

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-11-008**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Dr. Sheldon Claman

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

HEARING DATE: October 17, 2013

ISSUE(S): Entitlement to income replacement indemnity benefits beyond August 15, 2010.

RELEVANT SECTIONS: Section 110(1)(a) 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], was involved in a motor vehicle accident on December 9, 2005. She was operating her SUV travelling [text deleted] at about 100 kilometers per hour on [text deleted]. She lost control of her vehicle on ice and went into the [text deleted] ditch, rolling her vehicle three times. As a result of the accident, the Appellant reported a sore left shoulder and sore left side of her head with headaches, issues with her left eye and blurred vision. Due to the injuries which the Appellant sustained in this motor vehicle accident she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

At the time of the accident, the Appellant was working part-time as a health care aide. Her duties included helping residents perform daily living activities, such as bathing, getting out of bed, dressing, feeding and bed making. Due to the injuries which the Appellant sustained in the motor vehicle accident, she was unable to carry out her employment duties and she became entitled to income replacement indemnity ("IRI") benefits in accordance with Section 83(1) of the MPIC Act.

She was off work until February 21, 2006 when she returned to her employment as a health care aide. On December 7, 2007, the Appellant experienced a relapse of her motor vehicle accident symptoms which resulted in an inability to perform her work duties as a health care aide.

The Appellant completed a rehabilitation program at [Rehabilitation (Rehab) Facility] on April 30, 2010. A Physical Demands Analysis of her employment as a health care aide identified the physical demands of this job to be at the medium strength level. At the end of the rehabilitation program, the Appellant was deemed capable of performing medium strength work.

On June 7, 2010, the Appellant's family physician, [Appellant's Doctor], provided a medical report in regard to his examination of the Appellant of May 14, 2010. [Appellant's Doctor] noted in his report that:

I see that a functional assessment has deemed that she's able to return back to a Health Care Aide level of function. She does have spasms in her back area with decreased range of motion to forward flexion and rotation in the thoracic area. There are no hard findings seen. A recent CT scan of her thoracic spine was reviewed by the radiologist and there were no underlying deficits seen in this area.

Notwithstanding the fact that she has been deemed okay to return-to-work, I am wondering if a return-to-work on a supernumerary setting with a graduated increase in responsibilities might be undertaken. I am also wondering if an on-site evaluation in her workplace might be reasonable in order to determine the level of work that is required.

This medical documentation was reviewed by [MPIC's Doctor] of MPIC's Health Care Services team. In a Health Care Services Review dated July 29, 2010, [MPIC's Doctor] concluded that:

...The discharge report from [Rehab Facility] of May 11, 2010 notes that at the completion of the recent reconditioning program, the claimant demonstrated the functional capability of the job requirements in a Medium classification. Although [Appellant's Doctor] indicates wondering if a return to work in a supernumery (sic) setting with a gradual increase in responsibilities might be undertaken along with an on site workplace evaluation, the functional measures obtained/assessed by the [Rehab Facility] Team supports that the claimant is capable of Medium strength work in the HCA position.

On August 17, 2010, MPIC's case manager issued a decision letter regarding the Appellant's entitlement to IRI benefits. The case manager found that as of August 15, 2010, the Appellant was capable of holding employment as a health care aide and therefore her entitlement to IRI benefits ceased as of August 15, 2010.

The Appellant disagreed with the case manager's decision and sought an Internal Review of that decision. The Internal Review Officer, in a decision dated November 5, 2010 dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the objective medical information on the Appellant's file supported that the Appellant was capable of medium strength work in her position as a health care aide.

The Appellant appealed the Internal Review decision of November 5, 2010 to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to IRI benefits beyond August 15, 2010.

Prior to the hearing of this matter, the Appellant attended for an Independent Third Party Medical Examination with [Independent Doctor] on June 20, 2012. In his report dated July 4, 2012, [Independent Doctor] concluded as follows:

2. Were there any accident related injuries that prevented [the Appellant] from doing her pre-accident (sic) employment at the date she was deemed fit to return (July 29, 2010)?

According to the medical record and the claimant's own history, the primary factor preventing the claimant from returning to gainful occupation is her pain. As of June 2010, the primary area of complaint has been the thoracic spine.

Since the MRI scan of February 3, 2011, the claimant's pain has been linked to the finding of hydroxyapatite deposition at T9-10 disc space. While it remains unclear whether this lesion is associated with the claimant's pain complaints, there is no evidence that this lesion is a result of the motor vehicle collision. As such, her thoracic pain is improbably linked to an "*accident related injury.*"

According to the claimant, her left shoulder pain resolved shortly after motor vehicle collision. Although she still reports neck pain is less stiffness, she indicates that her neck condition has improved by approximately 50% and remains at a plateau. The current physical examination does not reveal any functional abnormalities affecting the neck or shoulder girdle bilaterally. In addition, the neurological examination is normal.

Therefore, while neck and shoulder girdle conditions can be causally linked to the motor vehicle collision, there is no objective evidence that these conditions preclude the claimant from returning to her former occupation. Given the relative absence of neck/shoulder girdle symptoms since June 2010, it is unlikely that these potentially "*accident related injuries prevented [the Appellant] from doing her pre-accident (sic) employment at the date she was deemed fit to return (July 29, 2010).*"

...

5. Your opinion regarding her current complaints, signs and symptoms as to their relevancy/relationship to the motor vehicle accident related injuries.

As indicated previously, the claimant's primary complaint over the past two years is linked to her thoracic spine. During the course of the current interview, she specifically cites pain in this region as preventing her from performing "*what I want to do, need to do.*"

It is noteworthy, that the physical exam findings document maximal tenderness at approximately T5-6. This does not correspond to the site of the MRI-documented hydroxyapatite deposition at T9-10.

In addition, there is widespread tenderness throughout the thoracic spine to palpation that is insufficiently forceful as to blanch the skin. This is inconsistent with a focal and

atomic lesion, including the hydroxapatite deposition at T9-10. Rather, it is more suggestive of widespread pain indicative of opioid induced hyperalgesia.

On the basis that hydroxapatite deposition is medically improbably linked to trauma, and since the claimant's thoracic pain emerged as a primary problem several years following the motor vehicle collision, and since her previously documented neck and shoulder girdle complaints (which may be causally linked to the motor vehicle collision) have for the most part resolved or become insignificant, the claimant's current signs and symptoms are not causally linked to the motor vehicle collision of December 9, 2005.

[Independent Doctor] provided a further follow-up report dated May 8, 2013 upon receipt of further medical information. In this report, [Independent Doctor] concludes as follows:

The following points summarize this opinion:

- Mid back pain is cited as the primary factor preventing the claimant from returning to her former occupation.
- This symptom complex did not emerge as a significant factor until 2010, approximately 4-5 years following her motor vehicle collision of December 9, 2005.
- Her functional evaluation at [Rehab Facility], as summarized in their discharge report of May 11, 2010 concludes that the claimant had the requisite physical function to safely return to her former occupation.
- Since the MRI scan of February 3, 2011, the claimant's pain has been linked to the finding of hydroxyapatite deposition at T9-10 disc space. Prior to that study, this diagnosis was not under consideration.
- While it remains unclear whether this lesion is associated with the claimant's pain complaints, there is no evidence that this lesion is a result of motor vehicle collision-related trauma. As such, her thoracic pain is improbably linked to an "*accident related injury.*"
- Consequently, the claimant's reported inability to return to work is not linked to a motor vehicle collision-related injury.

Appellant's Submission:

At the hearing of this appeal, the Appellant submitted that her motor vehicle accident-related injuries, prevent her from returning to her employment as a health care aide. The Appellant argued that following the motor vehicle accident she developed long-term issues including headaches, lack of concentration, fatigue and irritability. The Appellant claims that she likely suffered a concussion as a result of the motor vehicle accident of December 9, 2005. In addition,

the Appellant maintains that she has ongoing back pain since the motor vehicle accident. She maintains that although she did not specifically complain of pain in the thoracic area immediately following her motor vehicle accident, she has had ongoing back pain since the motor vehicle accident. She argued that her thoracic symptoms arose following her rehabilitation program at [Rehab Facility], which she maintains aggravated her back symptoms.

The Appellant submits that she had to discontinue her employment in December 2007 as she was no longer physically capable of continuing with that employment. She felt pain and strain in her back and she felt numbness in both hands. Additionally, she had issues with forward flexion, headaches, right shoulder pain and numbness in her hands. The Appellant argues that all of these symptoms arose and are connected to her motor vehicle accident of December 9, 2005 and prevented her from returning to her employment beyond August 15, 2010.

MPIC's Submission:

Counsel for MPIC submits that the objective medical evidence on the file confirms that the Appellant was capable of performing her employment as a health care aide as of August 15, 2010. In support of his position, counsel for MPIC relies upon the opinion of [Independent Doctor] which concluded that the Appellant's current symptomatology is due to thoracic complaints which are not related to the motor vehicle accident of December 9, 2005. Counsel for MPIC argues that the indication that the Appellant is unable to do her pre-accident employment is entirely subjective. He maintains that there is no objective medical evidence that the Appellant could not do her employment as a health care aide and that she has not met the onus of proof required in this case to find otherwise. Counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision of November 5, 2010 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 beyond August 15, 2010.

Reasons for Decision:

Upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that she was unable to hold employment as a health care aide, as of August 15, 2010 due to injuries resulting from the motor vehicle accident of December 9, 2005. Having reviewed all of the medical information on the Appellant's file, the Commission accepts the opinion of [Independent Doctor] that the Appellant's reported inability to return to work is not linked to a motor vehicle collision-related injury. The Commission accepts [Independent Doctor's] opinion that the Appellant's symptom complex did not emerge as a significant factor until 2010, approximately five years following her motor vehicle accident of December 9, 2005. As a result, we are unable to causally connect her ongoing pain condition to the motor vehicle accident of December 9, 2005.

Additionally, the Commission finds that the Functional Evaluation at [Rehab Facility], as summarized in their Discharge Report of May 11, 2010, concludes that the Appellant had the requisite physical functional capability to perform her occupation. The Appellant has not provided any objective evidence to challenge this assessment. As a result, the Commission finds that the Appellant has not met the onus of proof required in this case to establish that she could not hold her employment as a health care aide beyond August 15, 2010.

Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated November 5, 2010 is confirmed.

Dated at Winnipeg this 21st day of November, 2013.

YVONNE TAVARES

LEONA BARRETT

DR. SHELDON CLAMAN