

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-10-146**

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

APPEARANCES: The Appellant [text deleted] did not appear at the hearing;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Kirk Kirby.

HEARING DATE: February 12, 2013

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits.

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

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S
PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. ALL REFERENCES TO
THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL, IDENTIFYING
INFORMATION HAVE BEEN REMOVED.**

Reasons For Decision

On January 8, 2010, [the Appellant] was involved in a motor vehicle accident when, while leaving a parking lot, her vehicle was rear-ended. As a result of the accident, the Appellant sustained soft tissue injuries to her neck and back. She also reported headache pain.

At the time of the accident, the Appellant was employed with [text deleted] as an Admin. Rep. II. She had been on medical leave from her position at [text deleted] since April 16, 2009. She did not have a return to work date set at the time of the accident. On April 8, 2010, the Appellant had a conversation with her case manager in which she requested that MPIC pay her top-up

benefits between her regular earnings and what she was receiving in disability benefits. The case manager issued a decision on April 12, 2010 stating that:

In order to qualify for IRI benefits, the medical information on file has to support that as a direct result of the motor vehicle accident-injuries, you are entirely or substantially unable to perform the essential duties of your employment as indicated in Section 8 of Manitoba Regulation 37/94.

Since you were not able to hold your full-time employment at [text deleted] on the date of the accident, January 8, 2010, and the information provided by [the Appellant's Doctor #1] does not support that you are unable to perform your essential work duties as a result of the motor vehicle accident-injuries, there is no entitlement to IRI benefits as a result of the motor vehicle accident of January 8, 2010.

The Appellant sought an Internal Review of the case manager's decision. In a decision dated June 8, 2010, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of April 12, 2010. The Internal Review Officer found that the Appellant's inability to hold employment at the time of the motor vehicle accident was not related to the accident, but rather more likely from a prior condition. As a result, the Internal Review Officer confirmed that the Appellant was not entitled to IRI benefits arising from the motor vehicle accident of January 8, 2010.

The Appellant has now appealed that Internal Review decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to IRI benefits as a result of the accident of January 8, 2010.

Preliminary Matter:

On December 12, 2012, a hearing date for the appeal hearing of this matter was set by the Commission for February 12, 2013, commencing at 9:30 a.m. A Notice of Hearing confirming such was sent to both parties. On December 19, 2012, the Commission received an email from the Appellant requesting an adjournment of the hearing scheduled for February 12, 2013. The

Commission considered the Appellant's request and by letter dated December 20, 2012, did not grant an adjournment of the hearing. However, the Commission advised that, if the Appellant provided a medical note from her treating physician, outlining that she was unable to participate in the hearing due to a medical condition, the Commission would review the adjournment request at that time.

On December 24, 2012, the Commission received an email from [the Appellant] requesting that her hearing be put on hold due to the pain and stress she was experiencing. The Commission referred [the Appellant] to its letter of December 20, 2012, requesting a medical note from her treating physician. On January 16, 2013, the Commission received another email from [the Appellant] requesting that her hearing be put on hold due to the pain and stress she was experiencing from the January 8, 2010 accident. Once again, the Commission referred the Appellant to its letter of December 20, 2012, requesting a medical note from her treating physician. On February 11, 2013, the Commission received a further email from [the Appellant] requesting that her hearing be put on hold as she was sick. Once again, the Commission referred the Appellant to its letter of December 20, 2012, requesting a medical note from her treating physician.

On February 12, 2013, the hearing of the Appellant's appeal was convened at 9:30 a.m. The Appellant did not appear at the hearing. Counsel for MPIC was present at the hearing. The appeal hearing proceeded and the Commission received submissions from counsel for MPIC regarding the appeal of [the Appellant]. The appeal hearing concluded at approximately 10:00 a.m. Thereafter, the panel deliberated and reached a decision respecting [the Appellant's] appeal.

Following the hearing, the Chair was informed that the Appellant had phoned the Commission at approximately 9:40 a.m. that morning advising that she had arranged a medical note from her doctor. At approximately 11:30 a.m. on February 12, 2013, the Commission received a medical note dated February 12, 2013 by facsimile from [the Appellant's Doctor #2]. The note stated that:

To Whom May Concern:

[The Appellant] noted that she has considerable pain and stiffness throughout her body. She has flu-like symptoms and fatigue. She had these to some degree yesterday but when she awoke February 12/13, she felt very sick. She has fibromyalgia and symptoms are often magnified by changing temperature, non restored sleep, worry, anxiety and stress. She was not able to attend the 9:30 am meeting February 12/13 because of these symptoms.

This facsimile was provided to the Chair of the panel for consideration.

The Commission's Notice of Hearing provides that the time and date for a hearing are firm; postponements will only be granted under extraordinary circumstances. The Commission's letter dated December 20, 2012 provided the Appellant with the opportunity to provide a medical note from her treating physician if she was unable to participate in her hearing due to a medical condition. The Commission notes that, once an appeal hearing has been concluded, it should not be reopened, except in exceptional circumstances. In this case, the Commission finds that the Appellant had ample opportunity to provide a medical note to the Commission in advance of the February 12, 2013 appeal hearing, in order to request an adjournment of the hearing on medical grounds. The Commission finds that the Appellant has not provided any compelling reason as to why the appeal hearing should be reconvened. Furthermore, for the reasons noted below, respecting the merits of the Appellant's appeal, the Commission finds that there would be no useful purpose to be served by reopening the appeal hearing in this case. The Commission found that there was no merit to the Appellant's appeal and no reasonable grounds of success for the

Appellant. As a result, the Commission will not reconvene the hearing of the Appellant's appeal and has proceeded to issue its decision in this matter.

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 MPIC, the Commission finds that the Appellant has not established an entitlement to IRI benefits as a result of the January 8, 2010 motor vehicle accident.

Reasons for Decision:

Upon a consideration of the totality of the evidence before it, the Commission finds that:

- 1) The Appellant had been unable to work at her employment with [text deleted] since April 16, 2009 due to conditions unrelated to the motor vehicle accident of January 8, 2010.
- 2) As a full-time earner, the Appellant would be entitled to IRI benefits if she were unable to continue with her full-time employment as a result of the injuries sustained in the motor vehicle accident.
- 3) The medical information on the Appellant's file does not support that the Appellant was substantially unable to perform the essential duties of her employment as a result of motor vehicle accident related injuries.

The Commission finds that the Appellant's inability to hold employment at the time of the motor vehicle accident is not related to the accident of January 8, 2010. In order to qualify for IRI benefits pursuant to Section 81(1), the inability to continue working must be as a result of the accident. Furthermore, pursuant to Section 8 of Manitoba Regulation 37/94, the accident must

have caused the injury. Accordingly, the Commission finds that there is no entitlement to IRI benefits for the Appellant as a result of the motor vehicle accident of January 8, 2010.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated June 8, 2010 is confirmed.

Dated at Winnipeg this 7th day of March, 2013.

YVONNE TAVARES

NEIL COHEN

SANDRA OAKLEY