

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by Z.N.  
AICAC File No.: AC-05-122**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Neil Cohen  
Mr. Les Marks

**APPEARANCES:** The Appellant, Z.N., appeared on her own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Dean Scaletta.

**HEARING DATE:** June 23, 2008

**ISSUE(S):** 1. Entitlement to Income Replacement Indemnity benefits  
beyond February 20, 2005; and  
2. Entitlement to funding for psychological services beyond  
February 20, 2005.

**RELEVANT SECTIONS:** Sections 83(1)(a), 84(1) and 136(1)(a) of The Manitoba Public  
Insurance Corporation Act ('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**

The Appellant, Z.N., was involved in a motor vehicle accident on January 18, 1999, when her vehicle was struck by another vehicle at an intersection. As a result of this motor vehicle accident, the Appellant suffered a fractured left ankle, severe chest pain and pain to her left arm, shoulders, upper and lower back, hip and neck. Due to the injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act.

The Appellant has appealed to this Commission from the Internal Review decision dated April 20, 2005 with respect to the following issues:

1. entitlement to income replacement indemnity ('IRI') benefits beyond February 20, 2005; and
2. entitlement to funding for psychological services beyond February 20, 2005.

### **Case Manager's Decision**

MPIC's case manager issued a decision dated November 10, 2004 regarding the Appellant's entitlement to PIPP benefits. In her decision, MPIC's case manager determined the following with respect to the injuries which the Appellant sustained in the motor vehicle accident of January 18, 1999:

- Ankle injury - Dr. Balageorge, the Appellant's treating physician, opined that there were no specific objective or physical findings related to the ankle which would limit the Appellant's ability to work, except for the degree of pain which she experienced in regard to the ankle, which he considered a subjective finding.

Based on this information, the case manager determined that the ankle fracture sustained in the January 18, 1999 motor vehicle accident had healed and no longer prevented the Appellant from returning to full-time employment.

- Wrist injury - Dr. Rennie, orthopaedic surgeon, assessed the Appellant's right wrist on December 19, 2002. Dr. Rennie noted that the examination revealed that the Appellant's

right and left wrist, thumb and fingers had an equal and full range of motion. Based on this information, the case manager found that there were no objective findings to confirm any ongoing injury to the Appellant's right wrist. Therefore the case manager determined that there was no injury preventing a return to full-time employment.

- Chronic low back pain - The Appellant had a significant pre-accident back condition which included a history of L5-S1 laminectomy prior to the motor vehicle accident of January 18, 1999. The case manager determined that the Appellant's current level of back pain was likely at the same degree of disability as before the motor vehicle accident and therefore her pre-accident disabled baseline had likely been reached.
- Psychiatric condition - The Appellant's psychiatric condition pre-existed the motor vehicle accident of January 18, 1999. The case manager noted that based on this condition as well as her chronic back pain, the Appellant had been accepted for long term Canada Pension disability benefits. Dr. Armstrong, the Appellant's treating psychiatrist, both before and after the motor vehicle accident, had provided a clear and consistent opinion that psychiatrically, the Appellant was considered stable and that she was functioning at her pre-motor vehicle accident level of psychological well being. Dr. Armstrong's reports of June 2001 and December 2002 stated that the Appellant's mental status continued to be stable and psychiatrically limited from re-entering the workforce.

The case manager therefore concluded that the Appellant's ongoing psychiatric concerns were most likely related to a pre-existing pain condition and no longer related to her motor vehicle accident.

Based upon the foregoing investigations, the case manager made the following determinations with respect to the Appellant's PIPP benefits:

1. Entitlement to IRI benefits - Based on the foregoing medical evidence, the case manager found that the Appellant was no longer incapable of holding employment because of the accident and therefore was no longer entitled to IRI benefits. In order to provide the Appellant with a means of transition she continued the payment of IRI benefits to February 20, 2005.
2. Entitlement to funding of psychological services - The case manager determined that based upon the medical evidence on the Appellant's file, her psychiatric condition was no longer causally related to the motor vehicle accident and therefore MPIC was not responsible for funding of ongoing psychological sessions. Again, in order to provide the Appellant with a transitional period, the case manager provided funding for psychological sessions to February 20, 2005.

### **Internal Review Decision**

The Appellant sought an Internal Review of the case manager's decision of November 10, 2004. In a decision dated April 20, 2005, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. In her decision of April 20, 2005, the Internal Review Officer concluded the following with respect to the Appellant's file:

#### **Conclusion**

Section 81(1) of the Act provides that a full-time earner is entitled to an Income Replacement Indemnity for so long as he or she unable to continue the full-time employment.

Since the medical evidence on your file indicates that you do not suffer a physical or psychological impairment that would prevent you from returning to your pre-accident employment as a housecleaner, I must confirm your Case Manager's decision that you are not entitled to further Income Replacement Indemnity benefits.

### Psychological Services

In his July 12, 2004 report, Dr. Jones noted that Dr. El-Khatib indicated in January 2001 that he was going to reduce and taper off treatment with you. He noted that this has not yet occurred. Dr. Jones wrote that given that you are described as psychiatrically stable to resume employment from a psychological perspective, further psychological treatment would not be considered a medical necessity at this time. He wrote that it is assumed that you will continue to see Dr. Armstrong for your non motor vehicle accident related psychiatric issues.

Section 136(1) of the Act provides that Manitoba Public Insurance shall provide funding for medical or paramedical care where that care is medically required as a result of the motor vehicle accident. Section 5 of Manitoba Regulation 40/94 R provides that Manitoba Public Insurance shall provide funding for psychological care where that care is medically required as a result of the motor vehicle accident.

Given that the medical information on your file indicates that psychological care is no longer required as a result of your motor vehicle accident, you are not entitled to further funding for same and I must uphold your Case Manager's decision on that point.

### Appeal

The Appellant has appealed from the Internal Review decision dated April 20, 2005 to this Commission. The issues which arise on this appeal are:

1. entitlement to income replacement indemnity benefits beyond February 20, 2005; and
2. entitlement to funding for psychological services beyond February 20, 2005.

A hearing for this appeal was convened on June 23, 2008. At that hearing, the Appellant requested an adjournment in order to allow her to seek a representative to assist her with her appeal. In response, counsel for MPIC noted that the appeal had already been outstanding for more than three (3) years. He also noted that at a Pre-Hearing Meeting held on February 25, 2008, the Appellant had indicated, at that time, that she was ready to proceed with the hearing.

Additionally, counsel for MPIC commented that the Appellant had previously been represented by a lawyer and by the Claimant Adviser Office and that neither had been satisfactory to the Appellant. Consequently, MPIC was opposed to an adjournment of the hearing.

At the hearing, the Commission determined that it would proceed with submissions from MPIC. A written copy of MPIC's argument was provided to the Appellant at the hearing. The Appellant was then given until August 25, 2008 to provide a written response to MPIC's submission and any additional arguments she wished to provide to the Commission respecting her appeal of the Internal Review decision of April 20, 2005. She could of course obtain assistance with her written submission if she so required. The Appellant did in fact provide a written submission to the Commission in support of her appeal on August 25, 2008. Counsel for MPIC had no further comments to provide in respect of Z.N.'s written submission.

Upon a careful review of all of the reports and documentary evidence filed in connection with this appeal, and after reviewing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. the Appellant has not established, on a balance of probabilities, that she is unable to hold employment as a result of a physical or psychological impairment related to the motor vehicle accident of January 18, 1999; and
2. the Appellant has not established, on a balance of probabilities, that any ongoing requirement for psychological services beyond February 20, 2005 is as a result of the motor vehicle accident of January 18, 1999.

Our review of all of the medical information available indicated that, on a balance of probabilities, any sequelae from the motor vehicle accident of January 18, 1999, no longer

prevented the Appellant from being able to return to work as of February 20, 2005. Additionally, in respect of her psychological status, we find that based on the reports from her caregivers, the Appellant had reached her pre-accident level of functioning by February 20, 2005.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated April 20, 2005 is hereby confirmed.

Dated at Winnipeg this 7<sup>th</sup> day of November, 2008.

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**YVONNE TAVARES**

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**NEIL COHEN**

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**LES MARKS**