Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by H.F.
AICAC File No.: AC-04-20

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Deborah Stewart** **Mr. Neil Cohen**
APPEARANCES:	**The Appellant, H.F., was represented by Mr. Marcel Jodoin; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.**
HEARING DATE:	**May 3 & 4, 2006 and June 20, 22 & 29, 2006**
ISSUE(S):	**Entitlement to Income Replacement Indemnity ('IRI') benefits beyond June 12, 2004**
RELEVANT SECTIONS:	**Section 110(1)(c) of The Manitoba Public Insurance Corporation Act (the '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

The Appellant was injured in a motor vehicle accident on May 2, 2002, when the van he was driving collided with a pick-up truck. Both vehicles were extensively damaged. The Appellant sustained injuries to his neck, mid-back, chest and legs, and suffered from headaches.

At the time of the accident the Appellant, who had been a welder in [text deleted] for twenty-two (22) years, prior to coming to Canada in [text deleted], was working as a swine technician on a hog farm. His duties included birthing, feeding, cleaning and caring for domestic hogs.

Following the accident, the Appellant immediately missed two (2) days of work. He then attempted to return to work, but was unable to do so due to continuing symptoms, such as head and back ache. He was treated by a chiropractor and his family physician, Dr. H. Fast MD.

The Appellant began seeing an athletic therapist, Scott MacLeod, as well as a second chiropractor. He continued to be unable to work, suffering from lower back pain, right neck and mid-back pain, headaches, morning coughing and aggravation of his pain with activity.

The Appellant remained off work and in receipt of treatment. On September 19, 2002 he attended at Dr. William Rothman for an independent chiropractic examination. Dr. Rothman suggested continuation of the athletic therapy sessions and continuation of chiropractic treatment on a reduced basis.

Dr. Rothman concluded that on the basis of physical assessment, the Appellant was partially disabled from his duties as a hog farm worker. He found some magnification of functional limitations but noted that the prognosis for recovery was good, with caution noted in respect to the Appellant's ability to overcome any psycho-social influences that may be a detracting influence. He indicated:

> . . . [H.F.'s] enrollment in a work-conditioning program with Mr. MacLeod would hopefully help him overcome any fear avoidance issues that may be present and would restore an internal locus of control over his symptoms. I would expect that [H.F.] would be fit for a return to full time and full duties by the conclusion of his work conditioning program, which I believe is to run for four weeks. . .

Following a review by the chiropractic consultant to MPIC's Health Care Services Team, Dr. Pethrick, the Appellant's coverage for chiropractic treatment was ended on November 29, 2002.

The Appellant's position with his former employer was terminated in November of 2002. The Appellant's case manager asked his family physician, Dr. Fast, to comment on the Appellant's ability to participate in a work hardening program. Dr. Fast supported participation in a work hardening program. The Appellant was also examined, on December 12, 2002, by Dr. Jeff Engel, an orthopaedic surgeon. He supported a reconditioning and work hardening program, although he pointed out that the program could aggravate the Appellant's lower back pain.

On December 10, 2002 the Appellant's case manager issued a decision outlining a 180-day determination of employment for the Appellant as a swine technician. A work hardening program outline was developed by Associated Rehabilitation Consultants of Canada ('ARCC') and was approved by Dr. Fast on January 9, 2003.

During the work hardening program, the Appellant suffered from problems with high blood pressure and pain. However, for the most part, he continued with the program and ARCC provided a Discharge Report dated February 25, 2003. Although his condition had improved with the program, ARCC indicated that the Appellant was "unable to return to pre-injury employment due to self limitation based on continued pain complaints".

The Appellant's new family physician, Dr. Reimer, submitted a report on March 6, 2003 which indicated that the Appellant was having problems with ongoing back pain. On June 12, 2003, he confirmed that the Appellant would be able to perform a light duty employment with no lifting more than twenty-five (25) pounds and with frequent changes of position and did not have any other health issues that would restrict him from returning to work.

Dr. MacKay, a member of the MPIC Health Care Services Team, reviewed the Appellant's medical package on April 8, 2003. Dr. MacKay indicated that from an objective standpoint the Appellant had not been shown to have a physical impairment of function that would preclude him from performing work as a hog farmer.

Dr. MacKay stated:

> This file does not contain medical evidence indicating that [H.F.] developed a permanent impairment of spinal functions as a result of the incident in question. The information obtained from the file indicates that [H.F.'s] reluctance to perform prescribed exercises at home has contributed to his inability to return to his pre-accident level of function. At this stage it is doubtful that any further supervised care will be of any benefit to [H.F.]. If [H.F.] wishes to return to his pre-collision occupation as a hog farmer then he must be compliant with the program he was advised to perform independently.

Dr. MacKay reviewed Dr. Reimer's reports as well and concluded, on June 20, 2003, that the Appellant had the physical ability to return to the occupational duties of a hog farmer.

Dr. MacKay noted:

> Information obtained from Dr. Reimer subsequent to my April 8, 2003 inter-department memorandum was reviewed.
>
> It is noted that [H.F.] had the physical ability to perform light duty employment with no lifting more than 25 pounds provided he was able to change his position frequently. The reports provided by Dr. Reimer do not contain medical evidence identifying physical impairment of function that in turn would preclude him from performing his occupational duties.
>
> Based on the above noted information in conjunction with that noted during the initial review of the file, it is my opinion that [H.F.] has the physical ability to return to his pre-collision occupational duties as a hog farmer.

Dr. Reimer provided a subsequent report dated July 31, 2003 indicating that the Appellant had experienced a set back with his back and that even light duties and lifting would be out of the

question for him. Dr. Reimer provided further clarification to the case manager on August 16, 2003 indicating that the Appellant would be suitable for low intensity work which did not include lifting greater than five (5) pounds. He did not believe that any further improvement in functional status would be achieved and recommended retraining.

MPIC then retained a vocational rehabilitation consultant to assist in preparing the Appellant for finding suitable employment.

The Appellant's case manager wrote to him on July 9, 2003. After reviewing Dr. MacKay's opinion that there was no functional impairment that would prevent the Appellant from returning to his job as a swine technician, the case manager concluded that the Appellant had regained the capacity to do his job duties. As his position was no longer available, he would be entitled to a further 180-days of IRI, but entitlement to these benefits would end on January 12, 2004.

Internal Review

The Appellant sought an Internal Review of the case manager's decision. On November 7, 2003, the Internal Review Officer found that the file material supported the decision of the case manager. He indicated that while some of the Appellant's caregivers had been of the view that the Appellant was unable to return to the type of work he held at the time of the accident, there was little objective evidence to support that position. The Internal Review Officer found that the Appellant's subjective complaints exceeded what should be expected based on minimal objective findings and that, through a failure to pursue functional recovery through active exercise, the Appellant's ongoing functional limitations (if any), were largely of his own making.

It is from this decision of the Internal Review Officer that the Appellant has appealed.

Evidence

The panel heard evidence from the Appellant, with the assistance of a translator. We also heard evidence from the Appellant's family physician, Dr. Reimer, as well as his physiatrist, Dr. Watson. Finally, the panel heard evidence from Dr. MacKay, consultant to MPIC's Health Care Services Team.

Evidence of the Appellant

The Appellant testified at the hearing into his appeal, with the assistance of an interpreter. He described his history, including his work history in Germany, and after his immigration to Canada in 2001. He testified that he had missed very little work and had no problems with his back.

The Appellant described his job as a swine technician or hog farmer for the panel. His description corresponded with the findings of the therapists on the file that the work of a hog farmer falls in the heavy, or at least medium to heavy strength classification. Care of the younger animals also required rapid movement.

The Appellant also described the motor vehicle accident, the pain and injuries he suffered following that accident and the treatment which he sought. He explained his physiotherapy/athletic therapy and described and demonstrated the exercises which had been prescribed. He testified that he did the exercises almost every day, only stopping occasionally, when they caused him too much pain, and then only for four (4) or five (5) days at the most, before he would start doing the exercises again.

The Appellant also described his experiences in the rehabilitation program at ARCC, and the difficulties with communication which occurred there. The Appellant spoke very little English at the time and the caregivers at ARCC did not speak [text deleted]. However, for the most part, aside from two (2) or three (3) days in the middle of the program, when one of the therapist's mother-in-law was brought in to translate, no translation services were provided.

The Appellant described the pain and difficulties which he had suffered following the accident and the effects which it had on his life. He testified that he could no longer do many tasks around the house and that he could not even sit or stand longer than twenty (20) minutes or half an hour at a time. He had to rely upon his children for assistance. He testified, on cross-examination, that it seemed to him that the harder he tried to do things, even during the program at ARCC, the worse he got. In spite of this, he attempted to comply with the ARCC program and continued to do his exercises as much as he could.

The Appellant also described seeing Dr. Watson, a physiatrist, for treatment. However, the Appellant only saw Dr. Watson twice and did not obtain any substantial relief from these visits. He did not recall whether he communicated this to Dr. Watson.

Evidence of Dr. Reimer

Dr. Reimer is a family physician who took over the care of the Appellant from Dr. Fast, in February of 2003. He described his assessment of the Appellant and his conclusion that the Appellant was suffering from paraspinous muscle tenderness and gluteal medial tenderness below the lumbar spine. He had reported, in June of 2003, that the Appellant could only do light duties consisting of lifting less than twenty-five (25) pounds. He indicated that he later formed the opinion that due to the Appellant's pain and sleep disturbances, he questioned even his ability

to do light duties, and suggested to MPIC that they should consider English as a second language training for the Appellant.

Dr. Reimer testified that when he examined the Appellant he was conscious of the fact that the Appellant's injuries from the motor vehicle accident had lasted longer than the usual four (4) to six (6) weeks which one might expect for healing. In spite of this, he came to the conclusion that the Appellant was not overplaying his pain but rather, was relating it in a straightforward manner. He performed tests to rule out the presence of non-organic signs of pain behavior and made note of the Appellant's slow, stiff way of moving.

It was Dr. Reimer's view that as of December 2003, the Appellant would not have been able to perform the duties of a hog farmer or swine technician.

Evidence of Dr. Watson

Dr. Watson practices as a physiatrist. He testified that he examined the Appellant at the request of Dr. Fast in June of 2003. He described the language barrier he experienced with the Appellant as the reason he requested a translator to attend when the Appellant saw him for a second examination in September 2005. On both occasions Dr. Watson examined the Appellant and took a history.

Dr. Watson was of the view that the Appellant might suffer from ligamentous back pain. He explained that when ligaments are unstable, this causes the muscles to experience the stress of heavier work, working overtime to compensate. This can result in muscle spasm and sore muscles, increasing the pain to a point where the patient can not tolerate it. When back pain is

ligamentous in origin, muscle and work hardening programs may not help the patient, as they do not address the underlying (ligamentous) mechanism causing the pain.

Dr. Watson described his examinations of the Appellant and his findings. He explained that he had administered a trial of Xylocaine and the feedback from the Appellant indicated to him that he might be a candidate for prolotherapy treatment. He described this treatment, and the theories behind it for the panel.

Dr. Watson testified that, in his view, the Appellant was not a malingerer and that, as a result of his injuries and pain, he was not able to perform the duties of a hog farmer, which he understood to be work of a heavy nature.

On cross-examination, Dr. Watson reviewed a number of medical publications on the subject of prolotherapy and its effects on possible ligamentous pain. Dr. Watson agreed that some of the studies and literature in the area did not provide enough specifics or information. However, he remained of the view that ligamentous pain was a possible generator of the Appellant's pain and, in his view of the Appellant's history, he considered the motor vehicle accident to have been the cause of the ligamentous damage or instability, and of the Appellant's pain and symptoms.

Evidence of Dr. MacKay

Dr. Michael MacKay, a consultant with MPIC's Health Care Services Team, provided several reports to the case manager, Internal Review Officer and counsel for MPIC. He testified that he had not examined the Appellant but had focused on information provided to him by the Appellant's health care providers. In his view the Appellant's caregivers had not reported any

objective signs regarding the Appellant's lower back pain in the early stages following his motor vehicle accident. No neurologic abnormalities were found.

Dr. MacKay reviewed Dr. Watson's opinion that the Appellant's symptoms were consistent with ligamentous generated pain and resulted from the motor vehicle accident. Dr. MacKay took the position that he was unaware of any reliable, scientifically valid clinical tests to identify ligamentous instability involving the cervical spine and indicated that the trial of treatment recommended by Dr. Watson, prolotherapy, has not been recognized as a form of treatment that is medically required in the management of any type of musculoskeletal condition.

Although Dr. MacKay admitted that he had underestimated the severity of the collision, perhaps due to the vehicle airbag's failure to function, he was still of the view that the Appellant did not suffer from any functional limitations which would prevent him from returning to his job as a swine technician. Although he agreed that the Appellant was not a malingerer and that he suffered from non-specific back pain, for which no cause could be determined, it was his view that the Appellant's pain should not be a limiting factor in his ability to return to work. In his view education and rehabilitative exercise were essential for the Appellant's recovery and return to the workplace. He testified that it had been his view, at the time of his written reports, that the Appellant had not been compliant with his home exercise program, which may have contributed to the delay in his recovery. It remained his view that the Appellant had suffered a soft tissue injury which should resolve with the passage of time, particularly as the Appellant had been provided with significant care. There were no objective findings in the examination results which would prevent the Appellant from resuming his duties as a swine technician.

Other Evidence

The panel also reviewed reports from Michael Hutton, the Appellant's athletic therapist, ARCC Rehabilitation Consultants, Michele Gibb, occupational therapist and Dr. Jeff Engel, orthopaedic surgeon.

Dr. Engel reported on December 18, 2002. His diagnosis was one of mechanical low back pain. He supported a trial of a reconditioning and work hardening program, although noting that this may aggravate the Appellant's mechanical low back pain. He concluded:

> The specific objective findings that would preclude [H.F.] from returning to his occupation as a swine technician at a local hog farm is aggravation of his mechanical low back pain with working. In general, if one has severe back pain, one would find it difficult to do his or her occupation.

In a Discharge Report dated February 25, 2003, the ARCC Consultants provided the following vocational recommendation:

> Unable to return to pre-injury employment due to self-limitation based on continued pain complaints.

After reviewing the Appellant's test and assessment results, the ARCC consultants indicated that due to H.F.'s limited understanding of the English language, the educational seminars provided may not have been fully effective in teaching him the desired concepts.

They noted:

> [H.F.] continues to feel that his complaints were not addressed during programming. Passive therapeutic interventions did not provide relief to [H.F.] and facilitate further functional gains. [H.F.] was encouraged that the prescribed stretches and strengthening exercises were an appropriate treatment for his lower back complaints. [H.F.'s] unwillingness to perform regular stretching and abdominal strengthening exercises will limit his ability to manage his lower back complaints in the future.

The job classification of hog farmer was classified at a heavy demand level. The Appellant's continued pain complaints and problems with elevated blood pressure were reported, with the consultants concluding that:

> [H.F.] does not meet the job demands of a Hog Farmer. This limitation is mainly based on his reports of pain. Despite continued reports of lower back pain, [H.F.] did attempt to complete all his work simulation as well as exercises.

The occupational therapist, Michele Gibb, provided two (2) reports. In the first, dated November 14, 2005 she reported the results of a two (2) day functional capacity evaluation. She found that overall the client's performance was considered consistent and reliable and described the Appellant's reports of pain and ability to tolerate certain tasks. She noted significant deficits in the areas of elevated work, forward being (sitting and standing), repetitive squat and balance.

She provided a further report on November 27, 2005 which stated:

> [H.F.'s] current level of physical capacity exceeds the 'sedentary level', but does not meet the maximum physical demands of the 'light category'. His level of functional ability is therefore at the sedentary level. Based on his functional capacity evaluation results, [H.F.] would be unable to complete job demands consistent within the heavy or medium category and would not be able to complete all demands required of all light level positions.

Submissions

Appellant's Submission

Counsel for the Appellant submitted that it was clear that the Appellant's personal and work history, as well as the weight of evidence and testimony, indicated that the Appellant was not a malingerer and that his pain is real.

He pointed out that Dr. MacKay's mandate was simply to determine whether there were any objective evidence and physical findings regarding the Appellant's condition. As he did not find objective evidence, he determined the Appellant could return to his work. However, Dr. MacKay did admit that the Appellant suffered from chronic (in that it had lasted over six (6) months) non-specific lower back pain, and that this pain had been caused by the motor vehicle accident.

It was submitted that every other medical consultant agreed that the Appellant could not return to work and that the Appellant's symptoms related to the motor vehicle accident. Dr. Engel was of the view that the Appellant's pain might be aggravated by a work hardening program and that his pain might prevent him from returning to work. Dr. Rothman found that the Appellant was partially disabled from hog farming duties and Michele Gibb concluded that the Appellant would be unable to complete job demands within the heavy or medium category.

In reviewing Dr. Watson's evidence, counsel for the Appellant maintained that it was not essential that the panel accept Dr. Watson's theories regarding ligamentous damage and prolotherapy. What was important was Dr. Watson's diagnosis that the Appellant suffered from lower back pain which prevented him from working and which was caused by the motor vehicle accident.

Counsel for the Appellant also noted that the evidence had established that the Appellant, in spite of the language barriers with which he was faced, had been compliant with the home exercise program prescribed for him. Although MPIC had not provided appropriate translation services for him throughout his treatment and education, the Appellant attempted to be compliant, but

was prevented from full activity and a return to work by his lower back pain, which was caused by the accident.

Submission of MPIC

Counsel for MPIC emphasized that the onus is on the Appellant to establish, on a balance of probabilities, that he is incapable of performing the essential duties of his employment as a result of the motor vehicle accident. Counsel submitted that the level of proof should be proportional to the significance of this claim, and that the panel cannot merely consider the Appellant's subjective complaints alone. When looking at the totality of the evidence, he submitted, there is a lack of an objective basis for the Appellant's claim of inability to return to work.

Counsel for MPIC submitted that during the course of the hearing, the evidence touched upon the issue of chronic pain. Counsel submitted that there had been no evidence that the Appellant was suffering from a chronic pain syndrome, and no assessment had ever been done to make a connection between the Appellant's condition and such potential psychological factors.

The conflicting opinions of Dr. MacKay and Dr. Watson were reviewed. Counsel for MPIC submitted that both the credentials and evidence of Dr. MacKay should be preferred. He noted that Dr. Watson's practice included both prolotherapy, an uninsured service, and cranial-sacral therapy, which put him on the fringes of medicine. Dr. Watson, when he found damaged ligaments, really was looking only at tenderness and tightness, which Dr. MacKay testified are not evidence of pathology.

Counsel also submitted that, during his testimony, Dr. Watson showed a negative bias towards insurance companies in general. He also questioned Dr. Watson's criticism of the role of work

hardening programs for ligamentous injuries, submitting that work hardening programs are well accepted in the mainstream of the medical rehabilitation world.

On the issue of the Appellant's language difficulties, counsel for MPIC submitted that the Appellant's physiotherapist did not indicate having a communication problem with the Appellant and that, in the ARCC reports, there is no indication that the Appellant expressed any frustration with communication. A translator was called in when more detailed explanations were needed.

He rejected the reports submitted by Michele Gibb, as the Functional Capacity Evaluations occurred long after the date of the case manager's decision, and so were of no probative value. He relied instead upon the reports and testimony of Dr. MacKay, taking the position that as there were no objective findings in the Appellant's examination results, there continues to be no objective basis for him not to resume his duties.

Discussion

> **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:
>
> . . .
>
> (c) the victim is able to hold an employment determined for the victim under section 106;

The onus is on the Appellant to show, on a balance of probabilities, that he is unable to return to his occupation as a hog farmer or swine technician.

The panel has reviewed the reports on file, the testimony at the hearing and the submissions of counsel for the Appellant and for MPIC. The panel finds that the Appellant has presented

sufficient evidence to establish that he was not capable of doing the work of a hog farmer or swine technician.

We have carefully reviewed Dr. MacKay's opinion as set out in his reports and his testimony at the hearing. Dr. MacKay was quite clear that he did not find the Appellant to be a malingerer and did not doubt that he suffered pain as a result of the accident. However, a lack of objective findings to explain his lower back pain established that the Appellant was able to return to work and was not entitled to continued IRI benefits.

The panel is of the view that in coming to this conclusion, Dr. MacKay failed to take into consideration several factors and that the Internal Review decision also failed to take into account some of these factors.

Dr. MacKay was clear that he did not take into consideration the Appellant's expression of pain. He based some of his conclusions upon his underestimated impression of the severity of the accident, due to the vehicle airbag's failure to deploy. He was also of the view that the Appellant had not been performing his home exercises, although the evidence at the hearing established that the Appellant had indeed been compliant with this exercise program.

Dr. MacKay also failed to take into account Dr. Reimer's opinion that the Appellant could only do light duties, lifting under twenty-five (25) pounds with restrictions regarding changing positions.

Dr. MacKay testified that although he was aware of Dr. Reimer's opinion that the Appellant could only do light duties, lifting under twenty-five (25) pounds, because Dr. Reimer had

presented no objective test results to support this view, he had placed no weight upon Dr. Reimer's opinion and instead reached the conclusion that the Appellant could perform the medium to heavy work of a hog farmer. Yet even ARCC's objective findings, testing and assessments did not find that the Appellant could lift over twenty-five (25) pounds.

Dr. MacKay also failed to take into consideration the finding in the ARCC Discharge Report that the Appellant did not meet the job demands of a hog farmer.

It may be that Dr. MacKay did not take these factors into consideration because, as he indicated, his mandate was to conduct a paper review of the file to look for objective findings, and he was forced to rely upon the reports and findings of other practitioners. This may have been complicated by the language barrier between the Appellant and those practitioners.

Other caregivers, such as Dr. Watson, Dr. Reimer, Dr. Rothman, Dr. Rosenberg, Ms Gibb, and the consultants at ARCC, were able to base their findings upon actual physical assessments and face-to-face interviews with the Appellant, and their interpretation of them.

For all of these reasons, the panel has placed greater weight upon the evidence of these other physicians and caregivers who were involved in the Appellant's care, and provided evidence to the Commission.

The evidence before the Commission established, and both parties agreed, that the job of a hog farmer or swine technician involves heavy labour. Several reports, from the Appellant's caregivers, established that the Appellant could not meet these job demands. Dr. Rothman, in his independent chiropractic assessment stated, on September 30, 2002:

> Based on the job demands analysis provided in the file information package, [H.F.'s] occupation falls into the medium to heavy work category. A verbal review of work demands with [H.F.] disclosed that the main tasks involve rapid and repetitive bending at the trunk to lift and carry medium loads. My assumption is that his requirement to take a rotation of feeding the pigs requires heavier lifting. On the basis of physical assessment, I would surmise that [H.F.] is partially disabled from his duties as a hog farm worker. He may have difficulty performing rapid continual forward bending and lifting and shifting moderate loads. . . .

Dr. Rothman was of the view that the Appellant would be fit for a return to full time and full duties by the conclusion of a four (4) week work conditioning program.

Dr. Engel recognized that mechanical low back pain could prevent the Appellant from working as a hog farmer in December of 2002.

On January 8, 2003, the chiropractor, Dr. Rosenberg, stated:

> In my opinion, [H.F.] was unfit to work in his former occupation when I last saw him on November 29, 2002. I sincerely doubt that a six-week work hardening regimen will allow him to return to work in his pre-accident employment.

The ARCC Discharge Report of February 25, 2003 also classified the job of a hog farmer as having a heavy demand level. The report stated:

> [H.F.] does not meet the job demands of a Hog Farmer. This limitation is mainly based on his reports of pain. Despite continued reports of lower back pain, [H.F.] did attempt to complete all his work simulation as well as exercises.

On July 31, 2003, Dr. Reimer described the setback the Appellant had suffered with his back. He stated:

> He is eager to look at some type of employment that he would be able to tolerate. It would appear that lifting is out of the question. Even light duties would appear to be too

> much. But, something like sales – could be a possibility if his English could be improved. . . .

On November 1, 2004 Dr. Reimer stated:

> Impression: [H.F.] has fairly significant disability post-MVA despite attempts at work hardening; this patient is motivated to work but not able to find any work that is suitable.
>
> Plan: [H.F.] is not fit for return to work as a swine tech.

Dr. Watson, in his report dated September 12, 2005, stated:

> My experience has been that very intense physiotherapy programs used to strengthen muscles will often flare the pain because so many ligament structures are unstable. . . Therefore, his response to the exercise program at ARC would not surprise me and would be consistent with ligament pain being the generator of his discomfort.
>
> This kind of pain problem does not improve spontaneously. I believe that his pain will remain indefinitely without appropriate treatment. His pain certainly will be aggravated by any amount of lifting, pushing or pulling, or any extended length of time sitting or standing for more than 20 minutes.
>
> I cannot see this gentleman returning to any sort of laborious-type work, ie he could not do farm work. I am also somewhat pessimistic as to whether he will be able to do any sort of sedentary work, because of his limited sitting capacity.

Dr. Watson repeated and expanded upon this opinion during his oral testimony at the hearing.

Accordingly, the panel finds that the bulk of the evidence before it establishes that the Appellant was not capable, as a result of the motor vehicle accident, of doing the work of a hog farmer or swine technician. The Appellant has met the onus of establishing, on a balance of probabilities, that he was not able to return to work at this occupation.

Therefore, the panel finds that the Appellant is entitled to IRI benefits beyond January 12, 2004, as well as appropriate interest. The decision of the Internal Review Officer dated November 7,

2003 is therefore rescinded and the foregoing substituted for it. The Commission will retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation, either party may refer this matter back to the Commission for determination.

Dated at Winnipeg this 18th day of July, 2006.

LAURA DIAMOND

DEBORAH STEWART

NEIL COHEN