

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-47

PANEL: **Ms. Yvonne Tavares, Chairperson**
Mr. Neil Cohen
Ms. Mary-Lynn Brooks

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

HEARING DATE: **September 6, 2006**

ISSUE(S): **Whether Appellant's ongoing disability related to motor vehicle accident of January 26, 2001**

RELEVANT SECTIONS: **Section 110(1)(a) 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 a motor vehicle accident on January 26, 2001, wherein she sustained injuries to her lower back. Due to those injuries, the Appellant became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 the MPIC Act.

The Appellant had previously appeared before the Commission seeking an appeal from the Internal Review Decision dated December 16, 2002, which decision terminated the Appellant's income replacement indemnity ("IRI") benefits as of August 30, 2002.

In its decision, dated January 15, 2004, the Commission determined that the Appellant was not capable of holding employment as a [text deleted] as of August 30, 2002. However, the Commission referred the matter back to MPIC for a determination of whether a causal connection between the Appellant's ongoing disability (beyond August 30, 2002) and the motor vehicle accident of January 26, 2001, still existed. The Commission was concerned as to whether a disc herniation, which had come to light in a CT scan dated April 30, 2003, was related to the motor vehicle accident of January 26, 2001. Or, alternatively, whether the disc herniation was a new injury, separate and apart from the motor vehicle accident of January 26, 2001, and whether this could account for the Appellant's ongoing pain complaints and limitations in physical functioning.

MPIC's case manager in a decision letter dated August 16, 2004 (which decision was later amended by letter dated October 27, 2004) determined that there was no causal relationship between the motor vehicle accident and the disc herniation, and therefore no entitlement to IRI benefits for the Appellant.

The Appellant sought an Internal Review of that decision. In a decision dated February 4, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer determined that the medical information on the Appellant's file did not support a finding that the disc herniation was causally related to the motor vehicle accident of January 26, 2001. Therefore, there was no entitlement to any further PIPP benefits.

The Appellant has now appealed from the Internal Review Decision dated February 4, 2005, to this Commission. At the hearing of this appeal, the Commission determined that there was no

evidence to suggest that an intervening incident could account for the Appellant's disc herniation or that the disc herniation was in fact the cause of the Appellant's ongoing pain complaints. Therefore, in accordance with our previous decision dated January 15, 2004, the Commission determined that the Appellant's IRI benefits should be reinstated effective August 30, 2002.

The Commission also found that the Appellant should undergo a further treatment or rehabilitation program in order to assist her to improve her physical functioning and to explore means of controlling her chronic pain. Such a treatment/rehabilitation program should be arranged through her case manager at MPIC, perhaps at a facility such as the [rehab clinic]. A multi-disciplinary approach, including physiotherapy, psychological counseling or a work-hardening program (as may be indicated) should be undertaken to assist the Appellant return as closely as possible to her pre-accident status.

Lastly, the Commission determined that there was a lack of evidence to connect the disc herniation to the motor vehicle accident of January 26, 2001, on the balance of probabilities. Accordingly, there was no entitlement to a permanent impairment benefit for the Appellant's disc herniation.

Dated at Winnipeg this 14th day of September, 2006.

YVONNE TAVARES

NEIL COHEN

MARY-LYNN BROOKS