

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-05-163**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Wilfred De Graves  
Mr. Paul Johnston

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

**HEARING DATE:** August 25, 2009

**ISSUE(S):** Entitlement to Income Replacement Indemnity Benefits beyond December 30, 2001.

**RELEVANT SECTIONS:** Section 110(1)(c) of The Manitoba Public Insurance Corporation Act ('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 November 1, 1999 when she hit a deer with the front of her vehicle. She sustained neck and upper back strain injuries. Due to the bodily injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

At the time of the motor vehicle accident, the Appellant was employed at Granny's Poultry as a bagger and had worked there for approximately five months prior to the accident date. As a result of the injuries which the Appellant sustained in the motor vehicle accident, she was unable to return to her employment with Granny's Poultry and she became entitled to income replacement indemnity ("IRI") benefits. The Appellant was classified as a temporary earner and initially received IRI benefits to November 12, 1999 (the date she was scheduled to be laid off from her employment with Granny's Poultry).

The Appellant was not entitled to any further IRI benefits for the first six months following the motor vehicle accident. Due to her financial situation, the Appellant took a job as a flag person with Mulder Construction. She commenced employment there on May 9, 2000, and although she states that she was in pain, she was able to work full-time hours until August 12, 2000 when the job ceased.

As at the 181<sup>st</sup> day after the motor vehicle accident, the Appellant continued to be incapable of holding employment due to the injuries sustained in the motor vehicle accident. As a result, MPIC completed a 180 day determination of employment for the Appellant as directed by Section 84(1) of the MPIC Act. The 180 day determination provides the Appellant the best case scenario of what her potential income would be for full-time employment given her work history, education, training and physical and intellectual abilities. Based on that information, the Appellant's determined occupation was that of a "bagger", which was the employment she held at the time of the accident.

The Appellant was assessed by [text deleted], physiotherapist, on June 13, 2001 for an independent physiotherapy examination. [Independent physiotherapist] was provided with the

Appellant's job description from Granny's Poultry. In her report dated June 14, 2001 based upon that assessment, [independent physiotherapist] opined that the Appellant demonstrated no physical deficit on examination that would preclude her from performing the job at Granny's Poultry. [Independent physiotherapist] also suggested a short course of therapy for the Appellant, with the view to educating her with proper posture, resting positions, home walking and exercise program and stretches. The Appellant undertook this educational program at [physiotherapy clinic]. Subsequently, MPIC's Health Care Services Team reviewed all of the medical reports on the Appellant's file and concurred with [independent physiotherapist's] opinion regarding the Appellant's ability to hold employment and [independent physiotherapist's] treatment recommendations. Based upon [independent physiotherapist's] opinion and the opinions of MPIC's Health Care Services, MPIC's case manager wrote to the Appellant on December 17, 2001 and advised her that her IRI benefits would cease effective December 30, 2001 as she was now able to hold the employment she held at the time of the accident (which employment would also be her determined employment).

The Appellant sought a review of that decision. The Internal Review Decision of January 12, 2005 confirmed the case manager's decision of December 17, 2001 and dismissed the Appellant's application for review. The Internal Review Officer found that the Appellant's right shoulder condition was not related to the motor vehicle accident and that any difficulty that she had with cervical rotation would not prevent her from performing her pre-accident duties. Accordingly, she confirmed the case manager's decision.

The Appellant has appealed that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to IRI benefits beyond December 30, 2001.

At the hearing of the appeal, the Appellant submitted that IRI benefits should be extended beyond December 30, 2001, as she was unable to return to work due to the injuries which she sustained in the motor vehicle accident. She advised that she continued to suffer from debilitating pain which prevented her from returning her to any type of employment until the year 2007, when she forced herself to return to work. The Appellant maintains that she is still in severe pain. She has pain in her shoulders and her neck which prevented her from returning to work prior to 2007. The Appellant maintains that she has continued to seek medical treatment for the injuries sustained in the motor vehicle accident, but none of her caregivers to date have been able to identify and treat the causes of her pain complaints. The Appellant argues that due to her pain complaints, which originated with the motor vehicle accident of November 1, 1999, she was unable to return to work for many years. She therefore submits that she is entitled to IRI benefits for the period of time during which she was unable to hold employment due to her pain condition resulting from the motor vehicle accident of November 1, 1999.

Counsel for MPIC submits that the Appellant is not entitled to further IRI benefits beyond December 30, 2001. He maintains that the Appellant has not met the onus of proof required in the circumstances to establish that she is entitled to such coverage. Counsel for MPIC argues that there are no medical reports to support the Appellant's position. He maintains that the onus is on the Appellant to establish that the Internal Review Decision was wrong and she has not met the onus of proof.

Counsel for MPIC submits that the overwhelming medical evidence on the Appellant's file supports the termination of IRI benefits as of December 30, 2001. He refers to [independent physiotherapist's] physiotherapy report dated June 14, 2001, wherein [independent

physiotherapist] stated that the Appellant's neck and back pain was due to her deconditioned state and that the Appellant demonstrated no physical limitations to preclude her return to work. Counsel for MPIC also relies on the September 7, 2001 report of [MPIC's doctor], medical consultant to MPIC's Health Care Services, wherein [MPIC's doctor] opined that there was no evidence to preclude the Appellant from returning to work. With respect to the Appellant's right shoulder condition, counsel for MPIC relies on [MPIC's doctor's] opinion that the shoulder condition is not related to the motor vehicle accident. He also relies upon [Appellant's doctor's] report dated January 20, 2003. [Appellant's doctor] reviewed the Appellant respecting her right shoulder complaints and noted that "I find it hard to justify this lady's being off work on the basis of my physical findings". In summary, counsel for MPIC maintains that the medical evidence does not support the Appellant's position that she was in so much pain that she couldn't return to work. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision confirmed.

**Decision:**

Upon a careful review of the documentary evidence made available to it, and upon hearing the submissions by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that she was entitled to IRI benefits beyond December 30, 2001.

**Reasons for Decision:**

The Commission finds that the medical evidence in 2001, at the time of the termination of the Appellant's IRI benefits, indicated that the Appellant could return to work. The Commission accepts [independent physiotherapist's] assessment detailed in her report of June 14, 2001 and her opinion that the Appellant was physically capable of performing the job she held at Granny's

Poultry. The Appellant did not establish otherwise. There was no medical evidence presented by the Appellant that would preclude her return to work. The onus rested with the Appellant to establish that she was not capable of returning to work beyond December 30, 2001. We find that the Appellant has not met that onus and has not established that she was unable to hold employment beyond December 30, 2001.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated January 12, 2005 is therefore confirmed.

Dated at Winnipeg this 14<sup>th</sup> day of September, 2009.

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**YVONNE TAVARES**

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**WILFRED DE GRAVES**

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**PAUL JOHNSTON**