Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-99-15

PANEL:	**Mr. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.(Chairperson)** **Mrs. Lila Goodspeed**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf;** **Manitoba Public Insurance Corporation ('MPIC')** **represented by Mr. Tom Strutt**
HEARING DATE:	**June 21st, 1999**
ISSUE(S):	**Termination of Income Replacement Indemnity ('IRI') - whether justified.**
RELEVANT SECTIONS:	**Sections 110 (1) and 110 (2) of the MPIC 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 appellant was driving her [text deleted] on August 27th, 1994 at approximately 30 kms per hour in moving traffic, when her vehicle was struck from the rear by an allegedly impaired woman driving a [text deleted] vehicle. The collision caused approximately $700 dollars worth

of damage to the appellant's vehicle and caused injuries to her neck and back. The injuries were all of a soft tissue nature, including strain to her neck and upper back resulting in muscular spasms.

Throughout the nearly five years that have intervened since the date of [the Appellant's] accident, she has been seen, examined and, in many cases, treated by a great number of caregivers, including general practitioners, orthopedic, neurological and rheumatological specialists, physiatrists, a chiropractor, a massage therapist, rehabiliation specialists from [vocational rehab consulting company]., a psychiatrist, a clinical psychologist and physiotherapists. In addition, [the Appellant] has received numerous and extensive blood tests, X-rays, magnetic resonance imaging and physical and psychological testing.

We do not believe it would be useful to analyze, in detail, the multitude of medical and paramedical reports made available to us, all of which we have examined with care. It is, we believe, sufficient to say that, by May of 1998, MPIC was faced with the anomaly - not unusual - that although a strong majority of medical reports, based upon objectively observed signs, indicated substantial improvement in [the Appellant's] functional capacity, the continuing symptoms that she was reporting subjectively remained severe.

Up to the time of her accident, [the Appellant] had been working for [text deleted] as a Customer Assistance Officer, and the primary issue before us is whether, by June 26, 1998 she had, as her adjuster at MPIC decided, become "able to hold the employment that she held at the time of the accident". On this latter date, her adjuster and case manager, [text deleted], determined that she

had become able to hold that employment again but that, since she had been in receipt of Income Replacement Indemnity for more than 2 years, she was entitled to the continuance of her IRI for a further one year or until she had recommenced gainful employment, whichever first occurred. MPIC offered to assist in her search for employment, if she wished it. [The Appellant], was married on [text deleted] and gave birth to a baby in December 1998. She testified that she had returned to work for about one week immediately following her accident but was only able to work sporadically for the rest of that year until October 5. She testified that she cannot do her normal household work such as making beds, cleaning and the like. When she wakes up, she says, her neck and lower back are in pain, sometimes even her lower jaw gives her such problems that "I have to take my jaw in both hands and straighten it."

It should, perhaps, be noted that, during the period of [the Appellant's] fulltime employment by [text deleted], she was covered by a group insurance policy with [Appellant's employer's insurer]. On March 5, 1996 the [Appellant's employer's insurer] discontinued her benefits under that coverage, upon the basis that;

> - ……..the medical as well as non-medical evidence provided to us does not support continuous total disability which would thereby prevent her from performing any occupation beyond March 5, 1996. …… (her) medical condition retroactive to March 1996, when benefits were last paid, is mainly subjective and lacks objective medical findings to support continuous total disability. In addition, non-medical evidence would indicate that she is quite active and does not demonstrate the restrictions of movement or other limitations mentioned throughout her file.

[Text deleted], the Appellant's employer at the time of the accident, took the position that her fulltime employment status ended with the decision of the [Appellant's employer's insurer] to cease disability benefits some 2 ½ years after the appellant's accident. At that point, therefore, [the Appellant's] status was changed to that of a casual employee – that is to say, she was on call for work whenever [text deleted] happened to need her and if she was then available. [The Appellant] did, apparently, attempt a graduated return to work in May or June of 1997, but that only lasted a very short time. [The Appellant's] evidence was that, apart from her shortlived attempt to return to work with [text deleted], the only other work that she had undertaken since her motorvehicle accident of August 27, 1994 was a volunteer job for a couple of weeks in early 1997, helping to conduct a telephone survey.

The overwhelming body of medical and paramedical evidence makes it clear that [the Appellant] is physically capable of a graduated return to work – perhaps, even, fulltime employment – in any occupation akin to that which she had performed while employed while at the [text deleted]. No one denies that she has pain and discomfort, but few, if any, of her caregivers are prepared to say that those symptoms preclude her employment which, after all, was not physically demanding.

On June 26, 1998, when [Appellant's case manager] wrote to tell her that she was deemed capable of resuming her former employment, [the Appellant] had received a total of $55, 245 of income replacement, together with a further $26, 529 for travel expenses, medication, medical reports, physiotherapy, chiropractic and rehabilitation, for a total of $81, 774. As noted above, since she had received IRI for more than two years she became entitled to a further twelve

months of income replacement, from June 26, 1998 to June 25, 1999, by virtue of section 110 (2) of the MPIC Act. [Appellant's rehab consultant], rehabilitation consultant with [vocational rehab consulting company], wrote to [the Appellant] on July 22, 1998 to confirm that [vocational rehab consulting company] had been requested by the insurer to assist her in her search for employment. [Vocational rehab consulting company] had therefore opened a new file for her and offered to provide a job search program. Details of that program were set out in [Appellant's rehab consultant] letter. It seems clear from subsequent correspondence between [the Appellant] and [Appellant's case manager] that the primary reason why [the Appellant] has not taken advantage of the job search program proposed by [vocational rehab consulting company] is that, had she been able to find gainful employment through that medium, it would have been difficult for her to argue before this Commission that she was disabled from working.

[The Appellant] seeks an order from this Commission that termination of her benefits on June 26, 1998 was unwarranted, that she was not capable of a return to the workplace on June 26, 1998, is not capable of a return to work even now and should therefore be entitled to continued Income Replacement up to the present date and beyond, until she has achieved full functional capacity.

Upon a review of all of the evidence including, of course, the testimony of [the Appellant] herself, we find that the appellant was, in fact, capable by June 26, 1998, if not well before that date, of fulfilling substantially all the duties of her pre-accident employment. We must therefore confirm the decision of MPIC's Internal Review Officer dated December 7, 1998.

This is not to say that the appellant is entitled to no further benefits at all. The termination of Income Replacement Indemnity does not preclude the continuance of a reconditioning program and the pursuit by [the Appellant] of the job search program outlined in [Appellant's rehab consultant] letter to her of July 22, 1998.

There is one other issue raised in this appeal, and that is a claim by [the Appellant] that she should be referred to the [text deleted] in [text deleted], for further assessment and the prescription of a plan for [the Appellant's] future treatment. We do not find sufficient basis upon which to decide to refer this matter for specialized investigation outside the province and are therefore not prepared to make that order.

Subject, then, to the foregoing recommendations related to reconditioning and job search programs, we must confirm the decision of the Internal Review Officer.

Dated at Winnipeg, July 27, 1999.

J. F. R. TAYLOR Q. C.

CHARLES T. BIRT, Q. C.

LILA GOODSPEED