



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by G.C.
AICAC File No.: AC-02-94-FF

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms Mary Lynn Brooks
Mr. Neil Cohen

APPEARANCES: The Appellant, G.C., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Tom Strutt.

HEARING DATE: May 18, 2005

ISSUE(S): Entitlement to Income Replacement Indemnity ('IRI')
Benefits during the period July 19, 1996 to February 19, 1997

RELEVANT SECTIONS: Section 81(1)(a) of the Manitoba Public Insurance
Corporation ('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

G.C. (hereinafter referred to as the 'Appellant') filed an Application for Compensation, dated November 15, 1996 claiming medical expenses in respect of a motor vehicle accident which occurred on July 9, 1996.

The first medical report received by MPIC in respect of the Appellant was from Dr. E. Smil, in respect of her clinical assessment which was performed on October 28, 1996. In this report Dr. Smil indicated that:

1. a diagnosis of upper and lower back strain;
2. the Appellant had less than full function due to symptoms and functional deficits;
3. the Appellant was not disabled and was able to work supernumerary;
4. the Appellant reported that she was unable to work at a computer for prolonged periods of time due to her neck and back pain.

The Appellant was referred to Dr. G. Mackie, a physiotherapist, for further treatment but did not commence these treatments until January 1997 due to her heavy work load.

Dr. G. Stewart, a chiropractor, provided an Initial Health Care Report to MPIC, dated March 18, 1997, in respect of an examination of the Appellant performed by him on January 6, 1997. Dr. Stewart reported that:

1. the Appellant was suffering from a non-wad low back pain;
2. she had less than full function due to symptoms and/or functional deficits;
3. she was unable to work at any job for a period of two days; and
4. she had not been compliant with his treatment plan.

In a memorandum to file, dated May 12, 1997, the case manager summarized a meeting held with the Appellant on May 8, 1997 as follows:

1. the Appellant indicated that as a result of the accident she had to reduce her hours of work during the period July 1996 to February 1997 and believed that she had returned to regular full time duties after her last physiotherapy treatment from Mr. Gord Mackie.
2. in response to the case manager's inquiry, as to why the Appellant reported her claim so late, the Appellant indicated that she thought she was getting better following the motor vehicle accident but things continued to get worse and by January 1997 she had a very difficult time walking and that is why she saw Dr. Stewart.
3. the Appellant further reported to the case manager that after two treatments she began to feel a lot better but it was only after receiving physiotherapy treatments that she believed she made noticeable improvement.
4. in respect of the Appellant's loss of income, the case manager stated:
The claimant was very vague as to what kind of income loss she may have sustained – all she could say that she was unable to sit at the computer for long periods of time, and that nobody would do this work for her so basically the work just piled up. I asked her if she kept a record of her hours of work each day. She indicated she is self-employed and all she knows is that her hours of work were reduced and this will be supported in her quarterly statements.

The case manager, in this memorandum to file, further stated that:

1. she advised the Appellant that if there was medical evidence to support the claim from her physician, chiropractor and physiotherapist, and confirmation by the MPIC's Medical Services Team that the Appellant was not capable of performing her regular hours of work and that this was due directly to the motor vehicle accident, the Appellant would be requested to provide the case manager with copies of the last five years of her income tax returns as well as her quarterly statements.
2. upon reviewing Dr. Stewart's medical report the Appellant had been referred for physiotherapy treatments in October 1996 yet the Appellant did not begin treatment until January 10, 1997, a period of ten (10) weeks following that examination.
3. ". . . One would therefore have to wonder just how debilitating her injuries were as she failed to seek treatment until 10 weeks after the recommendation was made."

On June 10, 1997 Mr. Gordon A Mackie provided a physiotherapy report to MPIC in respect of his examination of the Appellant on January 10, 1997 and stated that:

1. the Appellant reported that she had headache, neck, mid and lower back pain, as well as reports of a broken sleep pattern.
2. she had not been seen by him consistently due to a heavy case load.
3. he attempted to impress upon her that her attendance was not good enough.

On November 4, 1997 the case manager wrote to the Appellant and rejected the Appellant's request for Income Replacement Indemnity ('IRI') benefits from July 19, 1996 to February 19, 1997. The case manager stated, in her letter, that in respect of the claim for loss of income the Appellant did not keep a record of her hours of work each day but advised that her quarterly income statements would reflect her hours of work which have been reduced to some capacity.

The case manager further stated:

This will confirm that the previous adjuster, Linda More had spoken with your physician, Eva Smil on April 29, 1997 in which it was confirmed that the first time that you were seen by Dr. Smil was on October 28, 1996, which is 3 months, 3 weeks post-accident. It was agreed by Dr. Smil that it would (sic) difficult to support any reduction in your hours of work, given the time period that had past (sic) from the time of the motor vehicle accident to the date of the initial examination. Dr. Smil had referred you for physiotherapy treatment following that examination, but it was not until January 10, 1997 that you received your first physiotherapy treatment. (underlining added)

The writer spoke with your physiotherapist, Gord Mackie on May 23, 1997. He advised the writer at that time that it would be difficult for him to comment as to whether or not your hours of work had to be reduced due to your symptoms. He was asked to provide

the writer with a report regarding his findings, and there (sic) relationship to the motor vehicle accident and whether he supported your claim that your hours of work had to be reduced as a result of the injuries you sustained in the above noted motor vehicle accident. (underlining added)

We are enclosing a copy of Gord Mackie's report of June 10, 1997 in which he makes no indication that as a result of the injuries you sustained in the above noted motor vehicle accident, your hours of work had to be reduced. It was also noted that you were not attending for physiotherapy treatment as required, even though the physiotherapist advised you of the importance to attend to same.

The case manager further stated:

Given all the above, we are unable to consider your claim for IRI benefits during the period of July 19, 1996 – February 19, 1997. Should you be able to provide the writer with additional information that may support your claim for IRI benefits, then we would appreciate receiving same within the next 30 days. (underlining added)

The Appellant made an Application for Review of the case manager's decision dated February 9, 1998.

On March 5, 1998 the Internal Review Officer wrote to the Appellant and stated:

Please be advised that the writer has conduct of this file for the purpose of conducting a review of the injury claim decision made in your case.

From your Application for Review filed in response to MPI's decision of November 4, 1997, I take it you disagree with MPI's decision not to provide you with Income Replacement Indemnity benefits for the period following your accident of July 9, 1996.

Accordingly, could you please provide me with copies of any and all documentation such as office records, time sheets or income statements upon which you intend to rely in support of your claim that your hours of work had to be reduced owing to the motor vehicle accident. Once I am in receipt of this documentation, I can arrange a mutually convenient date for a Review Hearing. In this way, I would have a chance to review your material prior to the hearing and there would be no need to adjourn the hearing to provide additional information.

In reply, the Appellant wrote to the Internal Review Officer on August 5, 1998 in which she discussed her medical condition and her medical treatments but did not provide financial information as requested by the Internal Review Officer.

On December 19, 2000 Dr. Smil provided a medical report to MPIC in respect to the Appellant.

In this letter Dr. Smil stated that:

1. although she did not see the Appellant until three months following the motor vehicle accident, it was her belief that the Appellant's reported injuries were directly related to the motor vehicle accident of July 17, 1996.
2. she saw the Appellant several times for follow up and that the Appellant was unable to perform her full work duties from July 17, 1996 until February 1997.
3. the Appellant was working at less than full function mainly due to neck and upper back pain and stiffness and tightness in the left lower thoracic and lumbar areas.

On January 3, 2001, Dr. O. Pacin provided a report to the Appellant in respect of his examination of the Appellant on September 18, 2000. In this report Dr. Pacin stated that:

1. the Appellant had attended at the Pan Am Sports Medicine Centre on September 18, 2000 and the Appellant had complained about her chronic low back pain which had increased the day prior following the performance of bending maneuvers.
2. since his physical findings included decreased range of motion in the lumbarsacral spine with left sided dural tension.
3. he had prescribed analgesics and advised the Appellant to remain off work for one week and to see him again the following week.
4. the follow-up examination did not occur until December 13, 2000, at which time the Appellant reported her low back pain had improved.
5. he suggested physiotherapy and noted that on December 13, 2000 the Appellant was working but was not able to do any significant lifting, twisting or bending.
6. the Appellant's prognosis was favourable and that the Appellant would at least be able to get back to her base line level of function.

The Appellant provided Dr. Pacin's report to MPIC by letter dated March 1, 2002 and requested that the Internal Review Officer, having regard to Dr. Pacin's medical reports, and the reports of Dr. Smil, Dr. Stewart and the reports of Mr. Gordon Mackie, review the Appellant's claim for IRI benefits. In this letter the Appellant also requested that MPIC reimburse her for the costs of Dr. Pacin's reporting letter as well as the costs she incurred relating to the treatment provided by Dr. Stewart and Mr. Gordon Mackie.

In response, on April 5, 2002, the Internal Review Officer wrote to MPIC's Health Care Services and requested that the Appellant's file be reviewed and that she be provided with an opinion as

to whether the medical evidence on file, including all of the new medical evidence gathered, revealed the Appellant's inability to work from July 19, 1996 to February 19, 1997. In her letter the Internal Review Officer also noted that although the Appellant requested reimbursement of the costs of chiropractic and physiotherapy treatments, the case manager's decision letter dealt only with the termination of IRI benefits to the Appellant.

On April 22, 2002 Dr. Brad Baydock, of MPIC's Health Care Services, provided an Inter-Departmental Memorandum to the Internal Review Officer wherein he reviewed all of the relevant medical reports and stated:

DISCUSSION

Following the motor vehicle collision of either July 9, 1996 or July 17, 1996 (as there is a conflict in the medical documentation regarding the exact date of loss), a period of approximately three months elapsed before the first documented medical assessment took place. During this period of time, the claimant's functional abilities cannot be determined as there is no direct medical documentation objectively outlining physical impairments and associated disabilities. The only information outlining impairment on file was (sic) subjective reports provided by the claimant's to her healthcare providers. In reviewing the initial report from Dr. Smil, she had indicated that the claimant was able to work modified duties despite her symptoms and physical findings. She indicated that the claimant was unable to sit at a computer for prolonged periods of time due to her neck and back pain but indicated that she would be able to work supernumerary. This report indicated that the claimant would not have been completely disabled from her work environment as of October 1996.

The next assessment was dated January 6, 1997, 2 ¼ months following the initial assessment. At that time, Dr. G. Stewart indicated that the claimant had a period of work disability of two days. There were no reports that the claimant had been unable to work prior to the specified two days in Dr. Stewart's report. In the letter dated June 10, 1997, Mr. Mackie stated he first saw the claimant on January 10, 1997. In his letter, he indicated that the claimant had decreased range of motion and tenderness in the cervical, thoracic and lumbar musculature. Mr. Mackie stated that the claimant had not been able to be consistently treated as she had a heavy caseload at the time. This would indicate to me that the claimant was performing work duties that impacted upon her attendance with the treating physiotherapist.

CONCLUSION

In this case, there was a period of time following the motor vehicle collision (approximately three months) in which there was no medical documentation outlining

any impairment in physical functioning. As of the medical information present after October 23, 1996, it would appear that the claimant was able to work in at least a modified duty capacity. This was evidenced by the initial report from Dr. Smil as well as the report from Mr. Mackie indicating that treatment was interrupted by the claimant's workload. Therefore, in my opinion, it is probable, based on the medical information present on file that the claimant was not completely impaired from performing her work duties during the time specified in the request for review.

Internal Review Officer's Decision

The Internal Review Officer issued her decision on May 2, 2002 and indicated that she reviewed all of the relevant information on file and is confirming the case manager's decision that there was no medical evidence that supported the Appellant's claim for IRI benefits during the period July 19, 1996 to February 19, 1997 and, as a result, the Application for Review was dismissed.

In arriving at her decision the Internal Review Officer stated:

You may recall from your Case Manager's decision letter that Dr. Eva Smil advised that she did not examine you until three months, three weeks after your motor vehicle accident. Dr. Smil agreed when speaking to the Case Manager on April 29, 1997 that it would be difficult to support any reduction in hours of work given the time period that had passed from the time of the motor vehicle accident to the date of the initial examination. The Case Manager also spoke to your physiotherapist Gord Mackie on May 23, 1997 at which time Mr. Mackie advised it would be difficult for him to comment as to whether or not your hours of work had to be reduced due to your symptoms.

The Internal Review Officer further stated that the medical consultant, upon review of the file, noted that:

. . . in Dr. Smil's first report you were able to work modified duties despite your symptoms and physical findings. This report therefore indicated that you were not completely disabled from your work environment as of October, 1996. There is no medical information prior to October of 1996 because you did not seek any treatment or examination from any health care providers in that period of time.

The Internal Review Officer further stated:

Dr. Stewart's report following his assessment of January 6, 1997 indicates that you had a period of work disability of two days. There were no reports on file that indicated you were unable to work prior to the specified two days in Dr. Stewart's report. Mr.

Mackie's report dated June 10, 1997 states that he first saw you on January 10, 1997 and he indicated you had decreased range of motion and tenderness in the cervical, thoracic and lumbar musculature. Mr. Mackie also stated that you had not been consistently treated as you had a heavy caseload at the time. This report would indicate that the performance of your work duties impacted on your ability to attend for physiotherapy treatments. Clearly, you were working during the period of July 19, 1996 to February 19, 1997. There is no indication on the medical information that you were totally disabled from working. The only information that is on file with respect to any inability to work is your subjective complaints that you had to work less hours due to your symptoms. There is no information on file to substantiate this claim and therefore I am confirming your Case Manager's decision of November 4, 1997 that there is no evidence to support a disability from work as a result of your motor vehicle accident of July 9, 1996. (underlining added)

The Appellant filed a Notice of Appeal dated July 31, 2002.

Appeal

The relevant provision of the MPIC Act in respect of this appeal is Section 81(1)(a) of the MPIC Act, which states:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

The only issue in this appeal is the Appellant's request for IRI benefits during the period July 19, 1996 to February 19, 1997. The Commission notes the Appellant requested reimbursement of physiotherapy and chiropractic treatments, but the Commission finds it does not have the jurisdiction to address this issue because the case manager did not render a decision in respect of this matter on November 4, 1997 but dealt only with the request of the Appellant for IRI benefits. The Appellant sought an Application for Review in respect of the denial of IRI benefit, which Application was rejected by the Internal Review Officer in a decision dated May 2, 2002 from which the Appellant filed a Notice of Appeal. The Commission, therefore, has jurisdiction

to deal with the Appellant's appeal in respect of denial of IRI benefits but not in respect of the reimbursement of physiotherapy and chiropractic treatment costs.

The Commission notes that in respect of the issue relating to physiotherapy and chiropractic treatment costs, a case manager issued a decision on January 14, 2004 rejecting the Appellant's request for the payment of these costs and advised the Appellant that she was entitled to apply for a review of that decision within sixty (60) days of receipt of the case manager's decision of January 14, 2004. The Commission has no knowledge as to whether or not the Appellant took any further action in this matter by filing an Application for Review in respect of the case manager's decision of January 14, 2004.

The Appellant testified at the appeal hearing and was cross-examined by MPIC's legal counsel.

In her submission to the Commission the Appellant stated:

1. as a result of the motor vehicle accident, of July 9, 1996, she sustained soft tissue injuries to her neck and back;
2. she did not initially seek medical attention until October 1996 because she believed she would recover from these injuries;
3. she did not recover fully but the pain worsened over a period of time;
4. that as a result of the increased pain she saw Dr. Smil on or about October 23, 1996 which was a period of three (3) months after the motor vehicle accident;
5. Dr. Smil's Initial Health Care Report records her complaints of her inability to work at a computer or attend Court for long periods due to her back and neck pain;
6. that subsequent to the motor vehicle accident she was unable to work full time due to this pain, as a result there was a substantial loss of productivity in respect of her law practice and as a result there was a significant loss of income during the period July 19, 1996 to February 19, 1997;
7. she initially consulted a chiropractor, Dr. Stewart, on January 6, 1997 but discontinued these treatments because they were painful and did not assist in her recovery.
8. she was referred by Dr. Smil, to a physiotherapist, Gordon Mackie and the physiotherapy treatments provided by Mr. Mackie assisted her in recovering to the point where after February 19, 1997 she was able to return to her work on a full-time basis;
9. she acknowledged that she did not regularly attend for physiotherapy treatments because of her heavy work load;

10. that Dr. Smil's medical report dated December 19, 2000 indicated that her injuries, that she reported to her on or about October 23, 1996, related to the motor vehicle accident and rendered her unable to perform her work from July 19 1996 until February 19, 1997.
11. that Dr. Pacin's medical report dated January 3, 2001 confirmed that she was suffering from a discogenic low back pain with left leg dural tension and that Dr. Pacin had recommended certain medications and suggested that she attend for physiotherapy treatments.

MPIC's legal counsel, in his submission, asserted that:

1. the Appellant's initial claim from MPIC was for medical expenses and not for loss of income and that the Appellant did not make any claim for loss of income until the month of February 1997 a period of seven (7) months after the motor vehicle accident.
2. the Appellant did not provide any timely medical reports to support the Appellant's claim that as a result of the motor vehicle accident she sustained injuries which prevented her from working full time as a [text deleted] and resulted in a loss of income.
3. the case manager reported that in discussions she held with the Appellant's physician, Dr. Smil, and her physiotherapist, Gordon Mackie, neither of them were able to support the Appellant's position in this respect of a loss of hours of work.
4. the Commission should accept the medical opinion of Dr. Baydock, MPIC's Medical Consultant, who after reviewing all the medical reports concluded that there was no medical documentation to support the Appellant's position that as a result of the motor vehicle accident she was unable to fully perform her work duties during the period July 19, 1996 to February 19, 1997.
5. notwithstanding several requests by MPIC for documentary evidence to support her claim for loss of income, the Appellant failed to provide this information in a timely fashion to MPIC.

MPIC legal counsel therefore submitted that, as a result of the failure of the Appellant to provide medical evidence to support her claim for a loss of hours of work and documentary evidence to confirm a loss income, the Appellant had failed to establish on a balance of probabilities that as a result of any injury she sustained in the motor vehicle accident she was prevented from working full time as a [text deleted] during the period July 19, 1996 to February 19, 1997 and, therefore, she was not entitled to IRI benefits pursuant to Section 81(1)(a) of the Act. MPIC's legal counsel therefore submitted that the Internal Review Officer's decision dated May 5, 1998 should be confirmed and the appeal dismissed.

Discussion

I. The Existence of Causal Relationship Between the Motor Vehicle Accident and the Appellant's Physical Impairment

The Commission notes that Dr. Baydock, MPIC's Medical Consultant, reviewed all of the relevant medical reports and advised the case manager, in his report dated April 22, 2002, that for a period of approximately three (3) months following the motor vehicle accident there was no medical documentation outlining any impairment in physical functioning. Dr. Baydock's medical opinion was supported by Dr. Smil's initial medical report, as well as the report of Mr. Mackie who indicated that treatment was interrupted by the Appellant's heavy work load. Dr. Baydock had therefore concluded, that based on the medical information on the Appellant's file, that the Appellant was not impaired from fully performing her work duties during the time specified in the request for review.

The Commission can not give any weight to the medical report of Dr. Pacin dated January 3, 2001. The motor vehicle accident occurred on July 9, 1996 and Dr. Pacin examined the Appellant on September 18, 2000 approximately four (4) years after the motor vehicle accident and Dr. Pacin noted that the Appellant was suffering from a discogenic low back pain with left dural tension. Dr. Pacin in his report dated January 3, 2001 indicated that he was informed by the Appellant that she was involved in a motor vehicle accident several years ago but he had no details of the accident. Dr. Pacin therefore, does not provide any opinion as to whether or not there is any connection between the injuries the appellant sustained in the motor vehicle accident on July 9, 1996 and her complaints of chronic low back pain reported to Dr. Pacin on September 18, 2000.

The only independent evidence in support of the Appellant's complaints that she suffered neck and back pain as result of the motor vehicle accident which prevented her from working full time is contained in Dr. Smil's reported dated December 19, 2000. In her report Dr. Smil states that the motor vehicle accident which the Appellant sustained injuries to neck and upper back and her lower lumbar area occurred July 17, 1996. She further states:

Although I did not see her until 3 months later, I certainly believe that her injuries were related to her MVA of 17/07/96. I saw her several times for follow ups (please, see the notes related to the accident).

Due to her injuries [G.C.] was not able to perform her full work duties from July 17 1996 until February 1977...

The Commission finds that since Dr. Smil did not assess the Appellant within a reasonable period of time after the motor vehicle accident, the Commission can not give any weight to Dr. Smil's subjective medical opinion that found a connection between the motor vehicle accident injuries and the inability of the Appellant to work full-time for the period of July 17, 1996 until February 1997. Dr. Smil does not provide any objective evidence to support this medical opinion.

As a result the Commission prefers the medical opinion of Dr. Baydock than Dr. Smil's medical opinion, dated December 19, 2000. Dr. Baydock, who reviewed all of the relevant medical reports stated, in his report to the case manager dated April 22, 2002, that for a period of approximately three (3) months following the motor vehicle accident there is no medical documentation outlining any impairment in the Appellant's physical function and that the medical information presented in Dr. Smil's initial medical report in the month of October 1996 indicates the Appellant was able to work at that time in at least a modified capacity.

Dr. Baydock in his report to MPIC dated January 8, 2004 reiterates his previous opinion and states:

The medical information on file was re-reviewed. As stated in a previous memorandum, there was a period of approximately three months in which the claimant did not seek medical care for her reported injuries. The conclusions drawn by physicians involved in her care at the time were based solely upon the subjective reporting. The presence of injuries related to the motor vehicle collision cannot be confirmed through objective medical reporting as none existed prior to the initial medical report on file. I thus cannot conclude a probable cause and effect relationship on objective grounds. Based on subjective reports an association between the reported injuries and the collision would have been possible.

The Commission also finds that the Appellant's complaints of pain caused by the motor vehicle accident are inconsistent with her conduct in the following respects:

1. The Appellant's initial claim from MPIC was for medical expenses and not for loss of income.
2. The Appellant did not make any claim for loss of income until the month of February 1997, a period of seven (7) months after the motor vehicle accident.
3. The Appellant was referred for physiotherapy treatments by Dr. Smil late in the month of October 1996 but due to demands of her workload, did not actually attend physiotherapy treatments until January 10, 1997 approximately three (3) months later.

For these reasons the Commission finds the Appellant has failed to establish on the balance of probabilities that as a result of any injury she sustained in the motor vehicle accident she was prevented from working on a full-time basis as a [text deleted] during the period July 19, 1996 to February 19, 1997 resulting in a loss of income, and, therefore, she was not entitled to IRI benefits pursuant to Section 81(1)(a) of the Act.

II. Documentary Evidence as to the Appellant's of Loss of Income

The Commission notes:

- a) the Appellant did not make any claim for loss of income until the month of February 1997, a period of seven (7) months after the motor vehicle accident had occurred.
- b) when the case manager requested a record of the hours lost, the Appellant advised the case manager that she was a self-employed [text deleted] who did not keep a record

of her hours of work, but that a reduction in her hours of work would be supported by her quarterly statements.

c)

The Commission further notes that:

- a) the case manager wrote to the Appellant on November 4, 1997 and advised the Appellant that her claim for IRI benefits was rejected.
- b) the case manager, also indicated in her letter to the Appellant, dated November 4, 1997, that MPIC was unable to consider the Appellant's claim for IRI benefits for the period July 19, 1996 to February 19, 1997 and that if the Appellant would provide the case manager with additional information it may support the Appellant's claim for IRI benefits and that she would appreciate receiving this information within thirty (30) days. The Appellant did not provide any documentary evidence in support of her loss of income to the case manager.
- c) the Internal Review Officer requested any documentation from the Appellant such as office records, time sheets or income statements which the Appellant intended to rely on in support of her claim for her hours of work but the Appellant did not provide any such information to the Internal Review Officer.

The Commission further notes, that during the course of the appeal hearing the Appellant wished to provide certain accounting information to the Commission. MPIC's legal counsel objected to the admissibility of this information on the grounds that the Appellant had failed, in a timely fashion, to provide the this information to MPIC and that it would be unfair and prejudicial to MPIC to permit the Appellant to file this information at the hearing. The Commission advised the Appellant that she had been sent, by the Commission, a notice of the appeal hearing wherein the Appellant was specifically requested to provide all documentary evidence she wished in support of her appeal in a reasonable time prior to the appeal hearing and the Appellant had failed to do so. The Commission, for these reasons, rejected to the Appellant's request to file any accounting information at the appeal hearing.

Decision

The Commission finds that the Appellant had ample opportunity to provide documentary evidence to support her claim for loss of income for the period of July 19, 1996 to February 19, 1997 and failed to do so. The Commission therefore finds, that the Appellant failed to provide

any evidence in support of her claim for loss of income and therefore determines the Appellant failed to establish on a balance of probabilities that as a result of the injuries she sustained in the motor vehicle accident she suffered a loss of income for the period July 19, 1996 to February 19, 1997 and was entitled to IRI pursuant to Section 81(1)(a) of the Act.

Conclusion

In summary the Commission therefore determines:

1. the Appellant has failed to establish on a balance of probabilities that as a result of any injury she sustained in the motor vehicle accident she prevented from working full time as a [text deleted] during the period July 19, 1996 to February 19, 1997;
2. the Appellant failed to provide any documentary evidence in support of her claim for loss of income for the period July 19, 1996 to February 19, 1997.

For these reasons the Commission therefore dismisses the Appellant's appeal with respect of the entitlement of IRI benefits for the period July 19, 1996 to February 19, 1997 and confirms the Internal Review Officers decision dated March 5, 1998.

Dated at Winnipeg this 19th day of August, 2005.

MEL MYERS

MARY LYNN BROOKS

NEIL COHEN