

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-228**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms Leona Barrett

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Leanne Zabudsky.

HEARING DATE: November 24, 2009

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits

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

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER
IDENTIFYING INFORMATION.**

Reasons For Decision

The Appellant, [text deleted], is appealing the Internal Review Decision dated November 1, 2005, with regards to her entitlement to income replacement indemnity ("IRI") benefits.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On December 31, 2004, the Appellant was a passenger in a vehicle which was rear-ended.

2. At the time of the accident, the Appellant was a student at the University of [text deleted]. She was scheduled to complete her [text deleted] training and begin practice on January 12, 2005.
3. The Appellant attended [Hospital] on January 2, 2005 complaining of headaches, numbness to her right side, post-nasal drip, myalgia and intermittent fever. A CT scan of the Appellant's brain was normal. The Appellant was given a doctor's note by the emergency room physician, advising her not to return to work until current illness resolves in 4 to 5 days.
4. The Appellant attended upon her family physician, [Appellant's Doctor] on January 7, 2005. [Appellant's Doctor] noted that the Appellant was complaining of headaches and neck pain, shoulder/arm pain, elbow/forearm pain, wrist/hand pain, interscapular pain, chest pain, thoracic/rib pain, abdominal pain, low back pain, hip/thigh pain, knee/leg pain and also dizziness, tinnitus, memory impairment, anxiety, depression, sleep disturbance and fatigue. [Appellant's Doctor] referred the Appellant to physiotherapy and to [Appellant's Neurologist].
5. [Appellant's Neurologist] provided a report dated February 22, 2005, wherein he reported a normal physical and neurological examination of the Appellant. [Appellant's Neurologist] opined that the Appellant had recovered from any ill effects of the motor vehicle accident. He noted there was no evidence of objective physical findings and functional limitations preventing the Appellant from resuming full duties as a [text deleted].
6. [Appellant's Doctor] provided a report dated March 15, 2005 wherein he noted that it was very likely that the Appellant had a significant head injury with intracranial damage. He found there was evidence of mood changes, weight changes, multiple pains and reduced concentration and memory. Sleep disturbance persisted. [Appellant's Doctor]

also noted that the Appellant could not do her normal household chores and was deeply distressed by her workplace response. He further noted that the Appellant would need psychological consultation once approved by MPI.

7. In an Inter-departmental memorandum dated May 10, 2005, [MPIC's Doctor], [text deleted], opined that the Appellant had not been identified as having a physical impairment of function, based on objective evaluation, which indicated that she was unable to resume her pre-accident level of function. He also recommended that further information be obtained from [Appellant's Doctor].
8. [Appellant's Doctor] provided a further report dated June 5, 2005. He noted that the Appellant had improved and was able to work as a [text deleted] trainee. Physically, she was still fatigued and deliberate in her motion. He noted normal neurologic, cardiovascular, respiratory and gastrointestinal examination. However, he was still of the view that the Appellant had sustained an intracranial injury and developed post-traumatic syndrome. He further noted that the Appellant would benefit from ongoing psychological support and frequent respite.
9. [MPIC's Doctor] reviewed the file again on July 12, 2005. [MPIC's Doctor] noted that [Appellant's Doctor's] report of June 5, 2005 did not identify any physical impairment of function, based on an objective evaluation, that would preclude the Appellant from completing her [text deleted] program. [MPIC's Doctor] concluded that it was not medically probable that the Appellant developed a condition as a result of the incident in question that in turn would account for her vast array of symptoms. He found that it was not medically probable that she would have developed an impairment of function from the incident in question that in turn would prevent her from completing the [text deleted] program and functioning as a [text deleted] practitioner. [MPIC's Doctor] also concluded that the Appellant's pain focused behaviour had adversely affected her perception of what

she was physically capable of performing and that there was no information that the Appellant had developed a psychological disorder as a result of the accident that might factor into her perceived level of function.

10. MPIC's case manager issued a decision letter dated August 26, 2005 in which he informed the Appellant that she was not entitled to IRI benefits since the medical review of her file concluded that it was not medically probable that she had developed an impairment of function from the motor vehicle accident of December 31, 2004 that would have prevented her from completing her [text deleted] program and functioning as a [text deleted] practitioner.

11. The Appellant sought an Internal Review of that decision. In a decision dated November 1, 2005, the Internal Review Officer confirmed the case manager's decision of August 26, 2005 and dismissed the Appellant's Application for Review. The Internal Review Officer found that the evidence on the Appellant's file supported the decision that it was not medically probable that the Appellant had developed an impairment of function from the accident that would have prevented her from completing her [text deleted] program and functioning as a [text deleted] practitioner.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to IRI benefits arising from the motor vehicle accident of December 31, 2004.

Appellant's Submission:

The Appellant submitted that the motor vehicle accident of December 31, 2004 prevented her from completing her [text deleted] program as originally scheduled and commencing practice on January 12, 2005. She notes that after the motor vehicle accident she had a viral illness, but she

also had muscle pain and headaches which precluded her return to her [text deleted] duties. She advises that she followed the emergency room doctor's advice and chose not to return to work because of her physical condition. She contends that she was also following the advice of her physiotherapist, who had excused her from [text deleted] duties due to her injuries until at least February 1, 2005. The Appellant submits that she was anxious to complete her [text deleted] program and to start her work as a [text deleted]. She maintains that the physical injuries which she sustained as a result of the motor vehicle accident prevented her from returning to her [text deleted] duties.

The Appellant also claims that the motor vehicle accident affected her psychologically. She maintains that her physical symptoms ultimately affected her psychologically and prevented her from returning to work. She claims that she became depressed as a result of the motor vehicle accident. The Appellant argues that both the reports of the physiotherapist and [Appellant's Doctor] noted that her mood was dysphoric, that she was losing weight, that she had a decrease in concentration and a sleep disturbance. The Appellant argues that [Appellant's Doctor] was treating both her physical and psychological conditions and that he reported to MPIC that there was a psychological overlay to her condition. She notes that he prescribed an anti-depressant to help treat her symptoms; however, she never received a referral for psychological services. She argues that emotional ability was documented at least twice in the course of her treatment and she was started on psychological medication as a result of the accident.

The Appellant advised that on April 13, 2005 she determined that she would finish her [text deleted] program despite the pain that she was experiencing. The Appellant testified that she took it upon herself to return to her [text deleted] program even though she was not 100%, as she did not want to lose her job. She further testified that she spoke with [Appellant's Doctor] who

gave her a note clearing her to return to work as of May 2, 2005, based upon her willingness to do so. The Appellant testified that she completed the [text deleted] Program on May 15, 2005.

In summary, the Appellant submits that prior to the accident she was healthy, active and had never had any psychiatric or psychological problems and had not received any psychological treatment. As a result of the motor vehicle accident, her family physician reported that she had psychological problems. She had an alteration in her mood. She had emotional disturbances from the outset of her claim. She was taking anti-depressant medications to stabilize her mood. She therefore maintains that her physical and psychological symptoms interacted to prevent her from returning to her normal activities and her duties as a [text deleted] following the motor vehicle accident. As a result, the Appellant argues that she is entitled to IRI benefits arising from the motor vehicle accident of December 31, 2004.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not established an entitlement to IRI benefits. Counsel for MPIC relies on [MPIC's Doctor's] reviews and his opinion that there is no objective evidence showing that the Appellant developed a condition as a result of the motor vehicle accident that would preclude her from returning to work. Counsel for MPIC also relies upon [Appellant's Neurologist's] report of February 22, 2005, wherein [Appellant's Neurologist] noted that the Appellant was capable of returning to work and that there was a discrepancy in her reporting of symptoms.

Counsel for MPIC maintains that it was the Appellant's personal decision to return to her [text deleted] program. The Appellant was solely responsible for determining that she was capable of working and willing to work at that time. However, counsel for MPIC notes that nothing had

changed in her health. Accordingly, counsel for MPIC argues that the Appellant's testimony conflicts – her condition prevented her from returning to work. However, nothing changed in her health and she made a personal decision to return to work. As a result, counsel for MPIC argues that the Appellant was capable of working following the motor vehicle accident, as supported by the documentation in the Appellant's file. She maintains that there is a lack of objective documentation of physical or psychological symptoms which would have precluded the Appellant's return to work. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated November 1, 2005 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to IRI benefits arising from the motor vehicle accident of December 31, 2004.

Reasons for Decision:

The Commission finds that there is insufficient objective evidence in the documentation before it to establish that the Appellant was unable to return to her employment due to either a physical or psychological illness resulting from the motor vehicle accident of December 31, 2004.

[Appellant's Neurologist's] report of February 22, 2005 advises that the Appellant was capable of resuming her duties as a [text deleted]. Further, although [Appellant's Doctor's] reports mention development of a post-traumatic syndrome, no further attention was provided to the Appellant's psychological concerns. As a result, we find that there is insufficient evidence to

establish that the Appellant had a psychological condition which precluded her return to work as a [text deleted].

Lastly, we note that the Appellant's own admission that it was her personal decision to return to her [text deleted] program, although nothing had changed in her health. As a result, we find her testimony contradictory, in that, although her condition prevented her from returning to work, she was able to accomplish a successful return to work without an improvement in her symptoms. We therefore find that:

1. it was the Appellant's personal decision to return to her [text deleted] program; and
2. there is a lack of objective documentation of a physical and/or psychological illness to establish an inability to return to work.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated November 1, 2005 is confirmed.

Dated at Winnipeg this 12th day of January, 2010.

YVONNE TAVARES

LEONA BARRETT

PAUL JOHNSTON