

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L. M. S.
AICAC File No.: AC-05-169**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Deborah Stewart
The Honourable Mr. Wilfred De Graves

APPEARANCES: The Appellant, L. M. S., was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: June 27, 2007

ISSUE(S): Entitlement to Income Replacement Indemnity benefits beyond June 12, 2005

RELEVANT SECTIONS: Section 83(1) of *The Manitoba Public Insurance Corporation Act* ('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, L. M. S., was involved in a motor vehicle accident on August 4, 2004, when the vehicle she was driving was rear-ended. As a result of this accident, the Appellant sustained soft tissue injuries to her body.

At the time of the motor vehicle accident, the Appellant was working as a child/youth care worker for [text deleted], on a regular full-time basis. As a result of the injuries which the

Appellant sustained in the motor vehicle accident, she was unable to continue this employment and thus became entitled to Income Replacement Indemnity ('IRI') benefits.

On December 8 & 9, 2004, the Appellant underwent a multi-disciplinary assessment by Associated Rehabilitation Consultants of Canada ('ARCC'). The purpose of the assessment was to conduct a physical and psychological examination of the Appellant, provide treatment recommendations and suggestions to assist with her return to work. The multi-disciplinary assessment was detailed in a report dated December 14, 2004 and made the following recommendations:

Recommendations

Diagnostic Recommendations

No further hematologic, electrophysiologic, or radiologic investigations are advised at this time. She has had a cervical CT scan and is awaiting an appointment for a Lumbar CT scan.

Therapeutic Recommendations

The following interventions are suggested at the present time:

- Smoking cessation or reduction
- Trial of acupuncture treatment
- Work Hardening Program (8-week) – starting at 2 hours and progressing to full time
- No medication changes

The file was subsequently reviewed by MPIC's Health Care Services Team. In his report dated February 4, 2005, Dr. MacKay concluded as follows:

It is my opinion [L.M.S.] has not been identified as developing a medical condition as a result of the incident in question that in turn prevents her from proceeding with the exercises and program noted above. It is my opinion [L.M.S.'s] low back symptoms are not solely a result of the incident in question. It is my opinion the information on file does not indicate [L.M.S.] has an impairment of physical function that precludes her from all forms of gainful employment.

It is reasonable to assume that upon completion of a work hardening program, [L.M.S.] will have reached the stage where she can return to her pre-accident occupational duties with no restrictions. The information on file does not indicate [L.M.S.] has developed a medical condition as a result of the incident that in turn would lead to a permanent impairment of spinal function and/or permanent disability.

In January 2005, the Appellant was admitted to the Health Sciences Centre, Winnipeg, MB with a severe subarachnoid hemorrhage from a ruptured left middle cerebral artery aneurism. As a result, the Appellant was hospitalized for a month. The prognosis for the Appellant's recovery from treatment of the ruptured aneurism and the proposed treatment for two (2) unruptured aneurisms was good.

In April 2005, the Appellant again began attending her chiropractor for treatments as she was still experiencing pain in her neck, lower back and pain radiating down her right leg.

In a decision dated M. 30, 2005, MPIC's case manager advised the Appellant that:

We are now in receipt of a report dated M. 13, 2005 from Dr. Michael West. In this report he indicates that in his opinion "her aneurysms and subarachnoid hemorrhage are not related to the car accident of August 4, 2004".

To determine the causal relationship between your present condition(s) and your motor vehicle accident, your file was reviewed by our Health Care Services Team. The information provided indicates that there are a number of unrelated medical conditions precluding your ability to return to work. The medical information does not establish a cause/affect relationship between your present condition and the motor vehicle accident of August 4, 2004. Furthermore, there are no conditions arising from the motor vehicle accident precluding you from returning to the jobs you held at the time of the motor vehicle accident. Enclosed is a copy of your entire medical package along with a copy of the Health Care Services Team report.

In conclusion, your IRI benefits, will end as of June 12, 2005. Please note that although your present inability to work is unrelated to the motor vehicle accident as of the date of this letter, in order to avoid any undue hardship, IRI benefits will be paid to you up to June 12, 2005.

The Appellant sought an internal review of this decision. In a decision dated August 4, 2005, MPIC's Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision of May 30, 2005. In her decision dated August 4, 2005, the Internal Review Officer concluded the following:

The medical evidence located in both of Dr. MacKay's reports (February 4, 2005 and June 6, 2005) stated you had recovered from your motor vehicle accident conditions to the extent you were capable of participating in a Work Hardening program. This Work Hardening program has never come to fruition because of your inability to participate in that program now because of your aneurysm. However, as indicated by Dr. MacKay, the Work Hardening program was likely a necessary step in your rehabilitation to returning to work successfully. I also note the ARCC Report indicated you were incapable of working at your employment when they did the initial assessment in December 2004. ARCC also recommended an eight week work hardening program.

There is no evidence that your soft tissue injuries have improved since then, or your status has been altered. At the hearing you presented to me as still being in a state of pain, which you attributed to the motor vehicle accident.

Your ability to participate in a work hardening program at ARCC, or any other similar facility, has been prevented or deferred by the brain aneurysms you have suffered. Therefore, the aneurysms, not your soft tissue injuries, are preventing your participation in the rehabilitation program, and by extension, returning to work. In other words, the intervening event of your aneurysms, precludes MPI providing you with IRI benefits for medical conditions not caused by a motor vehicle accident.

Dr. MacKay has stated that but for your hemorrhage, you would have been able to return to your full-time duties at the completion of the Work Hardening program in all probability. Had you commenced a work hardening program just after Dr. MacKay's recommendation of February 4, 2005, say February 14, 2005, and it had lasted for eight weeks, then the likely date of termination would have been April 8, 2005. Allowing for an addition two – four weeks of rehabilitation, as is sometimes required, then you would likely have been able to return to work on approximately May 9, 2005, if, as indicated by Dr. MacKay, that you would have been able to return to work in all medical probability after work hardening. I note that your IRI benefits were terminated as of June 12, 2005.

Accordingly, the decision of the case manager of May 30, 2005 to end your end your (sic) entitlement to Income Replacement Indemnity as of June 12, 2005 is confirmed.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to IRI benefits beyond June 12, 2005.

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is entitled to an additional eight (8) weeks of IRI benefits beyond June 12, 2005, to allow for the work hardening program that the Appellant should have received in order to transition her back to the workplace.

We base our determination on the Appellant's testimony at the hearing of this appeal that she was ready to participate in a work hardening program as of June 2005. As noted by the Internal Review Officer in her decision of August 4, 2005, "... as indicated by Dr. MacKay, the Work Hardening program was likely a necessary step in your rehabilitation to returning to work successfully. . . ARCC also recommended an eight week work hardening program." As stated by Dr. MacKay, the Appellant would have been able to return to her full-time duties at the completion of the Work Hardening program in all probability. As a result, we find that the case manager should have arranged for a work hardening program in June 2005 in order to assist the Appellant with her transition back to the workplace.

Although the Appellant was seeking ongoing IRI benefits, the Commission finds that the Appellant has not established, on a balance of probabilities, that injuries related to the motor vehicle accident of August 4, 2004, would have continued to prevent her from holding employment beyond the completion of an eight-week work hardening program. Her own

admission at the hearing of the appeal that she was physically capable of undertaking the program as of June 2005 leads us to the conclusion that, on the balance of probabilities, she would have been able to return to her full-time duties upon the completion of the program. Additionally, the Appellant did not present any medical evidence establishing that her ongoing inability to return to her previous employment continued to be related to the injuries caused by the motor vehicle accident.

Accordingly, the Commission finds that the Appellant is entitled to an additional eight (8) weeks of IRI benefits beyond June 12, 2005. The Appellant shall be entitled to interest on this sum in accordance with Section 163 of the MPIC Act.

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

YVONNE TAVARES

DEBORAH STEWART

HONOURABLE WILFRED DE GRAVES