

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.O.R.V.
AICAC File No.: AC-03-190**

PANEL: Ms Yvonne Tavares, Chairperson
The Honourable Mr. Justice Wilfred De Graves
Ms Sandra Oakley

APPEARANCES: The Appellant, L.O.R.V. was represented by Mr. Edward Rice and Mr. Chris Rykaczewski;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: June 14, 2007

ISSUE(S): 1. Entitlement to Income Replacement Indemnity ('IRI') benefits beyond October 31, 2003;
2. Entitlement to medical expenses coverage beyond October 31, 2003.

RELEVANT SECTIONS: Sections 81(1) and 136(1) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Section 5 of Manitoba Regulation 40/94

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, L.O.R.V., was involved in two (2) motor vehicle accidents, on January 15, 2002 and March 2, 2003. As a result of these accidents, the Appellant sustained soft tissue injuries. He complained of headaches, dizziness and left arm pain and weakness. Due to the injuries

which the Appellant sustained in these accidents, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act.

In a decision dated October 14, 2003, MPIC's case manager notified the Appellant that his IRI benefits and coverage for treatment expenses would cease as of October 31, 2003. Specifically, the case manager advised the Appellant as follows:

Based on the totality of the medical evidence the following was noted:

Pre-Existing Conditions:

You have pre-existing medical conditions which include osteoarthritis of both knees, degenerative changes in your cervical, dorsal and lumbosacral spine, left shoulder and left hand.

Work Capacity:

You are capable of performing your occupational duties you held at the time of the accident – performing light duties at [text deleted].

Therapeutic Intervention:

The medical information is not supportive of ongoing medical intervention as related to the motor vehicle injuries.

There is no objective physical evidence identifying an impairment of physical function which in turn would disable you from your light occupational duties with [text deleted]. Your entitlement to Income Replacement Indemnity benefits will now cease.

You are also therefore not entitled to any further therapeutic interventions/medical expenses (ie. chiropractic treatment, pool therapy). Your entitlement to further therapeutic interventions/treatment will also cease.

To assist you in making arrangements with your employer and medical practitioners, the Manitoba Public Insurance will pay your IRI benefits and medical treatment up to and including October 31, 2003. As of November 1, 2003 you will not be entitled to any further Personal Injury Protection Plan benefits.

The Appellant sought an internal review from that decision. In a decision dated November 19, 2003, the Internal Review Officer dismissed the Appellant's Application for Review and upheld

the case manager's decision of October 14, 2003. The Internal Review Officer based his decision on the following factors:

My review of the medical evidence would indicate that is (sic) has not been established that you are entitled to further PIPP benefits beyond October 31, 2003 as a result of injuries caused by the motor vehicle accidents. In arriving at that decision, I have noted the following:

1. That you had a significant pre-accident medical history which was already significantly interfering with your ability to carry on your employment prior to the motor vehicle accidents. The nature of the pre-existing problems were degenerative in nature.
2. That although Dr. Arneja commented upon your lack of work capacity, he was mindful of his referral to Dr. Berrington for the problems you were having with your left upper extremity muscles. According to Dr. Arneja, it was those symptoms that were preventing you from returning to your light duty employment.
3. Dr. Berrington recommended a return to your sedentary duties at [text deleted] notwithstanding the problems with your left upper extremity.
4. That Dr. Cohn's opinion as to whether injuries from the accidents were preventing you from returning to your pre-accident employment appear somewhat measured in my view.
5. That Dr. Mayba, confirming that you are now unable to return to your light duty employment, attributes your inability to do so to the progression of your pre-existing conditions degenerative conditions and not to the accidents. I attach weight to Dr. Mayba's opinion in light of the medical information in your file.
6. That Dr. MacKay has indicated that the file does not contain medical evidence indicating that you have a physical impairment of function arising from the medical conditions associated with the accidents to the extent that you would be unable to perform your light duty employment.

On the basis of the totality of the medical evidence, I am unable to conclude that you have established, on a balance of probabilities, that you are entitled to further PIPP benefits as a result of injuries occasioned by either your motor vehicle accidents. On that basis I am upholding Mr. Rawdon's decision of October 14, 2003 and dismissing your Application for Review.

The Appellant has now appealed from that decision to this Commission. The issues which require determination in this appeal are:

1. whether the Appellant is entitled to Income Replacement Indemnity ('IRI') benefits beyond October 31, 2003; and

2. whether the Appellant is entitled to medical expenses coverage, under PIPP, beyond October 31, 2003.

At the hearing of the appeal, counsel for the Appellant argued that the Appellant continued to suffer from his motor vehicle accident-related injuries after his benefits were terminated by MPIC, until he underwent surgery in [text deleted] for a torn rotator cuff, when his pain complaints significantly resolved. Counsel for the Appellant asserts that there was a temporal relationship between the Appellant's complaints and the motor vehicle accident. The Appellant's complaints remained constant from the time of his first motor vehicle accident, until a cause for the complaints was determined and he underwent surgery to repair the torn rotator cuff. The Appellant's complaints then substantially resolved and his function greatly improved. Based upon this series of events, counsel for the Appellant argues that the motor vehicle accidents were the cause of the Appellant's disabling complaints and not his pre-existing condition. Therefore, counsel for the Appellant submits that the Appellant's PIPP benefits were prematurely terminated and that they should be reinstated.

Counsel for MPIC submits that the weight of the evidence does not establish that the Appellant had any accident-related occupational disability beyond October 31, 2003. He argues that the medical evidence does not establish that the Appellant sustained a rotator cuff injury from the motor vehicle accident, since the indications of such an injury would be immediate. Counsel for MPIC maintains that in this Appellant's case there is a distinct absence of objective evidence of a disabling, accident-related medical condition. Counsel for MPIC therefore submits that the Appellant has not established that he was unable to return to or to continue his full time employment as a result of a medical condition arising from a motor vehicle accident.

In respect of treatment benefits, counsel for MPIC maintains that the Appellant has not established that any further courses of treatment would be medically required for accident-related medical conditions. As a result, he submits that the Appellant's appeal on this point should be dismissed as well.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant has not established that he was unable to perform the essential duties of his employment (that being light duties at [text deleted]) beyond October 31, 2003, as a result of injuries sustained in the motor vehicle accidents of January 15, 2002 and/or March 2, 2003. We base our findings upon the following factors:

1. Dr. I.I. Mayba's report dated September 3, 2003, wherein Dr. Mayba found that the Appellant's inability to perform the light duties at his occupation was due to his pre-existing conditions. Further, Dr. Mayba notes that the Appellant's pre-existing conditions were chronic and had been slowly progressing prior to and after his accidents.
2. The Appellant's torn rotator cuff injury could not be related to either motor vehicle accident. We find that the indications of a torn rotator cuff injury would have been immediate following either accident, and such a diagnosis was not made after the accident, despite numerous medical attendances by the Appellant upon health care practitioners. Accordingly, we could not relate the Appellant's rotator cuff injury to either motor vehicle accident.
3. The Appellant's pre-accident medical history which was significantly interfering with his ability to carry on his employment prior to the motor vehicle accidents.

4. There was a lack of evidence to establish that further medical treatments continued to be medically required for the Appellant as a result of injuries sustained in either motor vehicle accident.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated November 19, 2003, is therefore confirmed.

Dated at Winnipeg this 23rd day of August, 2007.

YVONNE TAVARES

**THE HONOURABLE WILFRED
DE GRAVES**

SANDRA OAKLEY