

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-108**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairman)
Mr. Charles T. Birt, Q.C.
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Ms Joan McKelvey;
Appellant represented by herself

HEARING DATE: October 16th, 1998

ISSUE(S): Payment of Income Replacement Indemnity ("IRI")
from September 12th, 1997 to January 5th, 1998.

RELEVANT SECTIONS: Section 81(1) of the MPIC Act ('the Act'),

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 was in the driver's seat of her automobile and, while stationary, was rear-ended by a refrigeration van; this collision caused injuries to her low back, left shoulder and neck. [The Appellant] consulted her family doctor, [text deleted], shortly after the accident and he diagnosed

her as having suffered a Type II Whiplash Associated Disorder. She was advised to stay off work for a short while, prescribed muscle relaxant medication and sent for physiotherapy.

In early August the Appellant felt that her condition was not improving and that the physiotherapy treatments were not helping so she decided to consult [Appellant's doctor #2] of the [text deleted]. On August 7, 1997 he diagnosed her as having a lumbar facet sprain with a secondary piriformis syndrome and prescribed medication and sent her for reconditioning at the [text deleted].

[The Appellant] had started a gradual return to work program in the first week of August 1997, working two days the first week, increasing to three days the second week and four days in the third week. With the increasing amount of work she experienced a corresponding increase in pain and back spasms. This caused her to increase the consumption of her medication to combat these symptoms.

She saw [Appellant's doctor #2] on September 2nd because her symptoms were not improving but getting worse; he increased her medication to Voltaren 75 and Amitriptyline and suggested she work only half days. She returned to see [Appellant's doctor #2] on September 12, 1997 because there had been no improvement in her condition and he recommended she cut her hours of work in half. In a response to a query by MPIC [Appellant's doctor #2] wrote to the Corporation on September 12th, 1997 advising that he was [the Appellant's] treating physician and that as she increased her work of hours there was a corresponding increase in the severity of

her back problems. He advised MPIC that he had recommended that she temporarily reduce her work schedule to half time for four weeks and then he would do a reassessment to determine further treatments and/or restrictions.

He saw the Appellant on September 23rd and her back problem had improved to some degree but, since her symptoms were continuing, he recommended that she continue her medication for another three weeks and that her reconditioning therapy be discontinued by mid-October.

Prior to the accident [the Appellant] was working 27.5 hours per week at a [text deleted]. Due to missed work arising out of the accident MPIC paid [the Appellant] Income Replacement Indemnity (IRI) up to August 30th, 1997. Throughout this period the Appellant had kept her employer and MPIC fully informed about her medical conditions and recommended treatments. The Appellant's employer wanted their own independent medical assessment of [the Appellant] and they sent her to [Independent doctor #1]. In his report dated September 12th 1997 he indicates that there was some inconsistency between her degree of discomfort and her physical presentation in his office. He did not favour extending her rehabilitation plan and recommended she return to full normal function as soon as possible. He recognized she would have some degree of discomfort but her return to normal activity would help strengthen the muscles causing her problems.

Based on their medical report the [Appellant's employer] felt the Appellant should and could

return to full time work and advised her of this decision. [the Appellant] felt she was not ready to return to full time employment given her most recent history of attempting to increase her work load and the recommendations of [Appellant's doctor #2]. The two parties discussed this issue and it was decided that [the Appellant] would resign from her position as of October 3rd, 1997 and she did so. This information was conveyed to her Adjuster.

On January 23rd, 1998 that MPIC advised the Appellant that IRI would only be paid up to August 30th, 1997 as they believed she could return to full time work as of that date. MPIC did not request any further report from her treating physician, [Appellant's doctor #2], until January 23rd, 1998, the same day upon which they advised her of the termination of her IRI benefits. On February 27th, 1998 [Appellant's doctor #2] gave a full report to MPIC of her visits and his recommendations for treatment and told them that he had last seen the Appellant on December 19th, 1997. At that time her physical capacity to work had improved and although there was mild tenderness was present in the paravertebral musculature he advised her that she was capable of returning to work on January 5th, 1998.

MPIC also wrote to [independent doctor #2], of Associated Sport & Spine Physicians, on January 23rd, 1998 asking for a report of his examination of the Appellant which occurred on January 22nd, 1998. (There is no indication on file as to who requested this examination). In his report of February 27th 1998, [independent doctor #2] states "[The Appellant] is limited by her symptoms. I have not advised her on any specific activity limitations." He gave her a prescription for a therapeutic exercise program to decrease the soft tissue restrictions of her hip

flexors and abductors as well as improve the strength of her back extensor, buttock and abdominal muscles.

ISSUE:

Was MPIC right in terminating [the Appellant's] IRI benefits on September 11th 1997? (The internal Review Officer's decision had extended her IRI from August 30th, 1997 to September 11th, 1997.)

When MPIC terminated the Appellant's IRI benefits they had in their possession two diametrically opposed medical opinions about her ability to return to full time employment, one came from her treating physician and one from her employer's doctor. MPIC choses to accept the latter one to terminate her benefits. We believe they should have forwarded [independent doctor #1's] opinion to [Appellant's doctor #2] to comment and get an update on [the Appellant] condition as he was her treating physician.

There is no evidence before us to explain why MPIC stopped the Appellant's IRI benefits on September 30th, 1997 and waited until January 23rd, 1998 to officially notify her of their decision. The Appellant should have been advised before the date of termination of her benefits in order not to create any financial hardships and allow her the opportunity to appeal their decision in a more timely fashion.

Given the evidence of [Appellant's doctor #2] and [the Appellant] we are of the view that she was not able to return to her full time employment on September 12th as she had not recovered from her injuries sustained in the automobile accident and that she could not have returned to full time employment until January 5th, 1998.

Therefore the Appellant is entitled to receive IRI from September 12, 1997 to January 4th, 1998. The total amount of IRI to be paid to the Appellant pursuant to this decision is to bear interest at the statutory rate from September 12, 1997 to the date of actual payment.

DISPOSITION:

The Acting Review Officer's decision of July 22nd, 1998 is, therefore, rescinded and the foregoing is substituted for it.

Dated at Winnipeg this 16th day of November, 1998.

J. F. R.TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX