Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-66

PANEL:	**Mr. Charles T. Birt, Q.C., Chairperson** **Mrs. Lila Goodspeed** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by** **Mr. Tom Strutt** **The Appellant, [text deleted], appeared in person**
HEARING DATE:	**November 12th, 1997**
ISSUE(S):	**Whether the Appellant is entitled to further income replacement indemnity after the termination date of December 14th, 1995.**
RELEVANT SECTIONS:	**Sections 81(1)(a) and 110(1)(a) of the MPIC Act and Section 8 of Regulation 37/94**

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 FACTS:

The Appellant, [text deleted], sustained an injury as a result of motor vehicle accident she was involved in on November 30th, 1995 in which her 1996 half-ton pickup truck was written off in the accident. At the time of the accident [the Appellant] and her husband were operating a trucking company.

She immediately phoned her medical doctor in [text deleted], [Appellant's doctor], but was not able to speak to her personally. [The Appellant] asked [Appellant's doctor's] assistant if she should see [text deleted], a Winnipeg chiropractor, who was suggested to her by her daughter. [the Appellant] was advised by [Appellant's doctor's] assistant that this was the best course of action to obtain relief for her injury.

The Appellant attended at [Appellant's chiropractor's] office for treatment and then continued to see him at least twice a week for the next several months. She had to travel to [text deleted] from [text deleted] which was over a 100 kilometres each way and arranged these trips to coincide with job-related pickups in [text deleted] similar to the activity she was following on November 30th, 1995, prior to the accident.

[The Appellant] was told by [Appellant's chiropractor] and MPIC to continue the chiropractic treatments although she felt they were not helping her. Her primary problem was ongoing numbness in her arms and loss of strength in her upper extremities. As a result she could not control the heavy trucks while driving and could not lock and unlock the trailers from the cabs as was required when hauling [text deleted]. Despite her continuing concern about this problem she did not seek another medical opinion until July 2nd, 1996 when she went to see [Appellant's doctor] for her annual checkup. [Appellant's doctor] examined her and recommend a physiotherapy treatment plan.

[Appellant's chiropractor] provided a chiropractic report to MPIC dated, September 3rd, 1996 stating that [the Appellant] "warrants no activity restrictions in her duties at work or leisure". [The Appellant] did not share this point of view and in October commenced

the recommended physiotherapy program which resulted in dramatic changes. By late December she had recovered 100 %, reaching pre-accident status.

[The Appellant] is appealing from the decision of the acting review officer who held that her I.R.I. was properly terminated on December 14th, 1995. [The Appellant's] position is that the termination of her benefits was premature, as she had not reached her pre-accident status by the date of termination.

In 1995 the Appellant and her husband operated a small trucking company in [text deleted] Manitoba and they had three trucks hauling [text deleted], one hauling [text deleted] and one sitting in their yard. Their primary work involved hauling [text deleted] from the excavation site to the processing factory with each truck making five trips per day. One full time driver would make three trips which took approximately ten hours and a part time driver would make the final two trips. [The Appellant] was one of the full-time drivers and hauled three loads per day, five days a week.

In addition to driving full time she would do office work at the end of the day, assist her husband to do light maintenance work on the vehicles and make trips into [text deleted] to pick up parts and necessary supplies. The length of her average work day was 14 to 16 hours, six days a week with her primary work being driving the large trucks, Monday to Friday.

The [text deleted] season, depending on the weather, goes from early March to late November or early December. Once this season is over the Appellant and her husband would service the vehicles, complete their office work and go away for a four week holiday until late

January. The Appellant was injured near the end of the [text deleted] season in 1995. She and her husband did go on a holiday in December but only after she spoke with and received the approval of her chiropractor.

In 1996, the season started on March 1st and [the Appellant], because of her physical problems, was not able to operate a truck for hauling [text deleted]. This necessitated hiring a full-time driver to cover her normal shift of ten hours. Although the Appellant was not able to perform the essential duties of her employment, she could do office work and light vehicle maintenance that did not require any lifting.

On June 25th 1996 [the Appellant's] replacement driver abandoned the truck, loaded with [text deleted], in the Appellant's yard and announced that he was quitting his job. [The Appellant] was unsuccessful in finding another driver to finish the shift and out of desperation [the Appellant] drove the loaded truck to the factory. She advised that she drove slowly and stopped to do her prescribed stretching exercises when her arms began to bother her. She reasoned that it was better to get the load to its destination late than not at all. In total she made two runs that day and one on each of the following days, June 26th and 27th, because she was unable to get a replacement driver. [the Appellant] advised that she did not do any hauling again until she was required to fill in for missing drivers and made one trip each on August 16th and 20th and again a month later on September 19th and 20th. The Appellant stated that she returned to full-time driving when she regained her normal condition in late December 1996.

THE LAW:

[The Appellant's] entitlement to I.R.I. is governed by Section 81(1) of the Act. The question that needs to be addressed is whether [the Appellant] was unable to continue the employment or to hold employment that she would have held during the first 180 days following the accident, if the accident had not occurred.

Section 81(1)(1) of the MPIC Act reads as follows:

"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;"

Section 8 of Regulation 37/94 reads as follows:

"Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident."

Section 110(1)(a) of the MPIC Act reads as follows:

"Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;".

At the time of the accident [the Appellant's] essential daily duties required to perform her job were truck driving, office administration and light vehicle maintenance. She worked at least 14 hours per day, six days a week and drove a truck 10 hours per day, Monday to Friday.

We are of the opinion that her primary work, the essential duties of her employment, were centred around driving a truck. Because of the nature of her injuries she could not perform these duties, necessitating hiring a replacement driver at the commencement of the [text deleted] season to carry out that portion of her job. We are of the view that [the Appellant] was substantially unable to perform her essential duties, namely truck driving, after the accident for the period of March 1st to August 31, 1996.

The [text deleted] season started on March 1st, 1996 and [the Appellant] was not able to drive until the emergency situation occurred in late June. She took on some driving shifts and increased the amount of driving to two trips per day in late August and September. In light of this demonstration of a driving capability, we find that by September 1996, [the Appellant] had effectively recovered from the MVA injuries and that she was substantially able to perform the full time essential duties that she had performed at the time of the accident.

DISPOSITION:

Based on the above findings, [the Appellant] is entitled to I.R.I. from March 1st, 1996 until August 31st, 1996, inclusive, together with interest at the statutory rate.

The decision of MPIC's acting review officer be varied accordingly.

Dated at Winnipeg this 19th day of December 1997.