

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.M.
AICAC File No.: AC-04-157**

PANEL: Ms Laura Diamond, Chairperson
Dr. Sheldon Claman
Dr. Sharon Macdonald

APPEARANCES: The Appellant, R.M., appeared on his own behalf and was assisted by an Interpreter, Mr. Neme Juan; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: November 5, 2008

ISSUE(S):

- 1. Entitlement to further Income Replacement Indemnity benefits;**
- 2. Entitlement to coverage for psychological treatments; and**
- 3. Entitlement to further Income Replacement Indemnity benefits.**

RELEVANT SECTIONS: Sections 110(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

On March 22, 2005, the Appellant was injured when, in the process of exiting a City of Winnipeg Transit Bus, he slipped on the top step and slid to the bottom.

The Appellant received chiropractic treatment for injuries to his back. He was unable to work at his job as a line cook and was in receipt of Income Replacement Indemnity ('IRI') benefits.

He participated in chiropractic treatment, eight (8) sessions with an athletic therapist and a reconditioning program with the Associated Rehabilitation Consultants of Canada ('ARCC'). The reconditioning discharge report indicated that no significant physical limitations were identified that would prevent the Appellant from returning to employment, although his physical ability was limited due to his subjective complaints. His chiropractor confirmed that he was capable of working modified duties and the Appellant was provided with vocational assistance.

The Appellant's case manager wrote to him on September 9, 2003 indicating that as he had regained the functional capacity to perform the occupational duties that he held at the time of the accident, he would no longer be entitled to IRI benefits, with the exception of continued IRI for an additional 180-days due to his loss of employment as a result of the motor vehicle accident. His continued entitlement to IRI benefits was to end on March 6, 2004.

The Appellant sought an Internal Review of this decision. On June 10, 2004 an Internal Review Officer for MPIC concluded that notwithstanding the Appellant's subjective symptoms, the medical evidence supported his ability to return to his pre-accident employment and that he had the ability to perform his pre-accident employment as a line cook. The case manager's decision was upheld.

While undergoing treatment, the Appellant's chiropractor noted that the years of chronic pain and disability may have affected his psychological quotient negatively. He recommended a psychological assessment.

The Appellant attended at a clinical psychologist for an independent psychological assessment. The psychologist found that the Appellant did have some symptoms of depression, both prior to and following the motor vehicle accident, but indicated that this was not directly linked to his falling down the steps of the bus or as a result of his pain, although there may be some interaction with his pain symptoms. She found that given the level of depression, the Appellant would not be unable to perform the required physical tasks of a job.

Following consultation with MPIC's Health Care Services, the Appellant's case manager found that the Appellant's psychological symptoms were not related to the motor vehicle accident and that he had the functional capacity to perform the occupational duties of the position he held at the time of the accident. Accordingly, MPIC did not consider psychological treatment sessions to be medically required as a result of the motor vehicle accident and found that the Appellant was not entitled to further IRI benefits as a result of a psychological condition preventing him from working.

The Appellant sought an Internal Review of this decision. On September 16, 2005, an Internal Review Officer for MPIC upheld the case manager's decision that the evidence did not establish, on a balance of probabilities, that there is a causal relationship between the Appellant's psychological difficulties and the motor vehicle accident in question to the extent that is required in order to receive IRI benefits. As a causal connection had not been established, psychological treatments would not be covered by MPIC, as they were not medically required on account of injuries arising out of the accident.

It is from these decisions of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant testified at the hearing into his appeal. He described falling down on the bus steps and the injuries and pain that he suffered as a result.

He described his difficulties in returning to work as a line cook, since this involved lifting a lot of heavy things, such as a whole bag of potatoes, by himself.

The Appellant described the difficulty he had with pain in his back and knee. In his view, he could not work because of that pain and because of the limitations it caused on his ability to walk any distance or to stand for periods of time.

He described the difficulties he had in the past, particularly when he separated from his wife, and in missing a daughter who lived in [Text deleted], but he did not think that he had significant psychological problems. He testified that he filed his appeal because some of his caregivers may have believed he had psychological problems, and he didn't want to contradict them, but overall, he believed that his problems stemmed from the pain in his back, which was the cause of his inability to work.

Evidence and Submission for MPIC

Dr. Douglas Andrew Jones, a clinical psychologist in private practice who also is a consultant for MPIC, testified at the hearing into the Appellant's appeal. He indicated that he had previously reviewed the Appellant's file and provided an opinion, in April of 2005, regarding the necessity

for the Appellant to undergo a psychological consultation, recommending that this be done by an independent third party.

He then reviewed the Appellant's file again, on June 9, 2005. This included a review of the independent clinical psychologist, Dr. Teresa Sztaba's report of May 8, 2005.

In his report of June 9, 2005, Dr. Jones reviewed reports from the Appellant's family physician, Dr. Malabanan, his chiropractor, Dr. Partridge and Dr. Sztaba. After reviewing these reports, Dr. Jones was of the opinion that, based on the balance of probabilities, the claimant's current psychological difficulties of recurring major depression and limited symptom panic attacks had a possible, but not a probable, causal relationship to the motor vehicle accident. Dr. Sztaba had indicated that the Appellant's current psychological symptoms were not related to the motor vehicle accident directly, but to other factors such as his lack of employment and social supports and his financial difficulties. As well, she had noted the claimant's ability to get to and from work and to perform the required tasks of the job, although noting some lack of motivation to return to work at the present time.

At the hearing, Dr. Jones reviewed both his June 9, 2005 report and Dr. Sztaba's report.

He indicated that based on Dr. Sztaba's report, it was his opinion that the depression and anxiety symptoms discussed, while they could possibly be related to the motor vehicle accident, were probably not related. Based on this, it was his opinion that the psychological treatment recommended by Dr. Sztaba would not be considered medically required as a result of the motor vehicle accident. He reviewed the DSM for diagnosis referred to in the Appellant's medical reports and described the Appellant's condition as a low grade depression, which may have been

chronic and long term. He agreed with Dr. Sztaba that his problems and depressed mood were due more to his lack of social supports and employment than to his fall from the bus and pain. He was psychologically able to work and a return to work would not adversely affect his clinical condition. Rather, a return to work might increase his self-confidence, decrease his depression, and help manage his financial stresses.

The Appellant had worked from September 2005 to June 2006, and then beginning again in January 2008, which indicated that he is psychologically capable of work.

Counsel for MPIC submitted that the Appellant, through a variety of treatments, including chiropractic treatment, athletic therapy and a reconditioning/work hardening program had the ability, at the time of his discharge from treatment, to work in a medium strength classification. He demonstrated a functional range of motion and was capable of resuming his pre-motor vehicle employment and duties as a line cook.

The Appellant still complained of residual back pain, but was functionally able to return to work. He did return to work as a painter in the spring of 2005 for a period, and there was no indication that he could not work at any time after that. He held jobs which were fairly consistent with his past work pattern history. Accordingly, counsel submitted that there was no reason why the Appellant should have been in receipt of IRI benefits following March of 2004.

Therefore, the Internal Review decision dated June 10, 2004 should be upheld.

In regard to the Internal Review decision dated September 16, 2005, counsel submitted that the Appellant's depression was primarily due to his isolation and other factors that pre-existed the

motor vehicle accident. The Commission heard the evidence of Dr. Jones who felt that the Appellant did not have a psychological impairment which would prevent him from working, and who felt there was no causal connection between the motor vehicle accident and any psychological problems the Appellant might have. Any difficulties the Appellant might have had in finding a job were not due to the motor vehicle accident but rather, were due to language barriers, a lack of social supports, bad luck, and other non-motor vehicle related factors. As there was no causal connection between the Appellant's psychological difficulties and the motor vehicle accident, no psychological treatment had been shown as medically necessary as a result of the motor vehicle accident. Accordingly, the Appellant's appeal from the decision of June 16, 2005 should also be dismissed.

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:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

(b) the purchase of prostheses or orthopedic devices;

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

(d) such other expenses as may be prescribed by regulation.

Manitoba Regulation 40/94:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer erred in finding that he was not entitled to further IRI benefits as he was able to hold the employment that he held at the time of the accident.

The onus is also on the Appellant to show, on a balance of probabilities, that any further care, including psychological treatments, was medically required as a result of the motor vehicle accident.

The panel has reviewed the evidence of the Appellant and of Dr. Jones. We have reviewed the medical and other evidence on the Appellant's indexed file, as well as the submissions of the Appellant and counsel for MPIC.

We agree with the decision of the Internal Review Officer of June 10, 2004 that the Appellant did not suffer from functional limitations as a result of a motor vehicle accident which would prevent him from returning to work. We note that the medical evidence has established that the Appellant had demonstrated a functional range of motion of the cervical spine, lumbar spine and shoulder and had the ability to work within the "medium" strength classification, meeting the demands of his pre-accident employment.

Accordingly, we find that the Appellant has failed to meet the onus upon him of showing that the Internal Review Officer erred in finding that he was not entitled to receive IRI benefits beyond March of 2004. The decision of the Internal Review Officer, dated June 10, 2004, is upheld.

The panel also finds, based upon the medical evidence on file, including Dr. Sztaba's report, and the evidence and reports of Dr. Jones, that the Appellant has failed to establish, on a balance of probabilities, that there is a causal relationship between his psychological difficulties and the motor vehicle accident in question.

5 *You ask if [R.M.] has a psychological condition that is motor vehicle accident related* – It is my opinion that his depression is not directly linked to his falling down the steps of the bus; nor is it directly a result of his pain, although it may interact with his pain symptoms in the manner of a pain disorder. It appears that his depressed mood, rather, is secondary to his loss of gainful employment and his financial difficulties and, as well, to his perception of having limited social support.

...
7 *Ability to perform job duties* – It is unlikely that, given the level of his depression, he would be unable to perform the required physical tasks of a job. I did not note, during out (sic) meetings together, any psychomotor retardation. His depressed mood, his longstanding period of perceived disability, his lack of physical conditioning, and his sense of entitlement and fear about potential loss of job, may affect his motivation to engage in any return-to-work plan.

8 *Safety/health risk to himself or co-workers* – I do not think that [R.M.] poses a safety/health to himself or co-workers.

As a result, we find that the Appellant has failed to establish, on a balance of probabilities, that he is unable to work and entitled to receive IRI benefits and psychological treatments on account of injuries (including psychological difficulties) arising out of the accident. Accordingly, the Internal Review decision of September 16, 2005 is upheld.

The Appellant's appeals are hereby dismissed.

Dated at Winnipeg this 1st day of December, 2008.

LAURA DIAMOND

DR. SHELDON CLAMAN

DR. SHARON MACDONALD