

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-98-85**

PANEL: **Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Wilson MacLennan**

APPEARANCES: **The Appellant, [text deleted], was represented by
[Appellant's representative];
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.**

HEARING DATES: **February 8 and 9, 2001**

ISSUE(S): **(i) Causation - whether Appellant's continuing disability
attributable to motor vehicle accident ('MVA');
(ii) Whether non-participation in rehabilitation programme
was "without valid reason".**

RELEVANT SECTIONS: **Sections 160(g) and 81(1)(a) of the 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

1. [The Appellant] sustained injuries in a motor vehicle accident on October 28th, 1994. At the time, she was employed as a seamstress by [text deleted];
2. MPIC commenced paying the Appellant Income Replacement Indemnity ('IRI') and provided her with personal care assistance;
3. The Appellant's family physician, [text deleted], rendered an opinion on August 8th, 1995, that [the Appellant] was physically able to return to her occupation, but referred her for a psychiatric assessment to [Appellant's psychiatrist]. [Appellant's psychiatrist] made a diagnosis of Post-Traumatic Stress Disorder;

4. [Appellant's psychiatrist] has been treating the Appellant on a regular basis since first assessing her on April 5th, 1995. [Appellant's psychiatrist], [text deleted], expresses the considered opinion that, despite all of the efforts of numerous care-givers throughout a well-designed program of rehabilitation, [the Appellant] is still suffering from Post-Traumatic Stress Disorder and that she has been unable to return to gainful employment since the date of her motor vehicle accident;
5. [The Appellant] was, prior to that accident, a conscientious, hard-working woman; none of the medical and paramedical care-givers who have attempted to help her or who have assessed her is of the view that she has been malingering; indeed, the clinical psychologists, neuropsychologist and psychiatrist who have assessed her are of the unanimous view that she is, or was at the date of assessment, unemployable, although they have differing views as to the reasons for that degree of disability;
6. [The Appellant] is now in receipt of long-term disability benefits [text deleted], from some time in November of 1997;
7. [The Appellant], as a result of marital and other difficulties she encountered prior to her motor vehicle accident, was subjected to stress factors that made her vulnerable and predisposed to Post-Traumatic Stress Disorder, but those prior stressors had never prevented her from working full-time, nor from performing all of her normal, domestic tasks. It is only since and, we find, as a direct result of, her motor vehicle accident that [the Appellant] has been unable to resume her former employment;
8. The widespread pain and the fatigue of which [the Appellant] complains are real, despite the absence of physical signs to which they can be attributed; they are the result of "emotional pain becoming somatized into physical pain" (as [Appellant's psychiatrist] expresses it), which has now become a chronic pain syndrome;
9. If, as has been suggested by [text deleted] (clinical psychologist and neuropsychologist), the bulk of the Appellant's psychological issues are due to her "dependent personality style that expresses emotional distraught somatically [*sic*]" and that this was "likely present pre-motor vehicle accident", we are not prepared to find that this condition, if it was present, would have rendered [the Appellant] unable to resume her former employment, in the absence of the motor vehicle accident;
10. [The Appellant's] case manager at MPIC, in a detailed and carefully worded letter of July 23rd, 1997, advised the Appellant that her benefits were being terminated due, primarily, to her failure to participate in the rehabilitation plan that had been designed for her. That decision was confirmed by MPIC's Internal Review Officer on March 12th, 1998. (The delay is satisfactorily explained on MPIC's file and is not relevant here.);
11. The case manager and the Internal Review Officer acted in good faith and upon the basis of the medical and other professional opinions available to them; they did not, however, have the benefit of some of the evidence that was before this Commission and that enables us to reverse their decision.

12. The Commission finds, upon a reasonable balance of probabilities, that the Appellant's condition is attributable to her 1994 motor vehicle accident and that her benefits under the Personal Injury Protection Plan should therefore be reinstated;
13. We express concern that [the Appellant] appears to have become dependent upon her monthly visits to [Appellant's psychiatrist], and we are of the view that efforts to eliminate that dependency and to restore her participation in the workplace should be resumed. The modalities of treatment and the personnel who need to be involved in that rehabilitation process are matters to be referred back to the Appellant's case manager for determination.

Dated at Winnipeg this 22nd day of February, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

WILSON MacLENNAN