

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]**

**AICAC File No.: AC-97-104**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mrs. Lila Goodspeed  
Mr. F. Les Cox

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC') represented  
by  
Ms Joan McKelvey  
[Text deleted], the Appellant, appeared on her own behalf

**HEARING DATE:** February 23rd, 1998

**ISSUE:** Whether victim entitled to further chiropractic or  
physiotherapy treatment, or both.

**RELEVANT SECTIONS:** Section 5 of Regulation 40/94

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.**

## **REASONS FOR DECISION**

### **THE FACTS:**

The Appellant, [text deleted], was injured in a motor vehicle accident on August 24th, 1994 in [text deleted], where she sustained injuries to her neck and back. She attended initially at the

[text deleted] Clinic where medication and a physiotherapy program were recommended. However, the Appellant was under contract with the [text deleted] and reported there for work at the beginning of the school year in September of 1994. Still suffering pain, being unable to lift and finding standing or sitting for any long periods to be difficult, she was examined by [Appellant's doctor #1] on September 7th, 1994. He recommended a four to six week massage and physiotherapy treatment program and, since the program was not available to her in [text deleted], the Appellant elected to undergo her treatments in [text deleted], Ontario, where she had family. She therefore left [text deleted] on September 8th, 1994, after one week of teaching and, shortly after her arrival at [Ontario], was examined on September 13th, 1994 by [Appellant's doctor #2], who referred her for physiotherapy. She was assessed at the [rehab clinic] in [Ontario] on September 19th of 1994 and commenced a treatment program that same day. She was discharged from that initial treatment on November 3rd, 1994 but, on December 30th and with the approval of Manitoba Public Insurance Corporation ('MPIC'), she commenced an Early Rehabilitation Program which she completed on February 9th of 1995.

As a result of her accident and consequent injuries, [the Appellant] had received income replacement indemnity from MPIC for an initial period of 159 days, plus a further 30 days pursuant to Section 110(2) of the MPIC Act since she had lost her job as a result of the accident; MPIC also paid for her physiotherapy and treatments at the [rehab clinic].

The Appellant remained in [Ontario] and obtained employment with [text deleted] in December of 1995. At that juncture, although she had never been completely free of pain as a result of her

accident, she nevertheless seemed to have that under control and was fully functional. On April 26th of 1996 she injured or, perhaps, reinjured her back while attempting to remove a piece of equipment from an aircraft. Because her job there entailed moving baggage for short distances, as well as checking passengers in and out, de-icing planes, guiding planes in to the terminal following landing, et cetera, she felt obliged to resign from [text deleted] due to her inability to continue handling the heavier aspects of that work.

Starting almost immediately after her work related injury, she started receiving massage therapy which continued for about three weeks. Since that did not seem to help, her physician started her on a program of physiotherapy for about four months and, before that course of treatment was completely finished, but overlapping with it, her physician also referred her for chiropractic treatment. For some time following her work related injury, the Workers' Compensation Board of Ontario paid for certain treatments and income for the Appellant who, due to her continuing lower back and neck pain, ascribed those problems to her earlier motor vehicle accident and sought reimbursement from MPIC for chiropractic and physiotherapy treatments. At the time of the hearing of her appeal, [the Appellant] also suggested that MPIC should purchase a home gymnasium for her so that she could continue exercises at home.

We do not believe that any useful purpose would be served by a detailed analysis of the several medical and chiropractic reports presented to us. We believe it is sufficient to say that her lower back almost undoubtedly was injured or, more probably, re-injured by her attempts to remove the heater from the aircraft on April 26th of 1996 and is not a responsibility of MPIC. However, the

question of her neck injury poses a slightly different problem. It was the view of MPIC that her continuing neck pain was also related to her work injury and that the two probably occurred concurrently. There is a note on MPIC's file, made by [text deleted], an adjuster for out-of-province claims in the [text deleted] office of MPIC, purporting to reflect a discussion between [MOPIC's adjuster] and [text deleted] of the Workers' Compensation Board of Ontario, that reads, in part, as follows:

[Text deleted] indicated they have a statement from [the Appellant] to indicate she had no problems with her neck prior to the work-related accident.

However, we asked the Workers' Compensation board of Ontario to check their file carefully and to see if they could find such a statement. We are advised that the file has been checked and there is no reference to any such note. True, [the Appellant] did apparently indicate to the Workers' Compensation Board that she had not had any symptoms prior to her work-related accident, but she explains that quite logically by saying that she was referring to lower back symptoms; she had not hurt her neck in her accident at [text deleted] and, therefore, did not mention her neck to the Workers' Compensation Board personnel. She did, in fact, mention her neck to her own physician, but then only in the context of the pre-existing condition.

We are of the view that the date of the onset, or recurrence, of [the Appellant's] neck pains becomes an important factor in arriving at our decision. We have concluded, on a balance of probabilities, that the problems she has been experiencing with her neck, which appear to radiate to the shoulder as well, are more directly related to her motor vehicle accident than to the

incident at her former workplace and that, therefore, some additional responsibility arises on the part of MPIC.

What, then, should be the extent of that responsibility? There is at least a fair possibility that residual discomfort will arise from time to time, but the insurer's obligation is to restore the Appellant, as best it can, to her pre-accident status. That status does include a history of prior discomfort in her neck and back, dating as far back as 1985 and 1986 and, more relevant to her present condition, in 1993 when she was attending for chiropractic treatments.

The [rehab clinic], upon discharging her from its program, recommended that [the Appellant] should continue with a program of flexibility exercising, aerobic exercise and continuing strengthening. The [rehab clinic] recommended membership in a local fitness club. Indeed, [the Appellant] herself seems to agree that continued exercising will be a major key to her maximum recovery.

We are not persuaded that further or continued chiropractic treatment will be of benefit in this particular case. Rather, we are the view that a six-month membership at [text deleted], the gymnasium that [the Appellant] was using, should be adequate to see her through and back to her pre-accident level. It had been our intention to require MPIC to purchase a six-month membership for her but, upon more recent and direct inquiry, we find that [the Appellant] and her spouse have, in fact, purchased a home gym at a cost of slightly under \$1,000.00. Their purpose in doing so was twofold: firstly, the presence of that equipment at home is, obviously,

much more convenient than having to visit a gymnasium whenever they wished to exercise; secondly, it becomes a permanent part of their household rather than a membership that expires at the end of a given period.

Further inquiry that we have made directly from [text deleted] tells us that the cost of a six-month membership there would be \$295.00 plus 7% GST, for a total of \$315.65, and that is the amount, therefore, to which we find the Appellant entitled. That amount will bear interest at the appropriate rate from March 26th, 1997 (the date when MPIC decided not to fund any further treatments) to the date of actual payment.

Dated at Winnipeg this 23rd day of March 1998.

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**J. F. REEH TAYLOR, Q.C.**

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**LILA GOODSPEED**

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**F. LES COX**