

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-21**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Sandra Oakley
Mr. Neil Cohen

APPEARANCES: The Appellant, [text deleted], was represented by Ms Virginia Hnytka of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: September 13, 2006

ISSUE(S): 1. Entitlement to Income Replacement Indemnity benefits;
and
2. Entitlement to funding for acupuncture treatments.

RELEVANT SECTIONS: Sections 81(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('Act') and Section 5 of Manitoba Regulation 40/94

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on May 23, 2005 wherein he sustained injuries to his head, his lower back and right leg. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the Act.

In or about September 2005, the Appellant submitted a claim to MPIC for Income Replacement Indemnity ('IRI') benefits and funding for acupuncture treatments. In a decision dated October

28, 2005, MPIC's case manager denied the Appellant's claim on the basis that there was no causal relationship between his right hip complaints and the injuries sustained in the motor vehicle accident of May 23, 2005.

The Appellant sought an Internal Review of that decision. The Internal Review Officer, in his decision dated February 6, 2006, dismissed the Appellant's Application for Review and upheld the case manager's decision of October 28, 2005. The Internal Review Officer also determined that there was no causal relationship between the Appellant's right hip complaints and the May 23, 2005 motor vehicle accident.

The Appellant has now appealed to this Commission. In order to establish an entitlement to IRI benefits, the Appellant must establish that:

1. he has a medical condition which renders him "entirely or substantially unable to perform the essential duties" of his employment; and,
2. the condition is causally related to a motor vehicle accident.

In order to establish an entitlement to funding for acupuncture treatments, the Appellant must establish that:

1. he has a medical condition which is causally related to a motor vehicle accident which requires treatment; and,
2. the treatment must be medically required.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's complaints of right hip pain after the motor vehicle accident, were, on a balance of probabilities, related to the injuries he sustained in the motor

vehicle accident of May 23, 2005. We base our findings of a causal relationship between the motor vehicle accident and the Appellant's right hip pain upon the following factors:

1. the Appellant did report right hip pain to his family physician within seven (7) days of the motor vehicle accident, which establishes a temporal relationship to the motor vehicle accident;
2. the Appellant's testimony at the hearing, that the problems related to his right leg and hip after the motor vehicle accident were not the same as the complaints for which he was seeking medical attention before the motor vehicle accident;
3. although the Appellant had some right hip complaints which pre-existed the motor vehicle accident, the complaints after the motor vehicle accident were much more severe, to the extent of limiting his daily activities and decreasing his functional abilities. This suggests either a new injury or an exacerbation of a pre-existing injury as a result of the motor vehicle accident; and
4. the opinion of [the Appellant's Doctor], who was of the view that the Appellant was likely suffering from post-traumatic capsulitis.

Based upon the foregoing factors, the Commission finds that the Appellant's right hip complaints following the motor vehicle accident of May 23, 2005, were, on a balance of probabilities, caused by that accident.

With regards to the Appellant's claim for IRI benefits, having established that there is a causal connection between his right hip complaints and the motor vehicle accident of May 23, 2005, the Appellant must then establish that this condition prevented him from entirely or substantially performing the essential duties of his employment as of September 2005.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant has not established that he was unable to perform the essential duties of his employment as a result of the injuries sustained in the motor vehicle accident from September 2005 and thereafter.

The Physical Demands Analysis which was completed in October 2005, concluded that the Appellant was capable of:

- a. lifting forty (40 lbs) pounds from floor to shoulder level, then executing a lateral trunk rotation, on a frequent basis without pain behaviours or complaints;
- b. lifting fifty (50 lbs) pounds from floor to shoulder level, then executing a lateral trunk rotation, on a frequent basis, with pain complaints (right leg) with no other altered movements or pain behaviours;
- c. working at a level corresponding to “heavy frequent”;
- d. lifting and carrying fifty (50 lbs) pounds a distance of one hundred eighty (180) feet without reported pain complaints or observable pain behaviours;
- e. walking with a normal pattern and speed; and
- f. sitting uninterrupted for seventy-seven (77) minutes.

The report also stated that there were “no duties that the Appellant absolutely cannot perform” although “the efficiency and effectiveness of his trowelling may be affected due to time constraints involved”. The Appellant was said to be capable of working eighty (80) percent of his job duties and that his “inability to perform all activities may be due to subjective pain experience and resulting fear avoidance behaviours”.

It was the Appellant's evidence that the nature of his winter employment varied greatly. Based upon this evidence, and the conclusions of the physical demands analysis, the Commission finds that the Appellant has not established that he was unable to hold employment after September 2005.

With respect to the Appellant's claim for funding for acupuncture treatments, there was no evidence presented at the hearing to establish that ongoing acupuncture treatments or other paramedical treatments continued to be medically required for the Appellant or that the Appellant incurred any expenses for such treatment after the case manager's decision of October 28, 2005. As a result, the Commission finds that the Appellant has not established that ongoing acupuncture treatments were medically required beyond October 28, 2005.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated February 6, 2006, is therefore confirmed.

Dated at Winnipeg this 12th day of October, 2006.

YVONNE TAVARES

SANDRA OAKLEY

NEIL COHEN