

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-90**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. F. Les Cox
Mr. Wilson MacLennan

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

HEARING DATE: October 12, 2000

ISSUE: Entitlement to income replacement indemnity benefits.

RELEVANT SECTIONS: Section 110(1)(a) 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 Facts:

The Appellant, [text deleted], was involved in a motor vehicle collision on November 6, 1997, at which time she was the driver of a vehicle without her seatbelt on when she collided with another vehicle at an intersection. From this collision, [the Appellant] developed symptoms in multiple regions of her body. She was initially assessed by a chiropractor, [text deleted], who documented in a report dated November 29, 1997 that [the Appellant] had symptoms and signs in keeping with a Whiplash Associated Disorder II ("WAD II") involving her cervical and lumbar regions. He also documented that [the Appellant] had sustained contusions to her left knee, left elbow and left hand. It was [Appellant's chiropractor's] opinion that, because of her multiple symptoms, [the

[Appellant] was unable to perform her work as a home care attendant and would be unable to return to work until late January of 1998.

[The Appellant] subsequently attended her general practitioner, [text deleted], who told her that she should stay off work until January 1998. He also referred her to physiotherapy.

[The Appellant] was assessed by [text deleted] (physiotherapist) on December 15, 1997.

In a report dated December 22, 1997, [Appellant's physiotherapist] outlined [the Appellant's] areas of complaint as: low back pain, sub-occipital pain, left sided upper trapezius discomfort, left medial elbow pain, left sided pain and stiffness of the spine and scapula, left patellar discomfort and lower quadriceps pain, left medial and lateral wrist and lower hand discomfort, left ankle medial and lateral sharp pain. It was [Appellant's physiotherapist's] opinion that [the Appellant] had sustained the following:

1. joint restriction C1-C2;
2. myofascial pain/muscular strain in the sub-occipitals, upper fibers of trapezius, left more so than right scalenes;
3. adverse neural tension/brachial plexus irritation on the left;
4. possible left scaphoid fracture;
5. hypomobility left innominate;
6. facet irritation of the lower lumbar spine;
7. patellar femoral pain; and
8. compression injury left talocrural joint.

She commenced treatments of [the Appellant's] varying symptoms. In a follow-up report dated January 30, 1998, [Appellant's physiotherapist] documented that [the Appellant] had a 90% resolution of her left elbow, left knee, left wrist and left ankle symptoms. Examination of [the Appellant's] lower back revealed full range of motion. It was [Appellant's physiotherapist's] opinion that [the Appellant's] subjective complaints did not correlate with the objective findings [Appellant's physiotherapist] had documented.

[Appellant's doctor #1] provided a report dated January 14, 1998 at which time he documented information that was present on the physiotherapy report he received from [Appellant's physiotherapist]. It was [Appellant's doctor #1's] opinion that [the Appellant] was capable of working in a modified capacity.

The file was then referred to MPIC's Medical Services Team for an opinion as to [the Appellant's] condition. After reviewing the medical information present in [the Appellant's] file and after speaking with [Appellant's physiotherapist], [MPIC's doctor #1] provided a memorandum dated February 20, 1998. It was [MPIC's doctor #1's] opinion that [the Appellant] had developed soft tissue symptoms involving various areas of her body as a result of the motor vehicle collision in question. The cervical and lumbar symptoms were in keeping with a WAD II and the symptoms involving her peripheral joints were in the form of contusions; no structural abnormalities had been noted pertaining to the various joints. [MPIC's doctor #1] noted that [the Appellant] had progressed well through the treatments she received from [Appellant's physiotherapist] to the point that no objective physical findings were noted that would indicate [the Appellant] had an impairment of function to a level that would prevent her from returning to her work as a home care attendant.

[MPIC's doctor #1] concluded that [the Appellant] was capable of returning to her work as a home care attendant and that she should continue to attend for physiotherapy treatments until the end of February 1998 with [Appellant's physiotherapist]. He also recommended that a home site assessment of one of [the Appellant's] client's living environment should be conducted to determine if modifications could be made. The ergonomic setting for that

particular client had apparently made it difficult for [the Appellant] to perform proper lifting techniques when assisting this individual out of bed.

Meanwhile, [the Appellant] had returned to work on February 2, 1998. She had worked four shifts when she apparently re-injured herself at work doing a lifting and turning procedure with her client. For reasons that were not completely clear, the Appellant did not file a Workers Compensation claim at this point, but continued her claim with MPIC. Since MPIC did not question or investigate the cause of her re-injury, but instead continued to pay her Income Replacement Indemnity ('IRI') benefits and assist with her rehabilitation, we must assume the insurer concluded that [the Appellant's] ongoing problems were caused by her motor vehicle accident.

Following up on the recommendations of [MPIC's doctor #1], [the Appellant's] adjuster arranged for a home site assessment to be carried out for [the Appellant's] home care client, [text deleted] on April 29, 1998 by [text deleted], occupational therapist. The purpose of the visit was to determine a care plan for the standing pivot transfer of [text deleted], from wheelchair to bed or stationary commode, and to determine [the Appellant's] ability to perform the transfer safely. In her report dated April 29, 1998, [Appellant's occupational therapist] recommended several solutions and techniques to assist with the safe transfer of [text deleted]. She also suggested that in the event that a transfer could not be negotiated safely, a hoist lift should be installed in [text deleted] home. Relating to [the Appellant's] readiness for patient handling, she recommended that [the Appellant] undergo a standardized lifting assessment.

The lifting assessment was carried out on June 17, 1998 by [Appellant's occupational therapist] to determine [the Appellant's] general readiness for return-to-work as a home care attendant. At the time of the assessment, [the Appellant] reported a current episode of low back pain which had started one and a half weeks prior to the visit, brought on by getting up in the morning. She reported that the pain limited her ability to perform a number of functions, including standing to wash dishes, repetitious pushing/pulling such as vacuuming, carrying laundry upstairs, and getting into and out of lying positions. Similarly, [the Appellant] reported being limited by pain when performing a sustained squat during the care of other home care clients, particularly in cramped quarters where her position was awkward.

In her report dated June 22, 1998, [Appellant's occupational therapist] concluded that [the Appellant] did not demonstrate the capacity to lift and handle patients when using squat or trunk flexion. Her functional presentation did have the features of a discogenic pain pattern. She suggested that [the Appellant] return to physiotherapy for a review of extension protocol. She concluded that [the Appellant] could return to work with clients where sustained or loaded flexion (in the form of sitting, squatting, bending) could be modified or avoided. However, she would be able to care for patients like [text deleted], who use a mechanical assist, or for patients who are walking.

[The Appellant] subsequently attended [Appellant's physiotherapist's] office on July 27, 1998 for further physiotherapy treatments. In a report dated July 29, 1998, [Appellant's physiotherapist] reported that [the Appellant] did have some subjective complaints of pain, but in her opinion this should not limit her functionally. She prescribed a treatment plan to

consist of three treatments, to focus on lumbar stabilization and to instruct on home exercises.

On August 10, 1998, [the Appellant] was seen by [Appellant's doctor #1] for an assessment of her functional ability, as well as to see if there were any positive physical findings. After consultation with [Appellant's physiotherapist], it was [Appellant's doctor #1's] impression that [the Appellant] had no physical findings but multiple subjective complaints. He noted that although she may have some sacroiliac joint pain responsible for her symptoms, it didn't appear that these symptoms should necessarily result in any functional impairment. With regards to treatment, he suggested nothing specific other than a home exercise program and chiropractic manipulations as needed. He concluded that she must learn to live with her discomfort as much as possible and that a weight loss program would certainly improve things.

Based on this latest medical information, MPIC determined that there were no objective physical findings that would functionally impair her from performing her pre-accident occupation of a home care attendant. In a letter dated September 14, 1998 and signed by her adjuster, [text deleted], [the Appellant] was advised that no IRI benefits would be paid to her beyond September 20, 1998.

On November 8, 1999, [the Appellant] filed an Application for Review of MPIC's decision to terminate her IRI effective September 20, 1998. [The Appellant] submitted that she was still unable to return to her pre-accident employment as a home care attendant as she could not perform essential requirements of the position.

Notwithstanding that [the Appellant's] Application for Review was approximately one year out of time, the Internal Review Officer accepted the Application and proceeded with the review. In her decision dated April 7, 2000, the Internal Review Officer concluded that, "As there are no objective medical findings that indicate that you have any functional limitations, you would therefore not be entitled to any income replacement indemnity benefits." Accordingly, she upheld the claims decision of September 14, 1998.

It is from this latter decision that [the Appellant] now appeals.

Discussion:

At the hearing of this appeal, [the Appellant] submitted that to date she has not been able to return to her pre-accident employment. She argued that the restrictions she has in regards to lifting because of her lower back prevent her from resuming her previous occupation. She provided a letter from the Home Care Resource Coordinator that they require all of their employees to have no limitations and to be able to perform all duties as assigned. Employees may be required to use a hoist lift or turn and position clients who are bedridden. Since [the Appellant] had limitations and would be unable to carry out assigned tasks in home care, they would be unable to give her any work. [The Appellant] also testified that she has limitations in assisting her husband around the farm because she cannot do any heavy lifting or bending. Further, she testified that she did work in 1999 and 2000 for [text deleted], sorting potatoes. She was able to tolerate the 12.5 hours per day at this job because she was able to take frequent rest breaks and the work surface was from her waist to her chest. Also, she could elevate her feet if needed to take pressure off her back.

The Appellant also submitted additional medical reports in support of her appeal. A report dated January 31, 2000 from [Appellant's doctor #1] describes her range of motion as full, however, she has discomfort on the right side of the low back on bending forwards and forced flexion. She is tender on the right side and has worsening of symptoms with repetitive movements particularly. [Appellant's doctor #1] went on to provide a diagnosis of myofascial pain secondary to her original trauma. A report dated July 11, 2000 from [Appellant's doctor #2] diagnoses [the Appellant] with residual fibromyalgic like symptoms that will permanently prevent her from going back to her heavy lifting duties as a home care attendant. X-rays taken July 6, 2000 of her pelvis, cervical and lumbar spine show no bone or joint abnormality except for a minor scoliosis of the lumbar spine to the left.

These medical reports together with numerous excerpts from the Appellant's claim file were reviewed by [MPIC's doctor #2] of MPIC's Medical Services Team to determine whether the new information altered previous opinions expressed regarding the Appellant's ability to return to her pre-accident employment. [MPIC's doctor #2] concluded that there were no findings indicative of myofascial pain and the Appellant did not meet the diagnostic criteria for Fibromyalgia. He also concluded that there were no physical findings that indicated a functional impairment that would prevent the performance of the essential tasks of the occupation in the same manner as pre-collision. The sole basis for work incapacity appeared to be the Appellant's subjective complaints.

Upon a careful review of all the material submitted and the arguments presented at the hearing, this Commission accepts [MPIC's doctor #2's] report and his comments regarding the Appellant's case. We are mindful that it has now been over three years since the

Appellant's accident and in the usual course of events any injuries resulting from a Whiplash-Associated Disorder Type II should have healed long ago. We cannot find on a balance of probabilities that her current complaints are as a result of the motor vehicle collision.

Disposition:

For the foregoing reasons, [the Appellant's] appeal is dismissed.

Dated at Winnipeg this 4th day of December, 2000.

YVONNE TAVARES

F. LES COX

WILSON MacLENNAN