Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-29

PANEL:	**Ms. Yvonne Tavares, Chairperson** **The Honourable Mr. Armand Dureault** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.**
HEARING DATE:	**December 3, 2003**
ISSUE(S):	**1. Entitlement to Income Replacement Indemnity benefits as a result of a relapse;** **2. Entitlement to ongoing therapeutic interventions.**
RELEVANT SECTIONS:	**Sections 117, 118 and 136(1) of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Subsection 5(a) of Manitoba Regulation 40/94.**

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 Appellant, [text deleted], was involved in a motor vehicle accident on December 31, 1998. As a result of the motor vehicle accident, the Appellant complained of multiple areas of pain including her neck, shoulders, upper and lower back. The Appellant had previously been involved in a motor vehicle accident on June 7, 1993, which resulted in complaints of low back pain.

At the time of the motor vehicle accident, the Appellant was employed as a sewing machine operator on a full-time basis. Due to the injuries which the Appellant sustained in the accident, she was unable to return to her employment duties. As a result, she became entitled to income replacement indemnity ('IRI') benefits in accordance with ss. 81(1) of the MPIC Act, which provides that:

> **Entitlement to I.R.I.**
> **81(1)** A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:
> (a) he or she is unable to continue the full-time employment.

The Appellant commenced a gradual return to work program on April 19, 1999 and progressed to full-time duties by May 3, 1999. However, she was unable to continue her job duties beyond May 25, 1999 due to an exacerbation of her pain complaints.

The Appellant subsequently attended physiotherapy sessions and a supervised exercise program to increase her strength and endurance. She then commenced another graduated return to work program on October 25, 1999 and progressed to full-time hours by January 3, 2000.

The Appellant maintained full-time employment and also worked overtime in the following months. She continued to work at her pre-accident job until May 24, 2000 (except for time off for vacation), but has been off work since that date due to complaints of pain in her neck, shoulders and back. Since that time, the Appellant has been unable to return to her previous occupation as a sewing machine operator, as she maintains she is unable to meet the job requirements due to her ongoing pain complaints.

In a letter dated November 7, 2000, MPIC's case manager wrote to the Appellant to advise her that MPIC would not fund further IRI benefits, medications or therapy. The Appellant

subsequently sought an internal review of that decision. In a decision dated February 16, 2001, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of November 7, 2000. The Appellant has now appealed to this Commission.

The issue which requires determination in this appeal is whether the Appellant suffered a relapse within the meaning of Sections 117 and 118 of the MPIC Act in May 2000, which rendered her unable to return to her employment as a sewing machine operator. Sections 117 and 118 of the MPIC Act provide that:

> **Entitlement to I.R.I. after relapse**
> **117(1)** If a victim suffers a relapse of the bodily injury within two years
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> (a) after the end of the last period for which the victim received an income replacement indemnity, other than an income replacement indemnity under section 115 or 116; or
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> (b) if he or she was not entitled to an income replacement indemnity before the relapse, after the day of the accident;
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> the victim is entitled to an income replacement indemnity from the day of the relapse as though the victim had been entitled to an income replacement indemnity from the day of the accident to the day of the relapse.
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> **Victim entitled to greater I.R.I.**
> **117(2)** The victim is entitled to an income replacement indemnity computed on the basis of the greater of
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> (a) the gross income used by the corporation immediately before the end of the period referred to in clause (1)(a); and
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> (b) the gross income of the victim at the time of the relapse.
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> **Relapse after more than two years**
> **117(3)** A victim who suffers a relapse more than two years after the times referred to in clauses (1)(a) and (b) is entitled to compensation as if the relapse were a second accident.
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> **Victim entitled to greater I.R.I. after relapse or second accident**
> **118** A victim who is receiving an income replacement indemnity under provisions of this Part other than under subsection 110(2) (temporary continuation of I.R.I. after

> victim regains capacity), or section 115 (I.R.I. for reduced income from determined employment) or 116 (I.R.I. reduction if victim earns reduced income) and who becomes entitled to an income replacement indemnity in respect of a relapse or second accident is entitled to whichever income replacement indemnity is the greater.

In order to be eligible for continuing treatment benefits, the Appellant must demonstrate that the treatment expenses were incurred because of the accident and the treatment must be medically required. These prerequisites are set out in ss. 136(1)(a) of the MPIC Act and ss. 5(a) of Manitoba Regulation 40/94, as follows:

> **Reimbursement of victim for various expenses**
> **136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care.
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> **Medical or paramedical care**
> **5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
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> (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician.

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant has not established that her ongoing problems are connected to the motor vehicle accident of December 31, 1998. We find that the Appellant had significant pre-existing cervical and lumbar complaints, as noted in the clinical notes and medical reports of her treating practitioners. In a report dated July 1995, her family physician opined that the Appellant would likely suffer chronic myofascial pain due to the injuries from the June 1993 accident. We also accept [MPIC's doctor's] conclusions set out in his Inter-Departmental Memorandum dated June 13, 2002 where he notes that:

CONCLUSIONS

> Based on my review of the above-noted reports, it is my opinion that the documents do not specifically identify [the Appellant] has (sic) having a medical condition, which developed as a result of the incident in question, that resulted in a physical impairment of function that would preclude her from performing her occupational duties.
> It is also my opinion that the documents indicate that despite reasonable treatment interventions, [the Appellant's] condition did not improve for reasons that could not be extracted from the documents. It is well known that with the passage of time and being compliant with a home-based exercise program that gradual improvements are usually the norm. A plausible medical explanation as to why [the Appellant] deviates from the norm is not known.
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> Based on the information obtained from my previous reviews of [the Appellant's] file, it is my opinion that further supervised (in-clinic) therapeutic interventions will not result in a functional improvement in [the Appellant's] situation in all probability. It is once again my opinion that the most appropriate treatment for [the Appellant] would be continuation with her home-based exercise program and returning to her occupational duties. From an objective standpoint, the medical evidence does not support [Appellant's doctor's] conclusion (i.e., impossible to return to work) in my opinion.

We find that the Appellant was able to return to her pre-accident employment duties and hold those employment duties for a significant period of time prior to leaving her employment due to her complaints of pain in May 2000. Given the length of time that had elapsed from the motor vehicle accident to the date of the Appellant's apparent relapse, the significant therapeutic interventions which the Appellant had undergone, her significant pre-accident history of similar complaints and the strenuous nature of her employment duties, we find that there is insufficient evidence to link the Appellant's symptoms as of May 24, 2000 to her motor vehicle accident of December 31, 1998. As a result, the Appellant's appeal is dismissed, and the Internal Review decision dated February 16, 2001 is confirmed.

Dated at Winnipeg this 11th day of February, 2004.

YVONNE TAVARES

HONOURABLE ARMAND DUREAULT

WILSON MACLENNAN