



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-73

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

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf, assisted by [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: January 20, 2004

ISSUE(S): Entitlement to Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Section 83(1) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 8 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

The Appellant, [text deleted], was involved in two separate motor vehicle accidents, on October 22, 1998 and on February 9, 2001. As a result of the injuries which the Appellant sustained in those accidents, she became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

At the time of the motor vehicle accident, the Appellant was self-employed with two businesses. She was the owner/operator of [text deleted], where her duties involved word processing, editing

and writing. She was also the owner/building manager of eight rental units and was responsible for all property management tasks related to these rental properties.

The Appellant is appealing the Internal Review decision dated June 14, 2001, with regards to her entitlement to income replacement indemnity ('IRI') benefits, as a result of her inability to continue with her pre-accident occupations beyond January 1999. The Internal Review decision determined that the totality of the evidence did not support the Appellant's claim for IRI and dismissed the Appellant's Application for Review.

At the appeal hearing, the Appellant submitted that as a result of the accident she sustained injuries which affected her ability to continue with her two home-based businesses. She maintained that prior to the motor vehicle accident of October 22, 1998, she was able to do all of the duties required of both businesses, looked after her household duties and took part in aerobics. After that accident, she developed pain in her neck and shoulder and severe headaches. She also experienced dizziness, nausea, persistent pain and muscle weakness. Any exertion made her condition worse. She was not able to sit at a computer or type for any length of time. She turned down word processing work because she just wasn't feeling well enough to do the required work. She also did the minimum required to manage her rental units, either having family members take care of the heavier work, or hiring contractors as needed. Overall, the Appellant argued that her function greatly declined after the October 1998 accident and she relates this sudden change to the effects of the accident.

Counsel for MPIC submits that the Appellant has not established an entitlement to IRI benefits arising out of either the October 22, 1998, or the February 9, 2001 motor vehicle accidents. He argues that the Appellant's medical conditions, which prevented her from working, cannot be

attributed to the motor vehicle accidents. Counsel for MPIC maintains that either pre-existing medical conditions, or obscure and subjective complaints of dizziness, nausea, fatigue and muscular weakness are attributed to the accidents, without a causal basis. He submits that there is no evidence that the Appellant had an objective impairment that prevented her from doing her word processing job. As well, he insists that her property management functions were not substantially affected, since she did not experience any quantifiable loss of income from her rental business. As a result, counsel for MPIC submits that the appeal should be dismissed and the Internal Review decision dated June 14, 2001 confirmed.

After a careful review of all of the evidence, both oral and documentary, we are unable to conclude, on a balance of probabilities, that the injuries sustained by the Appellant in the motor vehicle accidents of October 22, 1998, or February 9, 2001, prevented her from holding employment either as a word processor or a property manager from January 1999 and thereafter.

With respect to the Appellant's position as a property manager, we find that the Appellant has failed to establish, on a balance of probabilities, that she was unable to hold this employment after January 1999, due to injuries related to either of her motor vehicle accidents. Rather, the evidence establishes that there was no increase in maintenance and repair expenses for the rental properties in 1999 or 2000, when the Appellant submitted that she was unable to look after much of the property maintenance herself. The evidence before this Commission also established that the Appellant's net rental income for 1999 and 2000 was actually much higher than previous years, contrary to her claim of reduced rental income. As a result, we find that the Appellant has failed to establish, on a balance of probabilities, that she was unable to continue her employment in the rental business, as a result of injuries sustained in either motor vehicle accident.

With respect to the Appellant's position doing word processing and related activities, we find that the Appellant has failed to establish, on a balance of probabilities, that she was unable to hold this employment after January 1999, due to injuries related to either of her motor vehicle accidents. The evidence on the file simply fails to establish, on a balance of probabilities, a causal connection between the Appellant's chronic pain, muscle weakness and depression, and either of the motor vehicle accidents. Additionally, the Appellant has not established that her functional limitations were such so as to prevent her from her word processing occupation, which involved primarily sedentary transcription and editing work at a computer. We are not satisfied, on a balance of probabilities, that the reduction in the Appellant's work capacity, which started in early 1999, was connected to the motor vehicle accident of October 22, 1998 or that any exacerbation of her condition sustained as a result of the February 9, 2001 accident contributed to her diminished work capacity. As a result, we find that the Appellant has failed to establish, on a balance of probabilities, that she was unable to continue her employment in the word processing business, as a result of injuries sustained in either motor vehicle accident.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated June 14, 2001.

Dated at Winnipeg this 24th day of February, 2004.

YVONNE TAVARES

WILSON MACLENNAN

LES MARKS