

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-45**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: December 8, 2009

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits beyond October 3, 2004.

RELEVANT SECTIONS: Section 81(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

Reasons For Decision

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

The Appellant, [text deleted], was involved in a motor vehicle accident on June 27, 2004. At the time of the accident, the Appellant was the seat-belted passenger in a vehicle [text deleted], when the vehicle lost control and rolled over into a ditch. As a result of this accident, the Appellant sustained bruising to her right elbow, shoulder, left side, knee and the top of her head. She also had soreness in her neck and right shoulder.

At the time of the motor vehicle accident, the Appellant was employed with [text deleted] as a product demonstrator at [text deleted] on a full-time basis. Due to the injuries which the Appellant sustained in the motor vehicle accident, she was unable to return to her employment. As a result, the Appellant became entitled to income replacement indemnity (“IRI”) benefits.

By letter dated September 30, 2004, MPIC’s case manager terminated the Appellant’s IRI benefits on the grounds that the medical information on her file did not identify her as having an impairment of physical function, related to her motor vehicle accident injuries, to the extent that she would be disabled from performing her occupational duties as a demonstrator/sampler at [text deleted]. The Appellant sought an Internal Review of that decision. By memo dated December 1, 2004, the Internal Review Officer returned the Appellant’s file to the case manager for further consideration. The Appellant’s file was subsequently reviewed by [MPIC’s Doctor] [text deleted]. [MPIC’s Doctor] provided his report dated December 20, 2004, wherein he noted that the Appellant had exacerbated pre-existing symptoms as a result of the motor vehicle accident of June 27, 2004, but as of September 29, 2004, the Appellant did not have objective physical findings that would have prevented her from performing her pre-accident occupational duties.

MPIC’s case manager subsequently issued a further decision dated February 5, 2005. That decision confirmed that the Appellant was no longer entitled to an IRI benefit as of October 3, 2004, since the medical information on her file indicated that she did not have any objective physical findings that would prevent her from returning to work as of September 29, 2004.

The Appellant sought an Internal Review of that decision. In a decision dated September 21, 2007, the Internal Review Officer confirmed the case manager’s decision and dismissed the

Appellant's application for review. The Internal Review Officer found that the medical evidence on the Appellant's file confirmed that, as of October 3, 2004, the injuries she sustained in the motor vehicle accident would not have prevented her from returning to her pre-accident employment. As a result, the Internal Review Officer found that the Appellant was not entitled to further IRI benefits.

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 beyond October 3, 2004.

Appellant's Submission:

Counsel on behalf of the Appellant argues that the Appellant has sustained various injuries over the years in numerous car accidents, and those accidents have had a negative cumulative effect on her health. Counsel for the Appellant submits that the numerous car accidents have resulted in a chronic pain syndrome for the Appellant. He maintains that the Appellant is in constant pain and is unable to work. He contends that the Appellant is a credible witness and that the motor vehicle accidents have caused her inability to work. As a result, counsel for the Appellant submits that the Appellant's IRI benefits should be reinstated as of October 3, 2004.

MPIC's Submission:

Counsel for MPIC submits that the Appellant is not entitled to IRI benefits beyond October 3, 2004, as there is no objective medical evidence to establish a physical incapacity to perform her pre-accident employment. She argues that the Appellant's chronic pain syndrome has existed since 1989 and is not connected to this motor vehicle accident. Further, counsel for MPIC maintains that the Appellant's chronic complaints existed prior to the motor vehicle accident of

June 27, 2004. Her occupational duties were already significantly modified prior to the motor vehicle accident, in order to enable the Appellant to work full-time. She claims that the Appellant's condition has remained essentially the same after the motor vehicle accident as before. However, the Appellant has not even tried returning to work. In summary, counsel for MPIC submits that the Appellant has no functional limitations resulting from the accident of June 27, 2004, that would prevent her from returning to work as of October 3, 2004. Therefore, counsel for MPIC argues that the Appellant's appeal should be dismissed.

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 counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to IRI benefits beyond October 3, 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 June 27, 2004. There is a lack of objective medical evidence to establish that the Appellant is functionally incapable of performing the essential duties of her pre-accident employment, as a result of injuries that she sustained in the motor vehicle accident of June 27, 2004. Rather, the preponderance of evidence before the Commission establishes that:

- the Appellant had several ongoing medical complaints and conditions prior to the motor vehicle accident of June 27, 2004;

- the Appellant exacerbated her pre-existing symptoms as a result of the accident in question;
- as of September 29, 2004, the Appellant did not have objective physical findings that developed secondary to the accident in question that would have prevented her from performing her pre-accident occupational duties;
- the medical information provided by the Appellant is in keeping with her significant functional limitations that she had prior to the motor vehicle accident of June 27, 2004;
- by September 29, 2004, any exacerbation of the Appellant's symptoms attributable to the motor vehicle accident would have resolved and the Appellant was functioning at her pre-accident level as of that date.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 21, 2007 is confirmed.

Dated at Winnipeg this 27th day of January, 2010.

YVONNE TAVARES

NEIL COHEN

DEBORAH STEWART