AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-87

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairman)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Keith Addison;** **Appellant represented by [Appellant's representative]**
HEARING DATE:	**August 20th, 1998**
ISSUE:	**Re-instatement of Income Replacement Indemnity ('IRI') from November 24th, 1997 to January 26, 1998.**
RELEVANT SECTIONS:	**Section 81(1) of the MPIC Act ('the Act')**

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 was driving a pickup truck east on [text deleted] in [text deleted], Manitoba, when he was struck from behind twice by the same vehicle on September 7th, 1997. He was thrown back and forth and at one point hit his head on the back window. As a result of this accident he developed headaches and pains in his chest, back and neck.

Shortly after the accident he consulted [Appellant's doctor] who referred him for physiotherapy at [text deleted] Physiotherapy, arranged for X-rays of his head to determine the source of his headaches and prescribed medication. [The Appellant] was employed in the construction/maintenance Division of the [text deleted] as a labourer at the time of the accident; [Appellant's doctor] advised him not to return to work for the time being and gave him a medical certificate to this effect.

The X-Rays, taken on September 15th, 1997, did not reveal any evidence of a skull fracture or any increase in intercranial pressure. The headaches persisted and [Appellant's doctor] referred [the Appellant] to [Appellant's neurologist], a neurologist, for an examination on October 3rd, 1997. [Appellant's neurologist] concluded that there was nothing neurologically wrong with him and recommended that [the Appellant] remain active and get back to his usual activities as soon as possible.

In late October [Appellant's doctor] felt that the Appellant could return to work but only on a graduated return to work basis, starting at four hours per day and gradually increasing the work by one hour per week until he was able to work full time. Unfortunately this type of program was not available with his employer.

The Appellant had qualified for IRI as he was not able to return to work due to the accident. The Adjuster handling this case talked to [text deleted], the physiotherapist treating [the Appellant], on November 4th, 1997, to determine if the Appellant was able to return to work. [Appellant's

physiotherapist] advised that [the Appellant] was not capable of working on a full-time basis at that time. He was of the opinion that a work hardening program was not needed and that by November 24th, 1997, the Appellant would be able to return to his full time work duties. The Adjuster advised [Appellant's physiotherapist] that if the Appellant did not return to his full-time work duties by November 24th, 1997, he would terminate the physiotherapy treatments and place him in a work hardening program at another facility.

On November 21st [text deleted] Physiotherapy advised the Adjuster that they had discharged [the Appellant] as he had reached 80% of his pre-accident status but they could do nothing further for him as his continuing headaches and dizziness were preventing further improvement in his recovery program.

The Adjuster talked to [Appellant's doctor] on November 24th, 1997 about [the Appellant's] ability to return to full-time work. [Appellant's doctor] is reported as having advised the Adjuster that he was capable of returning to work. Based on this medical and physiotherapy information MPIC were of the opinion that the Appellant had reached his pre-accident status and more importantly was capable of returning to his full-time work at the [text deleted]. [The Appellant] was advised of this decision by telephone on November 24th and that his IRI benefits were terminated effective November 23rd, 1997.

However in a report to MPIC dated November 26th, 1997, [Appellant's doctor] states that the Appellant should try modified work that did not involve heavy lifting and repeated bending. He advised that the Appellant felt he could not handle even this type of work and even if he could this

type of work was not available with his employer.

[The Appellant] continued to experience headaches and dizziness and [Appellant's doctor] sent him to see [Appellant's neurologist] again who confirmed there was nothing neurologically wrong with him. [The Appellant] was sent for a CT Brain Scan on December 29th, 1997 and it proved normal and these findings were conveyed to [Appellant's doctor] on January 8th, 1998.

[The Appellant] saw [Appellant's doctor] several times during January, 1998, and was finally told he could return to his full-time work at the [text deleted] on January 26th, 1998. He did return to work on that date.

ISSUE:

[The Appellant's] position on this appeal is that he was cleared to do only light duties or work on November 24th and not given medical clearance to return to full-time work until January 26th , 1998. He was not able to get this type of work at [text deleted] and because he could not work full-time due to the accident he was entitled to receive IRI benefits for this period.

Information provided by [text deleted] indicates that MPIC advised them on November 24th, 1997, that [the Appellant] has fully recovered from his automobile injuries. [Text deleted] contacted [the Appellant] on December 1st, 1997, and advised him that if he could not return to work they need a medical certificate excusing him from work. This request was apparently made again on December 2nd and 17th of 1997. On December 22nd [text deleted] notes that [the

Appellant] failed to provide the required medical certificate as per their Collective Agreement and Departmental policy however he did provide a medical certificate stating he would be off sick for December 22nd, 23rd and 24th of 1997. [Text deleted] continued to request this medical certificate throughout January and by the 21st was provided with one stating he could return to work on January 26th, 1998 and he did.

In a report dated April 24th, 1998, [Appellant's doctor] advises that he saw [the Appellant] on January 2nd, 1998, and told him to call [Appellant's neurologist] to get the results of the December 29th CT Scan; if they were normal he was to return to regular work. [Appellant's neurologist] then reports that [the Appellant's] next visits in January were primarily for fever and respiratory tract infection and that his absence from work after the first week in January, 1998, was mainly due to fever. There is no mention by [Appellant's doctor] that he gave a medical certificate to [the Appellant] to excuse him from work for the period of December 22nd to 24th, 1997.

After considering all of the evidence we are of the opinion that [the Appellant] could have returned to work on December 22nd, 1997, but for reasons not related to the accident he did not. It is likely that he was suffering from the aforementioned fever and respiratory tract infection which are not accident-related. We are also of the view that the Adjuster, when he was informed on November 26th, 1997, that the Appellant could only do light or restricted work, should have enrolled him in a work hardening program that he contemplated doing in early November, 1997. MPIC would have paid IRI to [the Appellant] during his attendance at this type of program.

[The Appellant] should have been offered a work hardening program and therefore would have been entitled received IRI benefits but only up to December 21st, 1997.

[The Appellant] is to receive IRI for the period of November 24th to December 21st 1997 plus interest on this outstanding balance from December 21st, 1997 to the date of actual payment at the rate prescribed by statute, which is the prejudgement rate of interest determined under Section 79 of the Court of Queen's Bench Act.

DISPOSITION:

For the reasons set out above, the Acting Review Officer's decision of May 12th, 1998 is rescinded and the foregoing substituted for it.

Dated at Winnipeg this 5th day of October, 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED