision of September 14, 1998.

[para16] It is from this latter decision that M.L.D. now appeals.

Discussion:

[para17] At the hearing of this appeal, M.L.D. submitted that to date she has not been able to return to her pre-accident employment. She argued that the restrictions she has in regards to lifting because of her lower back prevent her from resuming her previous occupation. She provided a letter from the Home Care Resource Coordinator that they require all of their employees to have no limitations and to be able to perform all duties as assigned. Employees may be required to use a hooyer lift or turn and position clients who are bedridden. Since M.L.D. had limitations and would be unable to carry out assigned tasks in home care, they would be unable to give her any work. M.L.D. also testified that she has limitations in assisting her husband around the farm because she cannot do any heavy lifting or bending. Further, she testified that she did work in 1999 and 2000 for [text deleted] in [text deleted], Manitoba, sorting potatoes. She was able to tolerate the 12.5 hours per day at this job because she was able to take frequent rest breaks and the work surface was from her waist to her chest. Also, she could elevate her feet if needed to take pressure off her back.

[para18] The Appellant also submitted additional medical reports in support of her appeal. A report dated January 31, 2000 from Dr. Price describes her range of motion as full, however, she has discomfort on the right side of the low back on bending forwards and forced flexion. She is tender on the

right side and has worsening of symptoms with repetitive movements particularly. Dr. Price went on to provide a diagnosis of myofascial pain secondary to her original trauma. A report dated July 11, 2000 from Dr. T.K. Goodhand diagnoses M.L.D. with residual fibromyalgic-like symptoms that will permanently prevent her from going back to her heavy lifting duties as a home care attendant. X-rays taken July 6, 2000 of her pelvis, cervical and lumbar spine show no bone or joint abnormality except for a minor scoliosis of the lumbar spine to the left.

[para19] These medical reports together with numerous excerpts from the Appellant's claim file were reviewed by Dr. Hillel Sommer of MPIC's Medical Services Team to determine whether the new information altered previous opinions expressed regarding the Appellant's ability to return to her pre-accident employment. Dr. Sommer concluded that there were no findings indicative of myofascial pain and the Appellant did not meet the diagnostic criteria for Fibromyalgia. He also concluded that there were no physical findings that indicated a functional impairment that would prevent the performance of the essential tasks of the occupation in the same manner as pre-collision. The sole basis for work incapacity appeared to be the Appellant's subjective complaints.

[para20] Upon a careful review of all the material submitted and the arguments presented at the hearing, this Commission accepts Dr. Sommer's report and his comments regarding the Appellant's case. We are mindful that it has now been over three years since the Appellant's accident and in the usual course of events any injuries resulting from a Whiplash-Associated Disorder Type II should have healed long ago. We cannot find on a balance of probabilities that her current complaints are as a result of the motor vehicle collision.

Disposition:

[para21] For the foregoing reasons, M.L.D.'s appeal is dismissed.

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