



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-01-76**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Les Marks

**APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

**HEARING DATE:** January 14, 2004

**ISSUE(S):**

1. Entitlement to physiotherapy and IRI benefits as a result of the 1998 accident;
2. Whether certain documents constitute new information within the meaning of ss. 171(1) of the MPIC Act and, if so, whether fresh decisions on entitlement to PIPP benefits as a result of the 1994 accident and the 1998 accident are warranted;
3. Whether the Inter-Departmental Memorandum dated December 11, 2001 from [MPIC's doctor] constitutes new information which would give MPIC jurisdiction to review the 1996 and 1998 decisions of this Commission;
4. Whether the documents attached to the Appellant's July 18, 2002 letter constitute new information within the meaning of subsection 171(1) of the MPIC Act and, if so, whether a fresh decision respecting the Appellant's entitlement to IRI benefits during the first 180-days after the 1994 accident is warranted; and
5. Whether MPIC is obligated to fund the Appellant's legal representation.

**RELEVANT SECTIONS:** Sections 136(1)(a), 85(1), 86(1), 171(1) 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 Appellant, [text deleted], was involved in two separate motor vehicle accidents, on November 20, 1994 (the “1994 accident”) and on September 28, 1998 (the “1998 accident”). He is appealing four Internal Review decisions, dated June 15, 2001, May 3, 2002, August 28, 2002 and March 7, 2003, with respect to the following issues:

1. Entitlement to physiotherapy and Income Replacement Indemnity (‘IRI’) benefits as a result of the 1998 accident;
2. Whether certain documents constitute new information within the meaning of ss. 171(1) of the MPIC Act and, if so, whether fresh decisions on entitlement to Personal Injury Protection Plan (‘PIPP’) benefits as a result of the 1994 accident and the 1998 accident are warranted;
3. Whether the Inter-Departmental Memorandum dated December 11, 2001 from [MPIC’s doctor] constitutes new information which would give MPIC jurisdiction to review the 1996 and 1998 decisions of this Commission;
4. Whether the documents attached to the Appellant’s July 18, 2002 letter constitute new information within the meaning of subsection 171(1) of the MPIC Act and, if so, whether a fresh decision respecting the Appellant’s entitlement to IRI benefits during the first 180-days after the 1994 accident is warranted; and
5. Whether MPIC is obligated to fund the Appellant’s legal representation.

### **1. Entitlement to physiotherapy and IRI benefits as a result of the 1998 accident**

The Internal Review decision dated June 15, 2001 confirmed the case manager’s decision dated December 9, 1998. In his decision of December 9, 1998, the case manager determined that the Appellant was not entitled to any PIPP benefits as a result of the 1998 accident.

Upon a careful review of 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 he exhibited a good range of motion in both his neck and upper back upon examination after the 1998 accident. The medical evidence also provides that physiotherapy treatment was not indicated for the Appellant as a result of the 1998 accident. As a result, the Commission finds

that physiotherapy treatment was not medically required for the Appellant as a result of the 1998 accident.

Additionally, the objective medical evidence on the Appellant's file does not suggest that he sustained any injuries in the 1998 accident which would entitle him to any other PIPP benefits, including IRI. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated June 15, 2001 is confirmed.

**2. Whether certain documents constitute new information within the meaning of ss. 171(1) of the MPIC Act and, if so, whether fresh decisions on entitlement to PIPP benefits as a result of the 1994 accident and the 1998 accident are warranted**

The Internal Review decision dated May 3, 2002 confirmed the case manager's decision dated January 3, 2002. The case manager's decision had determined that the three documents provided by the Appellant on November 20, 2001, in relation to his claims for IRI arising out of the 1994 accident and the 1998 accident, did not constitute new information within the meaning of ss. 171(1) of the MPIC Act.

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the three documents in question do not constitute new information within the meaning of ss. 171(1) of the MPIC Act. A fresh decision with respect to the Appellant's entitlement to PIPP benefits arising from the 1994 and 1998 accidents is therefore not warranted.

It is clear from the previous decisions of the Commission that reports from the physiotherapist, [Appellant's physiotherapist], as well as from [Appellant's doctor] were before the Commission

when it made its previous decisions. Additionally, the notes from the physiotherapy student, dated April 6, 2000 which demonstrate a restriction of movement and other problems with the right shoulder do not constitute new information. The fact that the Appellant had complaints of right shoulder pain following the 1994 accident was well documented in the material before the Commission at the times of the 1995, 1996, and 1998 decisions. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated May 3, 2002 is confirmed.

**3. Whether the Inter-Departmental Memorandum dated December 11, 2001 from [MPIC's doctor] constitutes new information which would give MPIC jurisdiction to review the 1996 and 1998 decisions of this Commission**

The Commission finds that [MPIC's doctor's] Inter-Departmental Memorandum dated December 11, 2001 is not new information within the meaning of ss. 171(1) of the MPIC Act. It is his analysis of documents submitted by the Appellant. The information provided by the Appellant for consideration was not new information. There is no jurisdiction on the part of MPIC to review decisions of this Commission. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated May 3, 2002 is confirmed.

**4. Whether the documents attached to the Appellant's July 18, 2002 letter constitute new information within the meaning of ss. 171(1) of the MPIC Act and, if so, whether a fresh decision respecting the Appellant's entitlement to IRI benefits during the first 180-days after the 1994 accident is warranted**

The Internal Review decision dated August 28, 2002 determined that none of the documents attached to the Appellant's July 18, 2002 letter constituted new information within the meaning of ss. 171(1) of the MPIC Act. 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 August 28, 2002, the Commission finds that none of the documents in question constitute new

information within the meaning of ss. 171(1) of the MPIC Act. Accordingly, a fresh decision with respect to the Appellant's entitlement to IRI during the first 180-days after the 1994 accident is not warranted. As a result, the Appellant's appeal is dismissed, and the Internal Review decision dated August 28, 2002 is hereby confirmed.

**5. Whether MPIC is obligated to fund the Appellant's legal representation**

The Internal Review decision dated March 7, 2003 determined that the Appellant was not entitled to funding from MPIC for legal representation at his upcoming hearing before the Commission.

The Commission has previously considered this Appellant's request to fund legal counsel to represent him at hearings before the Commission. In a decision dated May 5, 2003, the Commission determined that there was no provision under the MPIC Act which would permit the Commission to fund legal counsel in these proceedings. The Commission's decision was affirmed on appeal to the Manitoba Court of Appeal in Reasons for Decision dated [text deleted].

Relying upon the reasons set out in the Commission's decision dated May 5, 2003 and for the Reasons for Decision set forth by the [text deleted], we find no reason to disturb the decision of the Internal Review Officer dated March 7, 2003. Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated March 7, 2003 is confirmed.

Dated at Winnipeg this 23<sup>rd</sup> day of January, 2004.

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**MEL MYERS, Q.C.**

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**YVONNE TAVARES**

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**LES MARKS**