

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-16**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan McKelvey
[Text deleted], the Appellant, represented by [Appellant's
representative]

HEARING DATE: September 28th, 1998

ISSUE: Causation - whether fibromyalgia syndrome resulted from
motor vehicle accident ('mva'), entitling Appellant to benefits.

RELEVANT SECTIONS: Section 136(1)(a) of the MPIC Act and Section 5 of Manitoba
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

[Text deleted], the Appellant, was [text deleted] years of age at the time of her mva which occurred
in [text deleted] on December 24th, 1994. She was apparently traveling in the right-hand lane,
with a five ton truck coming up beside her on the left; a vehicle entering the highway from the right
failed to stop at a 'yield' sign, cutting her off and forcing her brake suddenly, with the result that the

driver's side of her vehicle collided with the right side of the truck, bouncing off the truck and into a snowbank. Her vehicle was damaged to the extent of about \$4,000.00.

[The Appellant] first attended upon her family physician on January 9th and was diagnosed with muscular injury on the left side of her neck; she was referred for physiotherapy and prescribed Tylenol No. 3. Her physician noted that she had previous neck injury, more on the left side, resulting from a motor vehicle accident on December 20th, 1992. It was also noted that she was suffering from chronic fatigue syndrome. However, her physician reported that she was capable of resuming her main occupation as a bookkeeper.

[The Appellant's] case is complicated by her pre-accident history. We do not think it necessary to describe that history in minute detail. It is enough to note that, in 1983, she required a nephrectomy as a result of recurrent pyelonephritis; in 1988 [the Appellant] was diagnosed with chronic fatigue syndrome, which persists to this day; in the intervening years she has complained of pain in her feet, pain in her legs, pain in her back which radiated to the low back, to the pelvis and to the hips, numbness in her feet and fingertips, sharply decreasing energy, poor memory, significant psychosocial stressors, urinary complaints, headaches and non-restorative sleep pattern. Many of those complaints were documented as early as 1990, when [the Appellant] was prescribed an anti-depressant. In 1991 she was described in her physician's notes as suffering from fatigue, weakness, an inability to concentrate, dizziness and fuzzy vision with headaches, and her physician recommended that she take a leave of absence from work. Almost all of the foregoing complaints continued until and beyond her 1992 mva, when she was still complaining of

continuing sleep disturbances, back pain requiring massage, pain in the knees, fingers and myalgia.

[The Appellant] had been involved in an earlier mva on February 1st, 1984, which is described as being 'almost head on', wearing no seatbelt; she apparently had little memory of what had happened although she had not lost consciousness. Following that 1984 accident she complained of vertigo and an injured right ankle.

[The Appellant] has been examined and treated by a number of caregivers, including [text deleted], her original, family physician, [Appellant's doctor #2], of the [text deleted] Medical Clinic, who succeeded [Appellant's doctor #1] in that capacity, [Appellant's doctor #3], also of the [text deleted] Medical Clinic, [text deleted], a specialist in psychiatry, [text deleted], a specialist in rheumatology, [text deleted], another, independent specialist in rheumatology and [text deleted], a specialist in rehabilitation medicine [text deleted] and, in 1997, [text deleted], her chiropractor. The majority of those treating her have concluded that [the Appellant's] symptoms may properly be designated with the label fibromyalgia syndrome, although [Appellant's rehab specialist] questions that because, in his view, [the Appellant's] actual signs do not meet the physical criteria of fibromyalgia; he prefers to refer to her condition as, more simply, chronic pain syndrome with indistinct etiology. There also seems to be practical unanimity on the concurrent diagnosis of chronic fatigue syndrome.

The problem that faces us is the need to decide whether that bundle of symptoms loosely grouped under the label of fibromyalgia syndrome or chronic fatigue syndrome, or both, can properly be

attributable to [the Appellant's] motor vehicle accident of December, 1994. The symptoms for both those syndromes overlap to a major extent, to the point at which it is often difficult to distinguish between the two; in each case, the etiology is unknown.

In June, 1994, a committee of fibromyalgia experts was convened at the University of British Columbia in Vancouver under the auspices of the Physical Medicine Research Foundation to address issues of diagnosis, testing, assessment and prognosis of fibromyalgia. Their report, published in the *Journal of Rheumatology* in 1996, describes fibromyalgia as a syndrome of widespread pain, decreased pain threshold and characteristic symptoms that include non-restorative sleep, fatigue, stiffness, mood disturbance, irritable bowel syndrome, headache, paresthesia and other less common features. Widespread pain has generally been defined by the number of body regions involved or by a pattern of pain complaint that involves all four quadrants of the body and axial skeleton. The report goes on to emphasize that there is insufficient evidence to establish any causal relationship between trauma and fibromyalgia.

We have no hesitation in saying that we believe [the Appellant's] evidence completely; we do not suggest that the problems of which she complains are anything other than real. The question before us, however, is whether those problems were caused by a mva and, therefore, compensable under the Manitoba Public Insurance Corporation Act.

We have reviewed with great care all of the medical reports available to us, including the forms completed by [the Appellant's] caregivers for MPIC, the more complete, narrative reports presented by all of her doctors, her own evidence and that of [text deleted], the Director of the

Medical Services team at MPIC. We have also read all of the literature that was supplied to us by counsel and, as well, have reviewed other medical writings available to us. We have concluded, on a strong balance of probabilities, that the symptoms of which [the Appellant] has been complaining since her mva of December 24th, 1994 were not caused by that accident but, rather, represent the continuation of a condition from which she had been suffering for a good many years prior to that accident and which, apparently, have only responded on a temporary basis when treated symptomatically. While it is true that [the Appellant] ceased employment in May of 1995, that was primarily because her term position ended at that point. She has, fortunately, been able to find some new, part-time work since the spring of 1997 and it is our hope and belief that this will help to restore her self esteem. We cannot, however, hold MPIC liable to reimburse her for her claimed loss of income since May of 1995, nor can we require MPIC to reimburse her for the costs of her physiotherapy or chiropractic treatments since that time. At worst, [the Appellant] sustained a Grade II Whiplash Associated Disorder in her 1994 accident; the natural history of that injury, combined with the physiotherapy that she was receiving, would have restored her to pre-accident status within a matter of weeks. [The Appellant] testified that some of her symptoms were more pronounced after her latest accident but, with respect, we have to say that it does not necessarily follow that the accident caused that degeneration. Just because one thing follows another in time does not mean that the later situation was caused by the earlier one. As [Appellant's rheumatologist] commented, "I strongly question whether her fibromyalgia-like syndrome is not a somatic manifestation of a depression or other psychiatric illness". [Appellant's rehab specialist] recommends that [the Appellant] "exercise aerobically despite symptoms....beginning with a five minute walk even with symptoms and to complete her workout by the clock, not by her symptoms. I think this would be the only way of advancing her and

gradually increasing her tolerance. I see no physical limitations for this that would preclude her from doing this type of exercise." [Appellant's rehab specialist] also noted, contrary to the findings of several of his colleagues, that [the Appellant's] "tender point count is well below that necessary to meet the physical criteria for fibromyalgia. Furthermore, she is tender diffusely over numerous tender points over the back which are unrelated to fibromyalgia tender points."

DISPOSITION:

Whether the Appellant's condition is properly described as fibromyalgia syndrome, chronic fatigue syndrome or, merely, chronic pain syndrome, we find that, whatever its origins, those origins predated her motor vehicle accident of December 24th, 1994 and we must therefore dismiss her appeal and confirm the decision of MPIC's Internal Review Officer bearing date January 8th, 1997.

Dated at Winnipeg this 19th day of October 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED