

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-14-195 and AC-15-020**

PANEL: Ms Karin Linnebach, Chairperson
Ms Janet Frohlich
Mr. Paul Taillefer

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation (“MPIC”) was
represented by Ms Danielle Robinson.

HEARING DATE: September 28, 2016

ISSUE(S): 1. Whether the Appellant is entitled to further IRI benefits.
2. Whether the Appellant is entitled to an extension of her
IRI benefits under section 110(2) of the Act.

RELEVANT SECTIONS: Sections 172, 174, and 182(3) of The Manitoba Public
Insurance Corporation Act (“MPIC Act”)

Reasons for Decision

Background:

The Appellant, [text deleted], was injured in a motor vehicle accident (“MVA”) on April 13, 2008. Following the MVA, she received Personal Injury Protection Plan benefits, including Income Replacement Indemnity (“IRI”) benefits.

The Appellant has filed appeals with the Commission regarding several issues, resulting in the following decisions of the Commission:

AC-08-117 dated June 25, 2009;

AC-09-111 dated August 27, 2010;

AC-09-148 dated February 23, 2011;

AC-09-148 and AC-11-049 dated September 14, 2011;

AC-11-010 and AC-11-077 dated December 12, 2011;

AC-11-010 and AC-11-077 dated August 9, 2012;

AC-11-159 dated June 10, 2013;

AC-09-148 dated January 29, 2014;

AC-14-030 dated February 27, 2015;

AC-11-010, AC-11-077 and AC-15-011 dated August 4, 2015; and

AC-14-194 dated April 29, 2016.

On October 30, 2014, MPIC's Case Manager issued a decision advising the Appellant that her entitlement to IRI benefits would conclude as of November 19, 2014. The Appellant filed an Application for Review of this decision. On December 15, 2014, an Internal Review Officer upheld the Case Manager's decision, finding that the Appellant was capable of holding her 180-day determined employment. The Appellant filed a Notice of Appeal of the December 15, 2014 Internal Review Decision with the Commission on December 16, 2014.

On December 30, 2014, MPIC's Case Manager issued a decision denying the Appellant's request for a continuation of IRI under Section 110(2) of the MPIC Act. The Appellant filed an Application for Review of this decision. On January 14, 2015, an Internal Review Officer upheld the Case Manager's decision, finding that the Appellant did not lose employment because of the MVA and therefore did not meet the second criterion to be eligible for an extension of IRI benefits under section 110(2) of the MPIC Act. The Appellant's Notice of Appeal of the January 14, 2015 Internal Review Decision was received by the Commission on January 27, 2015.

On October 15, 2015, MPIC's Case Manager advised the Appellant by email that "the IRI decision letter" would be rescinded and the Appellant's IRI benefits reinstated. The Case Manager also advised the Appellant that the Appellant can expect back pay to the date her IRI benefits had ended.

On February 12, 2016, MPIC's Case Manager issued the written decision confirming that the October 30, 2014 decision to end IRI was rescinded and that IRI was reinstated. The letter also advised that the Appellant's IRI reconciliation entitlement plus interest was paid to the Appellant on November 5, 2015 and outlined the amount of bi-weekly IRI entitlement as of October 15, 2015. In addition, the Case Manager advised the Appellant that the December 30, 2014 decision denying the extension of IRI for one year was also rescinded.

Counsel for MPIC wrote to the Commission and the Appellant on February 23, 2016 regarding the Appellant's appeals of the Internal Review Decisions dated December 15, 2014 and January 14, 2015 ("the two IRI appeals"). Counsel submitted that a Notice of Withdrawal ought to be obtained to conclude the two IRI appeals given that MPIC has reinstated the Appellant's IRI benefits. The Appellant responded by email on March 1, 2016 asserting that MPIC had made recent requests that the Appellant attend for medical testing and that MPIC would use this new information to terminate her IRI benefits. As such, the Appellant stated she would not withdraw the two IRI appeals.

Case Conference Hearings were held on October 7, 2015, April 20, 2016 and August 3, 2016 to discuss the status of the two IRI appeals. In addition to entitlement to IRI, the Appellant raised the issue of whether MPIC had properly calculated her IRI benefits. In response, MPIC took the

position that if the calculation of IRI benefits is in relation to the case manager's decision letter of February 12, 2016, this issue was not currently before the Commission. Counsel stated that if the Appellant disagrees with the IRI calculation as outlined in the February 12, 2016 decision letter, she should file an Application for Review.

By email to the Commission dated June 30, 2016, the Appellant indicated that she wished the issue of IRI calculations to be heard separately from IRI entitlement. The Appellant confirmed this at the August 3, 2016 Case Conference Hearing and she was directed to file an Application for Review of the case manager's decision of February 12, 2016 which outlined MPIC's calculation of her IRI benefits. As such, the two IRI appeals which are the subject of this hearing concern entitlement to IRI benefits only. The issues on the two IRI appeals were identified as follows:

1. Whether the Appellant is entitled to further IRI benefits.
2. Whether the Appellant is entitled to an extension of her IRI benefits under section 110(2) of the Act.

Preliminary and Procedural Matters:

The hearing was scheduled for September 28, 2016 and the Appellant chose to participate by teleconference.

As the Appellant was in receipt of IRI benefits and therefore did not need to prove that she is entitled to further IRI benefits and an extension of IRI benefits under s. 110(2) of the MPIC Act, the hearing proceeded with submissions on the status of the two IRI appeals and whether there were any issues in connection with the appeals over which the Commission had jurisdiction.

At the commencement of her submission, counsel for MPIC provided the Commission with a written submission and a copy of the Commission's decision in AC-09-144. As the Appellant was participating by teleconference, it was decided to adjourn the hearing after MPIC's submission was concluded to be able to email the written submission and the decision in AC-09-144 to the Appellant and to allow her sufficient time to review both before providing her reply. The hearing reconvened in the afternoon, the Appellant having acknowledged that she had received MPIC's written submission and a copy of the Commission decision in AC-09-144 and that she was ready to proceed with her reply submission.

Submission for the Appellant:

The Appellant acknowledges that by decision letter dated February 12, 2016, the case manager has reinstated her IRI benefits. However, the Appellant submitted that MPIC's case manager had sought new medical information, specifically a report from [Appellant's doctor] regarding ongoing entitlement to IRI benefits. She stated that this information could result in her case manager issuing a future decision terminating her IRI benefits. As such, she indicated that she is not prepared to withdraw her appeals. The Appellant submitted that this hearing should be delayed until she has received [Appellant's doctor]'s report and any case manager decision considering his report.

With respect to the issue of the Commission's jurisdiction, the Appellant submitted that any future termination of IRI benefits is the same issue that is currently before the Commission as "IRI is IRI". She submitted the Commission has jurisdiction over MPIC decisions relating to IRI benefits on her claim. She then stated that she wanted the Commission to hold jurisdiction until a decision has been made by MPIC regarding ongoing IRI benefits. She stated it was her understanding that the Commission retained jurisdiction in this appeal because, after a previous

Case Conference Hearing, the parties could not come to an agreement regarding her IRI benefits and the status of her IRI benefits. As nothing has been resolved regarding her entitlement to IRI, the Appellant argued that the Commission retained jurisdiction until a decision is made by the case manager regarding ongoing entitlement to IRI benefits. The Appellant submitted that all of the communications between the Commission and the parties confirmed that the Commission retained jurisdiction.

In support of her position, the Appellant referred the Commission to “tab 298” of the Indexed File as well as “tabs 284, 286, 288, 291, 292, 293, 294, 295, 297, 298, 299, 300, 301, and 302”.

The Appellant provided a written reply submission that was emailed to the Commission before the hearing reconvened. Regarding the Commission’s decision in AC-09-144, the Appellant submitted that the decision is “not even close to being identical” to the matter at hand. The Appellant submitted that, in her case, the Commission would not proceed with the appeal of IRI until the permanent impairment hearing was heard and decided. The Appellant referred the panel to the Commission’s decision at “tab 276” of the Indexed File.

The Appellant referred the panel to a letter from the Commission dated October 15, 2015 where the Commission stated it would be premature to withdraw the appeal that was still outstanding and held the issue in abeyance. The Appellant asserted this letter shows the Commission was “holding jurisdiction” and provided the following quotation, which the Appellant reproduced only in part and with her own emphasis added:

“While the wording in these paragraphs is slightly unclear it appears MPIC is possibly indicating that it intends to reinstate the Appellant’s IRI benefits retroactive to when it

was terminated by the decision letters UNDER APPEAL. The Commission will therefore hold these appeals in abeyance while the parties determine if this is indeed the case.

If the parties are able to come to an agreement, or settlement” [...] “then these appeals will become moot” [...]

“It is not typically the practice of the Commission to arrange for an Appellant to sign a Notice of Withdrawal prior to the signing of a settlement or agreement or prior to the issuance of a new MPIC decision as it would be premature at this point. An Appellant would typically wait until the matters with MPIC are resolved to his or her satisfaction prior to relinquishing appeal rights”.

The Appellant submitted that MPIC has sought new information and that correspondence found in the Indexed File between the Commission and the parties supports her position that she is justified in waiting for a decision letter from her case manager. The Appellant submitted she should not be required to file a withdrawal of the two IRI appeals and should not be made to feel that her IRI will be terminated if she does not withdraw the appeals.

Submission for MPIC:

Counsel for MPIC submitted that the Internal Review Decisions at issue in this appeal are dated December 15, 2014 and January 14, 2015. By decision letter dated February 12, 2016, MPIC’s case manager advised the Appellant that MPIC had decided to rescind both Internal Review Decisions and reinstate IRI benefits as of the date of termination. This information was communicated to the Commission by letters dated February 23, 2016 and May 26, 2016. Given that MPIC has rescinded the Internal Review Decisions under appeal, counsel for MPIC

submitted it is necessary for the Commission to determine whether it still has jurisdiction over these issues.

Counsel referred the panel to a prior Commission decision in AC-09-144. In that case, an Internal Review Decision dated August 7, 2009 determined that the Appellant did not develop ankylosing spondylitis as a result of his MVAs. The Appellant filed a Notice of Appeal on November 3, 2009. The case manager issued a fresh decision on July 31, 2013 finding that there was enhancement of pre-existing ankylosing spondylitis and a Permanent Impairment benefit was awarded. Despite the case manager's July 31, 2013 decision, the Appellant refused to provide a Notice of Withdrawal for the appeal of the August 7, 2009 Internal Review Decision.

The Commission found that the case manager's July 31, 2013 decision letter replaced the Internal Review Decision of August 7, 2009 rendering that decision moot. The Commission found therefore that there was no outstanding issue arising from the decision letter under appeal to be adjudicated and that the Commission had no further jurisdiction regarding the appeal of the August 7, 2009 Internal Review Decision. The Appellant's appeal was dismissed.

Counsel for MPIC submitted that the February 12, 2016 case manager decision letter replaced the Internal Review Decisions currently under appeal, rendering those decisions moot. Since the Internal Review Decisions under appeal are moot, MPIC submits that there is no outstanding issue arising from the decision letters under appeal to be adjudicated. Should any further decisions be made on the Appellant's file with which she disagrees, she may file an Application for Review and, if necessary, a Notice of Appeal in accordance with the MPIC Act and Regulations. Counsel for MPIC submitted that the Commission has no jurisdiction regarding the decision letters under appeal and requests that the Commission dismiss both appeals.

In response to questions from the panel, counsel for MPIC submitted that IRI is not a lifetime benefit. The Appellant is entitled to IRI unless and until she is able to work despite her accident-related injuries. IRI would only be terminated if MPIC obtains new medical information that states the Appellant is not prevented from working despite her injuries. This does not affect the case manager's February 12, 2016 decision letter that reinstated IRI benefits and paid back IRI benefits. The Appellant is entitled to IRI benefits at this time. However, new medical information regarding ability to work could affect future IRI benefits and there could be a future termination of IRI benefits.

In response to questions from the panel, counsel for MPIC clarified that MPIC is not contesting any permanent impairment awards that were previously provided to the Appellant. Counsel also clarified that the Appellant's IRI benefits would not be terminated as a result of the Appellant's refusal to withdraw the appeals at issue. Counsel was clear that future termination of IRI benefits would only transpire if MPIC received new information that shows the Appellant is able to work despite her accident-related injuries.

Decision:

The MPIC Act contains the following provisions concerning MPIC decisions, reviews and appeals of those decisions:

Corporation to give written reasons to claimant

[170\(1\)](#) A decision made by the corporation in respect of a claim for compensation shall be given to the claimant in writing, and shall include reasons for the decision.

Application for review of claim by corporation

[172\(1\)](#) Except as provided in subsection (1.1), a claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Powers of the corporation on review

[173\(1\)](#) On a review of a decision, the corporation may set aside, confirm or vary the decision.

Corporation to give written reasons

[173\(2\)](#) The corporation shall provide the claimant with written reasons for the review decision.

Appeal from review decision

[174\(1\)](#) A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

It is clear from these provisions in the MPIC Act that an appeal before the Commission concerns an appeal from a specific written review decision with reasons. In this case, the written review decisions which were appealed and are currently before the Commission are the Internal Review Decisions dated December 15, 2014 and January 14, 2015.

Subsequent to these Internal Review Decisions being issued and the Appellant filing appeals of these Internal Review Decisions, but before the two IRI appeals were scheduled to be heard, the case manager made a fresh decision which was communicated in a letter dated February 12, 2016. The case manager stated that both Internal Review Decisions were rescinded and IRI benefits were reinstated.

The Appellant argued that any future termination of IRI benefits is the same issue that is currently before the Commission as “IRI is IRI”. While the panel understands the Appellant’s concern about her future IRI benefits and is sympathetic to any stress this may cause the

Appellant, the jurisdiction of the Commission in this matter is limited to the particular Internal Review Decisions that were appealed. The Commission does not have jurisdiction over any future decision of MPIC regarding entitlement to IRI benefits unless and until an Internal Review Decision on termination of IRI is properly before the Commission. If the Appellant's IRI benefits are terminated in the future, her recourse is to pursue the appeal procedures outlined in the MPIC Act.

The panel does not accept the Appellant's submission that the Commission was "holding jurisdiction" until a decision is made by the case manager regarding entitlement to IRI. The Appellant relies on an October 15, 2015 letter from the Commission for this proposition. However, this letter predated the February 12, 2016 case manager decision letter which reinstated IRI benefits. Further, the letter from the Commission cited by the Appellant expressly stated that "if the parties are able to come to an agreement, or settlement, or if the Appellant's IRI is in fact reinstated, [emphasis added], then these appeals will become moot". As indicated, the Appellant's IRI was reinstated and back pay of IRI was paid.

Upon careful review of the documentary evidence and the submissions of the Appellant and counsel for MPIC, the Commission finds that the case manager's letter of February 12, 2016 replaced the Internal Review Decisions of December 15, 2014 and January 14, 2015 and rendered these Internal Review Decisions moot. As a result of the case manager's February 12, 2016 decision, the Appellant's IRI benefits were reinstated going forward and she was paid back IRI benefits from the date the benefits ended. There are therefore no outstanding issues arising from the Internal Review Decisions of December 15, 2014 and January 14, 2015 and, as a result, the Commission has no further jurisdiction regarding the Appellant's appeal of these Internal Review Decisions.

Accordingly, the Commission orders that the Appellant's appeals be dismissed.

Dated at Winnipeg this 23rd day of November, 2016.

KARIN LINNEBACH

JANET FROHLICH

PAUL TAILLEFER