



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B.A.**  
**AICAC File No.: AC-03-47**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Barbara Miller  
Ms. Wendy Sol

**APPEARANCES:** The Appellant, B.A., appeared on her own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Terry Kumka.

**HEARING DATE:** May 6, 2004

**ISSUE(S):** Entitlement to Income Replacement Indemnity benefits  
beyond June 2, 2002

**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

B.A. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on December 7, 2001. The Appellant was driving a motor vehicle when she lost control of the car on an icy road and slid into a fence on [text deleted] in Winnipeg. The Appellant attended at the [text deleted] Hospital to treat her motor vehicle accident injuries.

The Emergency Report Form from [text deleted] Hospital, dated December 7, 2001, indicates the Appellant complained of headaches, neck, shoulder, back and leg pain. There is no reference to

the Appellant complaining about injury or pain to either of her knees. The only x-ray that was ordered at that time was to the cervical spine and not to the knees. This report also indicated that the Appellant's lower limbs did not reveal any deformity and had good movement.

The Appellant reattended at the [text deleted] Hospital on December 9, 2001. At that time she had complaints relating to problems involving her chest, abdomen and back with no complaints in respect of her knees.

MPIC's case manager, in a memorandum to file dated December 11, 2001, reports of a voice mail message from the Appellant's husband on that date indicating that the Appellant had been involved in a motor vehicle accident and had injured her chest and stomach areas and was having " a lot of pain in the stomach area". On December 13, 2001 the Appellant reattended at the Emergency Department at the [text deleted] Hospital and her complaints related to chest, back and neck.

The Appellant saw her physician, Dr. Rahman, on December 21, 2001. Dr. Rahman's Initial Health Care Report to MPIC is based on his examination of December 21, 2001 and indicated the following symptoms:

Both lower and upper back pain, pain r. leg, and both arms.

There is no complaint by the Appellant to Dr. Rahman in respect of a problem to her left knee. Dr. Rahman referred the Appellant to physiotherapy treatments. The Initial Health Care Report from the physiotherapist, Kathleen Ryan, dated December 22, 2001, states that the specific symptoms complained of are limited to "pain thoracic spine, r. arm, low back, hips".

On December 17, 2001 the Appellant completed an MPIC Application for Compensation form and described her motor vehicle accident injuries as follows:

Sore upper back between shoulder blades, right arm from shoulder and down arm, tummy numb, both hips sore, right leg has pain and numbness.

In a note to file dated December 20, 2001 the case manager reports of a telephone discussion with the Appellant who advised the case manager that she had an appointment with her doctor the next day and advised the case manager that she still had pain in her rib area.

On January 7, 2002 the case manager, in a note to file, indicated that the Appellant reported pain to her upper and lower back, right leg and right arm.

Due to the injuries the Appellant sustained in the motor vehicle accident she was unable to return to her employment as a respite worker or a cook.

MPIC requested the Occupational Rehabilitation Group to conduct a Job Site Analysis in respect of the Appellant. On January 29<sup>th</sup> and February 1<sup>st</sup>, 2002 a Job Site Analysis was completed by Christina Maggiora. In preparation of this report the occupational therapist met with the Appellant. In this report Ms. Maggiora indicated that the Appellant had advised her that she was unable to return to work because of pain to her back, hips and thigh.

The first complaint that MPIC received in respect of the Appellant's knee was based on a communication dated March 6, 2002, approximately 2 months after the motor vehicle accident.

MPIC had referred the Appellant to Ms. Heather Howdle, a physiotherapist, for physiotherapy treatments. On May 10, 2002 Ms. Howdle provided a report to MPIC. In this report Ms. Howdle advised MPIC that the Appellant was functionally capable of performing both of her occupations and was capable of returning to work.

The case manager provided the Appellant's physician, Dr. Rahman, with a copy of Ms. Howdle's report and indicated the Appellant refused to return to her employment until Dr. Rahman had assessed her. Dr. Rahman, in a fax to the case manager dated May 15, 2002, indicated the Appellant was not able to return to her employment as either a respite worker or a cook for the following reasons:

1. The Appellant was unable to squat or kneel or balance because of pain to her left knee and right hip;
2. The Appellant was unable to hold a child, which is a job requirement;
3. The Appellant was unable to balance a child because of soreness to both her back muscles and right hip;
4. The Appellant was unable to stand in a cooking area for 7 ½ hours because of her knee pain.

Upon receipt of Dr. Rahman's report, MPIC arranged for the Appellant to be assessed by Dr. I. Mayba of the Manitoba Clinic. Dr. Mayba interviewed and examined the Appellant on May 27, 2002 and provided a report to the case manager on the same date. Dr. Mayba stated:

This patient has pre-existing degenerative changes in her cervical, dorsal and lumbosacral spine, spondylitis, minor degeneration left knee, and obesity.

She was involved in a motor vehicle accident and sustained multiple soft tissue strains. Her progress has been prolonged. She has now no impairment. The prognosis is good. I expect no permanent impairment and no sequelae from the effects of this accident. I anticipate in the future she will be bothered by her pre-existing conditions.

In my opinion, she requires no ongoing treatment, medications, manipulations or therapies pertaining to this accident.

In my opinion, she is now fit and able to perform her usual activities and usual work on a full-time basis.

Weight reduction would be beneficial.

On May 30, 2002 the case manager wrote to the Appellant and stated:

Heather Howdle submitted a report dated May 10/02 that you had the capability of performing your pre-accident duties of a part time respite worker and a part time cook. Dr. Rahman sent in a fax dated May 15/02 outlining your pain complaints but did not provide any objective findings that would preclude you from performing your pre accident duties. On May 27/02 you underwent an assessment with Dr. I. Mayba and in his report dated May 27/02 he has advised that you are now fit and able to perform your usual activities and usual work on a full time basis. We have enclosed these reports for your review. Therefore your entitlement to Income Replacement Indemnity ends as of June 2/02.

The Appellant filed an Application for Review dated July 4, 2002.

Dr. Michael J. MacKay, MPIC's Medical Health Care Services Consultant, was provided with MPIC's medical reports in respect of the Appellant and was asked to determine:

1. What medical condition(s) did she develop as a direct result of the incident in question?
2. Does the medical evidence indicate that further diagnostic and/or therapeutic interventions are medically required in the management of the motor vehicle collision-related medical condition(s)?
3. Does the medical evidence indicate that [B.A.] recovered from the medical condition(s) arising from the incident in question to the extent that she is able to return to her pre-collision occupational duties as a respite worker aide/cook?

Dr. MacKay provided a Inter-Departmental Memorandum to MPIC dated July 9, 2002. Dr. MacKay stated:

1. It is my opinion that the medical evidence indicates that [B.A.] sustained soft tissue contusions and/or strains as a result of the incident in question.
2. Medical evidence does not identify any additional and diagnostic and/or therapeutic interventions as being medically required in the management of the conditions arising from the incident in question.
3. It is my opinion that the objective medical evidence presently contained in [B.A.'s] file indicates that she did not develop an impairment of physical function as a result of the medical conditions arising from the incident in question that in turn would prevent her from performing her pre-collision occupational duties at this time. In other words, it is medically probable that [B.A.] has recovered from the medical conditions arising from the incident in question to the extent that she is able to resume her pre-collision occupational duties if she so desires.

### **Internal Review Officer's Decision**

The Internal Review Officer issued her decision on January 30, 2003 and confirmed that she was upholding the case manager's decision and dismissing the Appellant's Application for Review. The Internal Review Officer, after reviewing the medical reports of Dr. Mayba, Dr. Kayler, Dr. MacKay and the report of Heather Howdle, concluded that the case manager made the correct decision on May 30, 2002 that the Appellant was able to resume her usual activities and usual work on a full time basis and therefore Income Replacement Indemnity ('IRI') benefits ended on June 2, 2002.

### **Appeal**

The Appellant filed a Notice of Appeal. The relevant provision 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;

Dr. Kayler, who performed an arthroscopy on the Appellant's left knee on February 20, 2003 provided a narrative report to the Commission in respect of this matter.

The appeal hearing took place on May 6, 2004 and the Appellant submitted that as a result of the injury to her left knee, due to the motor vehicle accident, she was unable to continue her employment beyond June 2, 2002 and was entitled to reinstatement of IRI benefits.

During the course of the hearing the Commission, with the consent of the Appellant, requested MPIC's legal counsel to write to Dr. Kayler, provide him with all of the relevant medical reports and request his opinion as to whether, on the balance of probabilities, the Appellant had been incapable of carrying out the essential duties of her employment beyond June 2, 2002 on account of the injuries caused by her accident on December 7, 2001. The appeal hearing was adjourned pending receipt of Dr. Kayler's report.

Dr. Kayler provided MPIC's legal counsel with his report dated June 11, 2004, a copy of which was provided to the Commission. MPIC provided Dr. Kayler's report to Dr. MacKay for his reply and the Commission received a copy of Dr. MacKay's report dated June 18, 2004 on June 30, 2004. The Commission provided Dr. Kayler's report and Dr. MacKay's report to the Appellant for her response.

On July 16, 2004 MPIC's legal counsel provided a response in respect of Dr. Kayler's report dated June 11, 2004 and Dr. MacKay's report dated June 18, 2004 and this response was forwarded to the Appellant. On July 20, 2004 the Appellant telephoned the Commission's Director of Appeals and advised that she had no comments with respect to MPIC's legal counsel's letter dated July 16, 2004.

### Discussion

The Appellant has asserted that as a result of the motor vehicle accident she sustained a trauma to her left knee and as a result thereof was unable to continue her employment as a respite worker and a cook and submits that until the motor vehicle accident occurred she had no problems with her left knee but as a result of the motor vehicle accident she developed significant problems to this knee which has prevented her from returning to her employment. The Appellant therefore submits that MPIC erred in terminating her IRI benefits and they ought to be reinstated.

MPIC's legal counsel, in his written submission to the Commission dated July 16, 2004, stated that the medical evidence fails to establish the existence of a causal connection between the accident of December 7, 2001 and her subsequent left knee problems.

MPIC's legal counsel further stated in his written submission:

The accident giving rise to the within claim occurred on December 7, 2001 when the claimant lost control of her vehicle on an icy road and slid into a fence. According to Dr. Mayba's report of May 27, 2002 (Tab 13), who saw her on May 27, 2002:

"She stated she had no cuts or bruises."

The claimant effectively asks the Commission to infer that she sustained trauma to the knee by reason of what followed thereafter. As to the mechanism of the accident, the Corporation takes the position that there is a lack of documented evidence confirming that [B.A.] sustained any injury to the knee whatsoever during the accident. In that regard Dr. Kayler has indicated in his June 11, 2004 report that he saw [B.A.] for the first time on October 30, 2002 for a painful left knee. He stated that with respect to that attendance, that:

"...no specific history of the mechanics of injury was obtained ...".

Dr. MacKay has had the opportunity of reviewing this file on numerous occasions with respect to the issue of causation. As he stated in his recent memorandum of June 18, 2004:

“I am unable to extract information from her reports indicating [B.A.] reported difficulties with her knees following the incident in question and/or clinical findings in keeping with a traumatic injury occurring to the knee.” (underlining added)

MPIC’s legal counsel examined all of the relevant medical reports relating to the Appellant’s motor vehicle accident injuries and indicated that the first time the Appellant complained of any problems to her knee was on March 6, 2002, which is approximately 2 ½ months after the motor vehicle accident. MPIC’s legal counsel therefore submitted:

Based upon the above, it is not open for the Commission to infer that [B.A.] sustained injury to her knees in the accident absent direct evidence to that affect. As indicated by Dr. MacKay in his June 18, 2004 memorandum:

“It is reasonable to assume that had [B.A.] sustained a traumatic injury to her knee (i.e. contused her knees on the dashboard at the time of the accident) to extent that she would in time develop degenerative changes involving the articular cartilage of the patella and trochlear groove of the femur (i.e. groove the patella slides through during movement of the knee) then she would have presented with symptoms and clinical findings shortly after the incident in question in keeping with the traumatic event (i.e. localized pain, bruising, swelling, loss of joint mobility, limited function as it relates to bending, squatting, kneeling, going up and down stairs).”

It is respectfully submitted that the above does not support Dr. Kayler’s assertion that historically an injury was occurred at the time to the knee.

Absent evidence of an injury to the knee occurring in the motor vehicle accident, Dr. Kayler makes mention of the operative report findings of February 20, 2003 being “consistent with injury”. However, as he indicates in his report of June 11, 2004, those operative findings are also consistent with degenerative changes or a combination of degenerative changes and injury. Interestingly, Dr. Kayler acknowledges that the medial compartment changes are less likely to occur from a mechanism of injury. The conclusion therefore is that the medial compartment changes noted in the operative report of February 20, 2002 are due to the degenerative changes noted therein and not trauma. It is submitted that the arrival at that determination would strongly suggest that [B.A.’s] operative findings related to the patellofemoral changes were also due to the degenerative changes which she was noted to have.

This conclusion would be supported by the lack of documented evidence indicating that any injury was sustained to the knee in the accident.

MPIC's legal counsel further states that Dr. Kayler in his report dated June 11, 2004 asserted:

“Nonetheless, her obesity is significant and cannot be overlooked as a potential factor in her ongoing knee pain, disability, and response to treatment.”

Dr. Kayler acknowledges that the arthroscopic findings cannot be linked to the motor vehicle accident based on their appearance alone. He also acknowledges that the arthroscopic findings can also be noted in non-traumatic situations. The totality of the evidence does not support his linking those findings to the accident as:

1. There is no documented evidence of ongoing pain in the period following the injury.
2. That one would have expected that [B.A.] would have presented with significant symptoms and clinical findings following the accident to give rise to a causal connection between the problems with her knee and arthroscopic findings and the accident.

Upon a review of all of the documentary evidence, after considering the testimony and submissions of the Appellant and the submissions of MPIC's legal counsel, the Commission agrees with MPIC's legal counsel that the medical evidence fails to establish, on a balance of probabilities, the existence of a causal connection between the motor vehicle accident of December 7, 2001 and the Appellant's subsequent left knee problems. The Commission further finds that at the time MPIC terminated the Appellant's IRI benefits on June 2, 2002 the Appellant had recovered from the injuries she sustained in the motor vehicle accident to the extent that she was able to resume her pre-collision occupational duties. The Commission therefore determines that the Appellant has not established, on a balance of probabilities, that she was incapable of carrying out the essential duties of her employment beyond June 2, 2002 on account of any injuries arising out of the accident on December 7, 2001. The Commission therefore concludes that MPIC correctly applied Section 110(1)(a) of the MPIC Act when it terminated the Appellant's IRI benefits on June 2, 2002.

As a result, the Appellant's appeal is dismissed and the Internal Review Officer's decision dated January 30, 2003 is hereby confirmed.

Dated at Winnipeg this 13<sup>th</sup> day of August, 2004.

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**MEL MYERS, Q.C.**

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**BARBARA MILLER**

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**WENDY SOL**