



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-31**

PANEL: Ms. Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms. Wendy Sol

APPEARANCES: The Appellant, [test deleted], was represented by [Appellant's representatives]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: January 8, 2004

ISSUE(S):

1. Whether the Appellant has a reasonable excuse for failing to apply for a review within the 60-day time limit and, if so, whether the Appellant is entitled to reimbursement of chiropractic treatments beyond March 31, 1999;
2. Whether the Appellant is entitled to Income Replacement Indemnity benefits; and
3. Whether the Appellant is entitled to coverage for an extension of the [rehab clinic] program beyond March 8, 2000.

RELEVANT SECTIONS: Sections 81(1), 136(1) and 172(1) of The Manitoba Public Insurance Corporation Act (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 Appellant, [text deleted], was involved in two separate motor vehicle accidents, on December 13, 1994 and on February 26, 1999. She is appealing two Internal Review decisions, dated December 6, 1999 and June 29, 2000, with respect to the following issues:

1. Whether the Appellant has a reasonable excuse for failing to apply for a review of the case manager's decision within the 60-day time limit and, if so, whether the Appellant is entitled to reimbursement of chiropractic treatments beyond March 31, 1999;
2. Whether the Appellant is entitled to Income Replacement Indemnity ('IRI') benefits; and
3. Whether the Appellant is entitled to coverage for an extension of the [rehab clinic] program beyond March 8, 2000.

1. Whether the Appellant has a reasonable excuse for failing to apply for a review of the case manager's decision within the 60-day time limit and, if so, whether the Appellant is entitled to reimbursement of chiropractic treatments beyond March 31, 1999

The Internal Review decision dated December 6, 1999 confirmed the case manager's decision dated February 17, 1999. In his decision, the case manager determined that the Appellant was not entitled to reimbursement of expenses for chiropractic care beyond March 31, 1999.

The Internal Review decision of December 6, 1999 also rejected the Appellant's Application for Review of the claim's decision dated February 17, 1999, for failure to comply with Section 172 of the MPIC Act. The Appellant's Application for Review had been filed after the 60-day time limit set out in ss. 172(1) had expired. The Internal Review Officer considered whether the Appellant's representative had a reasonable excuse for failing to apply for a review of the decision within the time period provided. He found that the Appellant's representative had not provided a reasonable excuse for failing to apply for a review of the decision within the time

provided for filing and, accordingly, he rejected the Application for Review.

The Appellant's representative was not at the appeal hearing to provide an explanation for the failure to apply for a review of the case manager's decision within the time period provided in ss. 172(1). We note that none of the material set out in the Appellant's file provides a reasonable excuse for a legal representative to fail to adequately safeguard a client's interests by following the requisite procedural requirements. However, we do not feel that the Appellant's claim should be prejudiced by her representative's oversight. As a result, the Commission has reviewed the Appellant's claim on its merits.

Having carefully reviewed all of the evidence made available to it, both oral and documentary, the Commission finds that the objective medical evidence on the Appellant's file indicates that further chiropractic treatments were not necessary as a result of her motor vehicle related injuries (from either accident) beyond March 31, 1999. Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated December 6, 1999 is confirmed.

2. Whether the Appellant is entitled to Income Replacement Indemnity benefits

The Internal Review decision dated June 29, 2000 confirmed the case manager's decision dated January 24, 2000. The case manager's decision had declined the Appellant's claim for IRI benefits arising out of either accident.

Upon a careful review of all of the evidence made available to it, both oral and documentary, and for the reasons set forth in the Internal Review decision dated June 29, 2000, the Commission finds that, on a balance of probabilities, the Appellant's inability to hold employment is not due

to either of the motor vehicle accidents.

In his Inter-Departmental Memorandum dated June 21, 2000, [text deleted], Medical Director of MPIC's Health Care Services team concludes that only one of [the Appellant's] various conditions can be related to either of her motor vehicle accidents. In this case, he relates the limitation in the Appellant's cervical spine range of motion to the collisions. However, he determines that this impairment, in and of itself, is not the condition that hampers the Appellant's employability. [MPIC's doctor] also concludes that the psychological and other widespread pain cannot be related in a probable, causal fashion to the collisions in question.

The Commission accepts [MPIC's doctor's] assessment of the Appellant's conditions. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated June 29, 2000 is confirmed.

3. Whether the Appellant is entitled to coverage for an extension of the [rehab clinic] program beyond March 8, 2000

The Internal Review decision dated June 29, 2000 confirmed the case manager's decision dated February 7, 2000. In his decision, the case manager declined to provide coverage for an extension of [the Appellant's] program at the [rehab clinic] beyond March 8, 2000.

Upon a careful review of all of the evidence made available to it, both oral and documentary, and for the reasons set forth in the Internal Review decision dated June 29, 2000, the Commission finds that on a balance of probabilities, the Appellant's further requirement for the [rehab clinic] program cannot be supported for either of her motor vehicle accidents. The Commission accepts

[MPIC's doctor's] assessment of the Appellant's conditions set out in his Inter-Departmental Memorandum dated June 21, 2000. After a careful review of all of the medical evidence related to the Appellant's conditions, [MPIC's doctor] concludes that, although the Appellant might benefit from an extension of the [rehab clinic] program, and especially the psychological component of that program, the need for the program cannot be related to either of her motor vehicle accidents. As a result, the Appellant's appeal is dismissed, and the Internal Review decision dated June 29, 2000 is confirmed.

Dated at Winnipeg this 30th day of January, 2004.

YVONNE TAVARES

DR. PATRICK DOYLE

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