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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by K.S.  
AICAC File No.: AC-02-88**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Barbara Miller  
Ms. Deborah Stewart

**APPEARANCES:** The Appellant, K.S., appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Tom Strutt.

**HEARING DATE:** May 15, 2003

**ISSUE(S):** Entitlement to Income Replacement Indemnity ('IRI')  
benefits

**RELEVANT SECTIONS:** Section 110(1)(a) of the Manitoba Public Insurance  
Corporation Act ('MPIC Act')

**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

K.S. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on June 30, 2001 and suffered contusions and abrasions to his neck and back, as well as soreness to the neck and back. The Appellant was employed as a long-haul truck driver and was unable to continue his employment as a result of the motor vehicle accident. MPIC commenced payment of IRI benefits to the Appellant on July 8, 2000, and coverage was also provided for 17

treatments from D'Arcy Bain Physiotherapy, together with an 8 week work hardening program from Associated Rehabilitation Consultants of Canada ('ARCC').

Dr. G.L.E. Ullyot, the Appellant's personal physician, who treated the Appellant in respect of his injuries, provided MPIC with an Initial Health Care Report dated September 20, 2001. In this report Dr. Ullyot indicated that the Appellant was capable of full function with symptoms. Ms. D. Colburn, physiotherapist at D'Arcy Bain Physiotherapy, who administered physiotherapy treatments to the Appellant, provided a Health Care Provider Progress Report to MPIC dated September 19, 2001 which indicated that the Appellant had full function with pain.

On December 14, 2001 the case manager at MPIC received a report from ARCC, indicating the Appellant had been discharged from the program having regained the functional capacity to perform his occupational duties. This report was signed by Dr. Conrad Hoy, physiatrist, and Mr. Burr, certified athletic therapist. In this report "*K.S. demonstrated, from a physical point of view, the ability to return to his pre-accident occupation as a long-haul truck driver without causing further harm to himself. The pain itself is not an impairment and he is also not impaired from performing work within the HEAVY strength demand*". The report further indicates:

### **Recommendations**

1. K.S. was discharged from our Work Hardening Program as of December 14, 2001 to return to his pre-accident status as a long-haul truck driver. K.S. may require maintenance care for his ongoing reported subjective pain as he returns to his pre-accident status. In this regard, follow-up appointments should be scheduled with the rehabilitation team, so that we can monitor his progress.
2. A self-directed home exercise program has been put together for K.S.. It is to his benefit that he follows this program so that he can optimize his function and continue to progress and stay active.

Upon receipt of that report, and after considering the reports of Dr. Ullyot and Ms. Colburn, the case manager concluded that the Appellant was capable of returning to his pre-accident status as a long-haul truck driver and, as a result, was no longer entitled to IRI benefits pursuant to Section 110(1)(a) of the MPIC Act. IRI benefits were terminated effective December 22, 2001.

The Appellant disagreed with this decision and made Application to Review the decision of the case manager dated December 19, 2001. In the Application for Review, dated January 24, 2002, the Appellant asserted he was still not up to the standard of returning to work at the end of the program and, since he experienced more pain due to the work being asked of him, he stopped doing his exercise in order to permit himself to heal from the rigors of the work hardening program at ARCC. The Appellant was unable to return to work full time and requested a further payment of four more weeks of IRI benefits in order to permit him to begin work with some funds to cover his time spent at home during further treatment on his own.

The Internal Review Officer issued a decision dated April 2, 2002 and stated:

Although you advised that you had pain after being discharged from the Associated Rehabilitation Consultants of Canada Limited, there is no medical information on the file that substantiates a further disability from working. Both Dr. Ullyot and Denise Colburne agreed that you had full function. A discharge report from Associated Rehabilitation Consultants of Canada Limited indicated that you had regained the functional capacity to perform your occupational duties. As there is no medical information on file to the effect that you were not able to work at your pre-accident occupation as of December 22, 2001, I find that your Case Manager was correct in denying you Income Replacement Benefits beyond that date.

On May 15, 2002 Dr. Ullyot wrote to the Internal Review Officer and indicated that the Appellant left the ARCC program with some residual difficulty which appears to have left him with a reduction in his functional capacity. Dr. Ullyot further indicated that "*Physically K.S. was in fact proceeding along in this direction in what was felt to be a reasonable fashion but he*

*certainly continued with his post-traumatic stress situation throughout the entire rehab. process.”* Dr. Ullyot indicated that he last saw the Appellant “. . . on May 15, 2002 at which time there was clearly some residual spasm along the paraspinal musculature in the mid to lower thoracic vertebrae and the first to the fourth lumbar vertebrae. This was particularly noticeable on the left side”. However, Dr. Ullyot further indicated that he did not know whether this particular finding was a result of the Appellant’s return to work and suggested that a re-assessment by a physical medicine specialist should take place.

On August 15, 2002 Dr. MacKay, a member of the MPIC Healthcare Services Team, forwarded a handwritten note to MPIC wherein he indicated that upon a review of the medical file there was no medical evidence to identify the Appellant developing a medical condition as a result of the June 30, 2001 motor vehicle accident which required passive intervention at this stage. Dr. MacKay further asserted that if the Appellant had remained compliant with his exercise program, which he was advised to perform independently by ARCC, then full resolution of his motor vehicle condition would have occurred by now. Dr. MacKay recommended that the Appellant should be encouraged to continue with his independent program and that passive intervention, such as massage, should be viewed only as an elective.

### **APPEAL**

In respect of the issue of this appeal, the relevant section of the MPIC Act is:

**Events that end entitlement to I.R.I.**

**110(1)** A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

The appeal hearing took place on May 15, 2003. The Appellant asserted at the appeal hearing that his discharge from ARCC was premature and that he was not capable of returning to work on a full time basis. He denied the allegations by ARCC that he lacked motivation and indicated this was never brought to his attention by any employee of ARCC at any time. He further asserted that when he returned to work as a long-haul truck driver he started experiencing pain in his lower back region when he was driving on his first trip. The Appellant also stated that he continued to experience varying degrees of pain during the entire trip. He further indicated that when he returned home it had taken a week for him to return to his pre-trip status. He also indicated that he was still experiencing pain, had to adjust his work habits to compensate for this, was unable to take as many trips as he had previously and, as a result, this has lowered his income significantly.

In reply, legal counsel for MPIC asserted that the decision of the Internal Review Officer was correct in determining that the medical evidence clearly demonstrated that the Appellant had returned to his pre-accident status and that he had regained his functional capacity to perform his occupational duties as a long-haul truck driver.

The Commission, after carefully reviewing all of the evidence on file, and after hearing submissions of both the Appellant and legal counsel for MPIC, concludes that MPIC correctly applied the provisions of Section 110(1)(a) of the MPIC Act when terminating the IRI benefits on December 22, 2001. The Commission finds, having regard to the medical reports of Dr. Ulyot, dated September 20, 2001 and May 15, 2002, the report of the physiotherapist, Ms. Colburne, and the report of ARCC, dated December 14, 2001, that the Appellant was capable of returning to his pre-accident status as a long-haul truck driver as of December 22, 2001. The Commission therefore determines that the Appellant has not established, on a balance of

probabilities, contrary to Section 110(1)(a) of the MPIC Act, that MPIC incorrectly terminated the IRI benefits of the Appellant. As a result, the Commission confirms the decision of the Internal Review Officer dated April 2, 2002 and dismisses the Appellant's appeal.

Dated at Winnipeg this 24<sup>th</sup> day of June, 2003.

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**MEL MYERS, Q.C.**

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**BARBARA MILLER**

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**DEBORAH STEWART**