

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-99-45

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

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Terry Kumka;
the Appellant, [text deleted], attended by way of telephone
conference call

HEARING DATE: September 27th, 1999

ISSUE(S): Whether income replacement indemnity properly
terminated.

RELEVANT SECTIONS: Sections 83(1)(a) and 83(2)(a)(ii) of the MPIC 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 basic facts relevant to this appeal are fairly simple and undisputed. They may be summarized this way:

1. the Appellant sustained injuries in a motor vehicle accident at approximately 10:15 P.M. on the 4th of May 1997. At the time, she was employed on a part-time basis as a health care aid and, to a lesser extent and only sporadically, as a substitute teacher;

2. prior to her accident the Appellant, although only guaranteed 15 hours of work per week at [text deleted], in fact worked an average of 31.25 hours per week; after her accident and following her return to work on June 12th, 1997, she only worked an average of 17.93 hours per week until the end of December, 1997. Thereafter, since the Appellant was able to obtain new, part-time work as a teaching assistant, starting on or about the 6th of January 1998, she limited her work as a health care aid to the guaranteed minimum of 15 hours per week;
3. MPIC discontinued payments of income replacement indemnity to the Appellant as of June 11th, 1997, upon the basis that she had become able to return to work at full capacity at that latter date.

[The Appellant] does not dispute the fact that she was able to return to work on June 12th, 1997 and that she continued working at [text deleted], part-time, thereafter. Indeed, it was not until about September of 1998 that the Appellant left her part-time employment at [text deleted] altogether, having found full-time employment in the educational field.

What is in dispute, here, is whether, as a result of her motor vehicle accident, [the Appellant] was prevented from working the number of hours that she had worked previously. As she puts it "We all knew I could work; it was a question of how many hours I could work".

The evidence is that [the Appellant] was, prior to her accident, an unusually active person; she could not, by any yardstick, be thought of as indolent, nor is there any suggestion that she was malingering or taking unfair advantage of the situation created by her accident. She was offered

additional shifts, as had been the case prior to her accident, but was obliged to turn them down "because I knew I wasn't up to it".

Her physiotherapist, [text deleted], thought that she would be able to return to work on a full-time basis by about June 7th, 1997 and much of the strength of MPIC's decision has as its base [Appellant's physiotherapist's] opinion. In fact, however, [the Appellant] had attempted to return to work even a couple of days before the date predicted by [Appellant's physiotherapist], in order to test her own abilities to stay the course. She had been obliged to quit after about 2 hours, and went home in tears. Again, there is no suggestion that she was displaying abnormal pain behaviour. Somewhat earlier, a physician whom she had consulted in [text deleted] right after her accident and, as well, her own family physician in [text deleted], had expressed the view that she should be able to return to work on or about the 20th of May 1997. Unfortunately, their forecasts simply proved to be unduly optimistic: she was certainly able to return to work, but not at the number of hours per week that were available to her, nor was she able to work for more than about 3 days in succession.

Upon the basis of all of the evidence presented to us including (but not limited to) that of [text deleted], consultant in physical medicine and rehabilitation, [text deleted], the Appellant's chiropractor, the Appellant's oral testimony, the reports of [Appellant's doctor #1] and [Appellant's doctor #2] and the views of [text deleted], chiropractic consultant to MPIC, we find on a balance of probabilities - albeit a somewhat slender one - that it was, in fact, the Appellant's motor vehicle accident that prevented her from working for the number of hours after her accident that she had been accustomed to working prior to it. She is therefore entitled to be

paid income replacement for 13.32 hours per week from June 12th, 1997, until January 5th, 1998, and her claim will therefore be referred back to the Claims Department of MPIC for the proper calculation and payment of the amount outstanding plus interest.

During the course of the hearing, [the Appellant] indicated that she had still not been reimbursed for certain chiropractic fees and medication made necessary by her motor vehicle accident. Although that matter is not before us, we draw the attention of the insurer to those expenses in the expectation that the Appellant will be reimbursed for them.

Dated at Winnipeg this 1st day of October, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED