

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-28**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Mr. Keith Addison
[The Appellant], the Appellant, appeared in person

HEARING DATE: October 22nd, 1996

ISSUE(S): Entitlement to income replacement indemnity.

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 FACTS:

[The Appellant] appeals from a decision of the Internal Review Officer of Manitoba Public Insurance Corporation ('M.P.I.C.') on the limited ground that, due to the first of two accidents that she sustained during the year 1995, she missed five days of work for a total of 37 hours and 55 minutes. The days in question are October 10th, 17th, 20th, 26th and 31st.

Our ability to render a decision in this matter has been substantially delayed, due to our inability to obtain, from [the Appellant's] original physician, [text deleted], a response to many requests that we made of her for certain additional, specific information. When [Appellant's doctor's] reply finally came to hand, it was not at all responsive to the questions that we had posed, and we are therefore none the wiser.

[Appellant's doctor's] initial reports to M.P.I.C. indicated that she had prescribed a course of physiotherapy for [the Appellant] but had recommended that her patient return to work. The report of the physiotherapist, which in turn is endorsed with some further comments of [Appellant's doctor], indicates that [the Appellant] seemed to be experiencing an unexpectedly tender response to palpation and was not able to respond well to pain, making some forms of physiotherapy more difficult. An Obus form of seating support was recommended by both the physiotherapist and the physician, with continuation of 'back education, strengthening and stretching'. While [Appellant's doctor] obviously encouraged [the Appellant] to return to work, we have no way of knowing the nature of any examinations that [Appellant's doctor] conducted, what tests (if any) she administered, her diagnosis of [the Appellant's] condition nor her prognosis for that condition.

We do know that [the Appellant] appears to have attempted to comply with [Appellant's doctor's] advice, since she reported for work after the October 4th accident on October 6th, 7th, 8th, 13th, 16th, 18th, 21st, 22nd and 24th. Her employer, [text deleted], confirm that [the Appellant] was also called for full shifts of 7.75 hours on October 20th and 26th, but did not come in. She had also been booked to work on October 10th, 17th and 31st, but called in sick

on each of those days when, as before, her hours each day would have been 7.75.

Despite the earlier reports of [Appellant's doctor], we are of the view that, upon a balance of probabilities, it was indeed her motor vehicle accident of October 4th, 1995 which caused [the Appellant] to be absent from work on the five days to which her Notice of Appeal makes reference, and she is entitled to income replacement indemnity for those five days, calculated at the appropriate rate.

DISPOSITION:

The matter is therefore referred back to M.P.I.C. for the calculation of income replacement indemnity for the five days referred to above, and for the payment to [the Appellant] of the appropriate sum.

Dated at Winnipeg this 10th day of December 1996.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX