



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.G.
AICAC File No.: AC-02-08**

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Mr. Wilson MacLennan

APPEARANCES: The Appellant, D.G., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: October 15, 2002, March 5, 2003, July 14, 2003

ISSUE(S): 1. Entitlement to further Income Replacement Indemnity
benefits
2. Entitlement to further Chiropractic Treatment benefits

**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

D.G. (hereinafter referred to as the "Appellant") was involved in a motor vehicle accident on December 27, 2000 and suffered injuries to his neck and right shoulder. As a result of the injuries sustained in the motor vehicle accident, the Appellant was unable to work as a truck driver and, after the seven day waiting period, commenced receiving Income Replacement Indemnity ("IRI") benefits. The Appellant received chiropractic treatments from Dr. Stitt, who provided a treatment plan to MPIC dated February 6, 2001 wherein he indicated that the Appellant would require treatment for a period of one to one and a half years and that the Appellant would be unable to work for a period of one to two months.

Upon receipt of that report MPIC requested a chiropractor, Dr. A. Martin, to conduct an independent examination of the Appellant which took place on February 15, 2001. Dr. Martin provided a report to MPIC dated February 20, 2001 wherein he stated that it was probable that the Appellant had some mild to moderate cervical degenerative changes and that a short period of total disability of six to eight weeks was necessary.

On April 2, 2001 MPIC advised the Appellant that they had completed their investigation, determined the Appellant was entitled, excluding a seven day waiting period, to receive a total of six weeks IRI benefits.

On April 3, 2001 MPIC requested the chiropractic division of the MPIC Medical Services Team to review Dr. Stitt's Initial Health Care Report in respect of chiropractic treatments and provided MPIC with a copy of Dr. Martin's examination. On April 23, 2000 Dr. Timothy Pethrick, chiropractic consultant to MPIC's Health Care Services Team, advised MPIC that he disagreed with Dr. Stitt's assessment that the Appellant required treatment for one and a half years and agreed with the findings of Dr. Martin. Dr. Pethrick recommended that an additional three to four months treatment with decreasing frequency was warranted.

On April 30, 2001 MPIC wrote to the Appellant advising him that as a result of the independent examination conducted by Dr. Martin, together with the assessment done by MPIC's chiropractic consultant, MPIC agreed to fund chiropractic treatments on the basis of one chiropractic treatment each week by Dr. Stitt until the end of June 2001, at which time MPIC would no longer fund any further treatments.

The Appellant filed an Application for Review dated May 10, 2001 which was received by MPIC on May 31, 2001. The Internal Review hearing took place on June 15, 2001 but was adjourned by the Internal Review Officer in order to obtain further information.

On August 8, 2001 the Appellant sought treatment from Dr. Martin and, as a result thereof, Dr. Martin advised MPIC that he was concerned about a conflict of interest. Dr. Martin informed MPIC that the Appellant's condition had not shown the recovery that he had anticipated and he was uncertain whether this was a result of inadequate exercise advice from his treating practitioner or whether the Appellant had not followed up on these types of recommendations. Dr. Martin further informed MPIC that the Appellant would be unable to work as a long haul truck driver since this would interfere with regular therapeutic interventions. However, Dr. Martin stated that if the Appellant was able to obtain employment for short trips of two to three days then the Appellant would be able to maintain a reasonable degree of treatment frequency. Dr. Martin also recommended that the Appellant receive further treatment to strengthen his neck and upper back muscles and if he was unable to do so to obtain treatment from a physiotherapist.

Dr. Martin commenced treating the Appellant and on September 20, 2001 he provided a report to MPIC wherein he stated that the Appellant's last treatment was September 10, 2001 and at that time the Appellant was complaining of neck soreness with cracking especially on extension and right shoulder pain. Dr. Martin noted in his report "*...localized, regional myofascial tenderness in the shoulder girdle musculature and some mild tenderness to direct palpation over the right shoulder region.* Dr. Martin indicated that his clinical impression was that the Appellant "*. . . has pre-existing lower cervical degenerative disc and joint disease and regional myofascial pain in the right shoulder girdle and extending into the right shoulder capsular/bursal regions*".

Dr. Martin further stated in his report that in his opinion “. . . *ongoing chiropractic care would be of limited benefit*” to the Appellant’s overall recovery and that a “. . . *short term regime of physiotherapy directed at teaching him a home based exercise program would prove more valuable from this point onward*”. Dr. Martin opined that the Appellant could work as a truck driver for short hauls but he would have some concern if the Appellant’s trips exceeded one or two weeks in length at the present time.

On October 12, 2001 Dr. Martin provided a note to the Appellant wherein he indicated that the Appellant was under his care for a condition affecting his neck and right shoulder since the motor vehicle accident, and that he recommended a trial return to work at the earliest possible time. This report was provided to MPIC on October 16, 2001.

Internal Review

The Internal Review Officer, after receiving Dr. Martin’s reports dated August 8, 2001 and October 12, 2001, and after obtaining a further statement from the Appellant and other information, issued a decision on December 10, 2001 rejecting the Appellant’s Application for Review. The Internal Review Officer concluded that having regard to the medical information from Dr. Stitt, Dr. Martin and Dr. Pethrick, he agreed with Dr. Martin that ongoing chiropractic care would not assist in the Appellant’s recovery and therefore no further chiropractic benefits were paid to him.

In respect of physiotherapy care the Internal Review Officer stated in his decision that the matter would have to be reviewed by the case manager who would provide the Appellant with a decision in regard to treatment in due course.

In respect to the Appellant's claim for IRI benefits the Internal Review Officer, in his decision, accepted the opinion of Dr. Martin that the Appellant was physically disabled from working for six to eight weeks after the motor vehicle accident. The Internal Review Officer concluded that the Appellant was capable of returning to full time employment as a truck driver on February 14, 2001 and, as a result, the Appellant was not entitled to any further IRI benefits as a result of the motor vehicle accident.

The Appellant filed a Notice of Appeal on January 29, 2002.

On February 4, 2002 the case manager prepared a file note which indicates that the Appellant had called him and indicated that the Appellant's doctor had referred the Appellant to West-Fit Physiotherapy and the Appellant was inquiring as to whether MPIC would fund these treatments. The physiotherapist provided a report to MPIC dated February 20, 2002 and indicated that he had examined the Appellant on February 19, 2002 and his impression was "*Impingement syndrome of right glenohumeral joint post whiplash injury and ? rotator cuff injury. Hypertonic right UFT and levator scapula. Irritation of right C5-6 and C6-7 facet joints*". The physiotherapist also suggested a treatment plan which provided:

Heat and respond, ultrasound, C-spine traction, glenohumeral joint mobilizations, ROM exercises, rotator cuff strengthening, neck stretches, mobilization, scapular arm stabilization program, IFC, ice. Treatment recommended twice a week for 6-7 weeks.

Upon receipt of that treatment plan the case manager referred the treatment plan to Dr. Fougere, Medical Consultant for MPIC and requested advice as to whether MPIC should fund the physiotherapy treatments. Dr. Fougere responded by memo dated February 27, 2002 and Dr. Fougere stated:

File reviewed to provide an opinion as to whether physiotherapy tx is warranted.

Opinion: Although not a medical necessity, a limited number of sessions – up to 6 would be reasonable to educate & progress the claimant with a postural stabilization program. Treatment at 2x per week for the first 2 weeks, once in the 3rd week and once in the 5th week to allow for monitoring progression and tapering from clinic care. Treatment beyond this frequency/time frame is not warranted.

Upon receipt of this memorandum the case manager wrote to the Appellant advising him that the Health Care Services Consultant approved physiotherapy treatments and, as a result, MPIC was authorizing six treatments over a period of five weeks.

The Appellant filed a report with the Internal Review Officer from his physician, Dr. Willemse, which stated that the Appellant was seen on October 18, 2002. Dr. Willemse stated “*Presently he has limited signs with almost normal range of motion, some signs of posterior impingement but still pain in his trapezius distribution*”.

The West-Fit Physiotherapy provided a further report dated November 20, 2002 as follows:

This is a report of D.G.’s current cervical spine & right shoulder ROM based on re-assessment Nov 20, 2002:

C-spine Flexion	45°
Extension	30°
Right Side Flex	25°
Left Side Flex	23°
R Rotation	47° active 49° passive
L Rotation	43° active 60° passive

	<u>Right</u>	<u>Left</u>
Shoulder Flexion	153°	156°
Extension	51°	56°
Abduction	157°	164°
External Rotation	75°	75°
Internal Rotation	80°	90°

Appeal Hearing

The Appellant testified at the appeal hearing that:

- (a) as a result of the motor vehicle accident he was unable to return to work because of the injuries sustained in the accident.
- (b) the injury to his neck and right shoulder was extremely painful and prevented him from carrying out his duties as a long haul truck driver.
- (c) as a result of the physiotherapy treatments he received he began to feel much better and on the date he testified before the Commission he had nearly made a complete recovery.

Dr. Stitt also testified at the appeal hearing by teleconference and stated that in his opinion the Appellant was incapable of returning to work for a period of one year after the motor vehicle accident.

In respect of employment, the Appellant testified that at the time of the motor vehicle accident on December 27, 2000 he would have been employed with [text deleted] on a permanent basis. L.B., one of the principals of [text deleted], also testified and confirmed that but for the motor vehicle accident the Appellant would have been employed on a permanent basis doing short haul trips between Winnipeg, Brandon and Regina.

At the conclusion of the evidence, the Appellant submitted that but for the motor vehicle accident he would have been employed at [text deleted] on a permanent, and not a temporary, basis and that his evidence in this respect was corroborated by L.B.. The Appellant further submitted that as a result of the injuries he sustained in the motor vehicle accident he was incapable of working as a truck driver and that he did not begin to recover from these injuries

until he started to receive physiotherapy treatment from the physiotherapist in the month of March 2002.

The Appellant therefore asserted that MPIC has improperly terminated his IRI benefits seven weeks after the motor vehicle accident and requested that IRI benefits be reinstated and continue until he made a full recovery with respect to injuries he sustained in the motor vehicle accident. In respect to chiropractic treatments the Appellant indicated he required these treatments having regard to the injuries he sustained in the motor vehicle accident and requested reimbursement for all chiropractic treatment costs he had incurred subsequent to the termination of funding by MPIC.

MPIC's legal counsel submitted that having regard to the chiropractic report submitted by Dr. Martin, who had both assessed and treated the Appellant, and having regard to the chiropractic report of Dr. Pethrick, MPIC's chiropractic consultant, the Appellant had not established on a balance of probabilities that he was entitled to further IRI benefits after February 14, 2001.

In respect of chiropractic treatments, MPIC's legal counsel submitted that MPIC had properly terminated chiropractic treatments at the end of June 2001, having regard to the opinion of Dr. Martin, who had treated him, and the opinion of Dr. Pethrick, who had corroborated Dr. Martin's opinion. MPIC's legal counsel submitted that, having regard to the reports of both of these doctors, the chiropractic treatments after a period of time, had not been medically required and MPIC was justified in terminating the funding of these treatments.

Discussion

The Commission is satisfied that the Appellant has established, on the balance of probabilities, that he was unable to work as a truck driver for a period of one year after December 27, 2000 because of the injuries he sustained in the motor vehicle accident to his neck and right shoulder.

Dr. Stitt, who initially treated the Appellant and who testified at the hearing by way of a teleconference call, stated that in his opinion the Appellant was incapable of returning to work until one year after the motor vehicle accident. Dr. Martin, who disagreed with Dr. Stitt's assessment, initially concluded that the Appellant was capable of returning to work six to eight weeks after the motor vehicle accident, and this opinion was confirmed by Dr. Pethrick, MPIC's chiropractic consultant.

The Commission, however, notes that after Dr. Martin commenced treating the Appellant he appeared to modify his initial opinion as to when the Appellant was capable of returning to work. Dr. Martin, in his report dated August 8, 2001, indicated that the Appellant's condition had not shown the recovery he had anticipated and he recommended a physiotherapy program for the Appellant. It appears to the Commission that Dr. Martin acknowledged an error in his original diagnosis.

The Commission further notes that Dr. Martin, in his report dated September 20, 2001, indicated that he last saw the Appellant on September 5th and at that time the Appellant was complaining of neck soreness with cracking especially on extension and right shoulder pain. The Commission also notes that on October 12, 2001 Dr. Martin provided a written note to the Appellant wherein he indicates that he would recommend that the Appellant attempt a trial return to work at the earliest possible moment.

The Commission therefore concludes that Dr. Martin determined that the Appellant was complaining about injuries sustained in the accident approximately nine months after the accident had occurred (September 20, 2001) and approximately eleven months after the accident (October 12, 2001) Dr. Martin was not recommending the Appellant return to work without reservation. On the contrary, Dr. Martin recommended only that the Appellant attempt a trial return to work. These latter assessments by Dr. Martin clearly indicates that he no longer was of the view that the Appellant was capable of returning to work without reservation six to eight weeks after the motor vehicle accident which occurred on December 27, 2000. The Commission finds that Dr. Martin's opinion as to the Appellant's capacity to return to work is not inconsistent with Dr. Stitt's testimony to the Commission that the Appellant was incapable of returning to work for a period of twelve months. In this respect Dr. Martin's opinion corroborates Dr. Stitt's testimony.

It should be noted that both Dr. Martin and Dr. Stitt examined the Appellant and were able to assess him over a period of time. Dr. Pethrick on the other hand conducted only a paper review, did not have the advantage of meeting with the Appellant and personally examining him, and assessing the Appellant's credibility. In these circumstances the Commission gives greater weight to the latter opinions of Dr. Martin and to the testimony of Dr. Stitt than it does to Dr. Pethrick's opinion as to the time when the Appellant could return to work.

The Appellant was assessed by a physiotherapist on or about February 14, 2002, approximately 13 ½ months after the motor vehicle accident had occurred. In a report to MPIC, dated February 27, 2002, the physiotherapist indicates that the Appellant was complaining about a constant ache, achy pain to his right neck and shoulder, sharp pain at times when lifting and unable to lift right

arm or shoulder. The physiotherapist determined that as a result of the Appellant's complaints the Appellant required physiotherapy treatments for a period of twice a week, for six to seven weeks, and MPIC, notwithstanding its reservation, did approve funding for a limited number of sessions up to six weeks and the Appellant was so advised on March 1, 2002.

The Commission finds that the Appellant was a credible witness who testified in a straightforward and direct manner and the Commission accepts his testimony that as a result of the injury to his neck and shoulder caused by the motor vehicle accident he was incapable of working as a truck driver for either long or short distances for a period of one year from the date of the motor vehicle accident. The Commission determines that the latter opinions as set out in Dr. Martin's reports dated September 20th and October 12, 2001, the testimony of Dr. Stitt and the physiotherapy report dated February 27, 2002, all corroborate the Appellant's testimony that he was incapable of working because of the motor vehicle injuries to his neck and shoulders. The Commission therefore determines that on the balance of probabilities the Appellant has established that due to the motor vehicle accident injuries, the Appellant was incapable of working as a truck driver for a period of one year.

In respect of employment the Appellant testified that but for the motor vehicle accident he would have had permanent employment with [text deleted] on December 27, 2000. L.B., a principal of [text deleted] testified that the Appellant would have been employed on December 27, 2000 but for the injuries the Appellant sustained in the motor vehicle accident and that the employment was of a permanent, and not of a temporary nature in respect of short haul trips between Winnipeg, Brandon and Regina. The Commission is satisfied that both the Appellant and L.B. were credible witnesses, both testified in a clear and concise manner and their testimony was consistent in respect of the Appellant's employment with [text deleted].

The Commission therefore finds that the Appellant has established on the balance of probabilities that:

- (a) as of December 27, 2000 he would have been employed with [text deleted] on a permanent basis;
- (b) as a result of the motor vehicle accident injuries he was prevented from working for [text deleted] as a truck driver between the date of the motor vehicle accident on December 27, 2000 and December 31, 2001.

In respect of chiropractic treatments the Commission accepts Dr. Martin's opinion that MPIC properly terminated chiropractic treatments at the end of June 2001 because further chiropractic treatments would have been of limited benefit for the overall recovery of the Appellant. Dr. Martin's opinion is corroborated by Dr. Pethrick and both of these doctors disagree with Dr. Stitt's assessment.

The Appellant testified that as a result of receiving physiotherapy treatments in the early part of 2002 his physical condition had improved and it is unfortunate that physiotherapy treatments had not commenced earlier. The Commission therefore is satisfied that the Appellant has not established on the balance of probabilities that MPIC incorrectly terminated the funding of chiropractic treatments at the end of June 2001.

Decision

The Commission therefore determines that:

1. MPIC incorrectly terminated IRI benefits of the Appellant;

2. The Appellant's IRI benefits be reinstated from the date of their termination on February 14, 2001 and continue until December 31, 2001;
3. Interest shall be added on the amount due and owing to the Appellant in accordance with Section 163 of the MPIC Act;
4. The Appellant's appeal in respect of entitlement to further chiropractic treatments be dismissed;
5. The Commission shall retain jurisdiction in this matter and if the parties are unable to agree as to the amount of IRI benefits then either party may refer this dispute back to the Commission for final determination;
6. The decision of MPIC's Internal Review Officer, bearing date December 10, 2001, as amended by paragraphs 1, 2, 3 and 5 above, be, therefore, confirmed.

Dated at Winnipeg this 13th day of August, 2003.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

WILSON MACLENNAN