Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-122

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Yvonne Tavares** **Ms. Deborah Stewart**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.**
HEARING DATE:	**January 14, 2002**
ISSUE(S):	**(i) Entitlement to Income Replacement Indemnity benefits; and** **(ii) Entitlement to reimbursement for various expenses.**
RELEVANT SECTIONS:	**Sections 81, 110, 136 and 138 of the Manitoba Public Insurance Corporation Act (the "MPIC Act") and Sections 5 and 10 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 injured in a motor vehicle accident on December 31, 1999, when the vehicle she was travelling in was rear-ended by another vehicle. The Appellant sustained a whiplash injury involving a cervical and lumbosacral strain as a result of the motor vehicle accident, as well as a strain to her right shoulder, left hip and knee.

The Appellant is appealing the decision of the Internal Review Officer dated October 2, 2000, which had dismissed her Application for Review and confirmed the decision of the Case Manager dated July 10, 2000.

The issues under appeal are as follows:

1. Entitlement to Income Replacement Indemnity benefits;
2. Entitlement to reimbursement of treatment expenses and ongoing rehabilitation benefits;
3. Entitlement to reimbursement of the cost of replacement eyeglasses;
4. Entitlement to reimbursement of the cost of a massager; and
5. Entitlement to reimbursement of the cost of certain vitamins.

1. Entitlement to Income Replacement Indemnity Benefits

At the time of the motor vehicle accident, the Appellant was working as a self-employed taxi-cab driver. She had also secured employment as a sewing machine operator with [text deleted], commencing on January 2, 2000. After the accident, the Appellant did not return to work as a taxi-cab driver for some time as her vehicle had not been repaired, but she did commence her job with [text deleted] as scheduled. A few weeks after commencing employment with [text deleted], however, her complaints regarding the neck and back injuries she had sustained in the motor vehicle accident were such that her doctor authorized her absence from her job at [text deleted]. Since she was unable to continue her employment as a result of the injuries sustained in the motor vehicle accident, she then became entitled to Income Replacement Indemnity benefits, and these benefits continued over the next few months.

On February 7, 2000, the Appellant returned to her position with [text deleted], initially on a gradual return-to-work program, working herself up to eight hours per day, five days per week, over the course of the next few months. Adjustments to her Income Replacement Indemnity

benefits were made to account for the time she actually worked during this period. Income Replacement Indemnity benefits were also paid to the Appellant on account of the lost income from her employment as a taxi-cab driver, which she had planned to continue on a part-time basis in addition to her position at [text deleted]. On June 12, 2000, the Appellant's employment with [text deleted] was terminated, for reasons unrelated to the injuries she sustained in the accident of December 31, 1999.

On April 19, 2000, the Appellant was examined by [text deleted], an orthopaedic surgeon, upon referral from her family physician, [text deleted]. In his report dated June 13, 2000, [Appellant's orthopaedic surgeon] concluded the following:

> Based upon the clinical examination findings and investigative findings, to my opinion, the patient had pre-existing disc degenerative disease involving the lower lumbar area which has been demonstrated in the radiological findings. Also degenerative disease at both knees at the patellofemoral compartment as noted in the radiological findings. These findings cannot be related to the recent accident date of December 31, 1999. However, this accident must have aggravated or caused some flare-up of the condition related to her knee and back. Also she must have some soft tissue sprain involving the shoulder and the base of the neck. The symptomatology which has been described by [Appellant's doctor #2], [Appellant's doctor #3] and [Appellant's doctor #1] following the incident of the accident obviously has subsided or improved reasonably well with the appropriate treatment of physiotherapy.
> …
>
> Based upon the present findings, the patient does not need any active treatment except symptomatic medication if and when she has any flare-up.

On July 5, 2000, the Appellant's file was referred to MPIC's Healthcare Services Team for an opinion as to the Appellant's functional limitations. Upon review of the available medical information, the MPIC Health Care Services Team commented that, "There is insufficient objective medical evidence identifying an impairment of physical function arising from the

collision in question that in turn would disable [the Appellant] from her occupational duties as of June 12, 2000."

On July 10, 2000, MPIC's Case Manager wrote to the Appellant to advise her that effective July 21, 2000 her entitlement to Income Replacement Indemnity benefits would cease as she had regained the capacity to return to work as of June 12, 2000.

The Appellant sought an Internal Review of that decision. In his decision dated October 2, 2000, the Internal Review Officer confirmed the decision of the Case Manager and he states that:

> There is no convincing evidence on the file – medical or otherwise – which supports your claim for IRI beyond July 21, 2000. The case manager, in my view, went out of his way to fully explore your entitlement and continued your benefits to, and even somewhat beyond, the time when termination would otherwise have been justified.

[The Appellant] has now appealed from that decision to this Commission.

At the hearing, the Appellant argued that she continues to suffer pain from the injuries she sustained in the motor vehicle accident of December 31, 1999. She advised the Commission that since discontinuing her employment with [text deleted], she has taken a position as a cashier at [text deleted], effective August 20, 2000. She explained that she continues to have pain in her wrists due to the repetitive nature of her current job.

Counsel for MPIC argued that the decisions of the Internal Review Officer and the Case Manager were amply supported by the medical information on the file. Specifically, he referred to the fact that the Appellant had been able to return to her employment with [text deleted] and in the ensuing months had been able to reach full-time status. He also referred to the report of

[Appellant's orthopaedic surgeon] dated June 13, 2000, which indicated that the Appellant had no functional limitations. Accordingly, counsel for MPIC submitted that there was no evidence to support reinstating Income Replacement Indemnity benefits for the Appellant.

Based upon the findings of the orthopedic surgeon, [text deleted], as set out in his report of June 13, 2000, and the fact that the Appellant was working full-time hours by that time, the Commission finds that there were no functional limitations by that date which prevented [the Appellant] from returning to her employment, either as a sewing machine operator or as a taxi-cab driver. We are of the view, therefore, that her entitlement to Income Replacement Indemnity benefits was properly terminated by MPIC on July 21, 2000.

2. Entitlement to Treatment Expenses and Ongoing Rehabilitation Expenses

The Appellant claimed the cost of a chiropractic treatment and ongoing rehabilitation expenses. We note that the Case Manager, in his decision dated July 10, 2000, stated that "Respecting your rehabilitation physiotherapy, I have authorized funding your assessment at the [hospital]. When the results of this are known, it will be reviewed by our Health Care Services Team to determine if further entitlement exists for therapy."

It appears that the Appellant never followed up with her Case Manager regarding ongoing treatment expenses. It also appears that no decision denying reimbursement of ongoing medical and paramedical care and related expenses has ever been made by the Case Manager. Further, since the Internal Review Officer simply confirmed the previous decision of the Case Manager in his decision, he did not actually deny the entitlement to ongoing rehabilitation expenses. Accordingly, we find that we have no jurisdiction to deal with the Appellant's claim. Therefore,

the Appellant may contact her Case Manager, if she so desires, in order to follow up with her requests for reimbursement of any of her expenses.

3. Entitlement to Reimbursement of the Cost of Replacement Eyeglasses

The Appellant is seeking the additional sum of $169.80 which, she contends, is the difference between her actual cost to replace the eyeglasses which were damaged in the motor vehicle accident and the sum of $164.16 which MPIC has already reimbursed her for optometry expenses.

The Appellant submitted that the eyeglasses which were damaged and required replacement arising out of the motor vehicle accident had progressive lenses. She argues that the amount which MPIC has reimbursed her only covers the cost of bifocal lenses, and not the actual cost to replace the progressive lenses she lost in the motor vehicle accident, which she claims was over $300.

Counsel, on behalf of MPIC, submitted that the Case Manager had been more than fair in dealing with the Appellant's claim for reimbursement. The Appellant had actually never produced the eyeglasses which she claimed were damaged in the motor vehicle accident. She did produce a receipt for eyeglasses (bifocals) which she had purchased the year before the accident. In his decision of July 10, 2000, the Case Manager states that:

> I have contacted [text deleted], which is the place of purchase of the eyeglasses damaged according to the receipt submitted by you. I confirmed that the current replacement cost of the glasses is $114.00 plus $30.00 for scratch guard and taxes totalling $164.16. I included the $45.00 the optometrist exam cost in the payment made to you May 16, 2000.

The difficulty in this case in determining the appropriate level of reimbursement for the Appellant is caused by the fact that the Appellant discarded the actual eyeglasses she was wearing at the time of the accident and which she claims were damaged in the accident. Had the Appellant saved those glasses, it would have been a simple matter to determine whether or not the eyeglasses were actually bifocals or progressive lenses. In any event, the onus of proof is squarely upon the Appellant to prove, upon a balance of probabilities, that the eyeglasses which required replacement contained progressive lenses. The Appellant has not established, upon a balance of probabilities, that the lenses which she lost in the accident were indeed progressive lenses, and therefore we must dismiss this aspect of her appeal.

4. Entitlement to Reimbursement for the Cost of a Massager

The Appellant claimed reimbursement for the cost of a massager. Again, we note that in his decision dated July 10, 2000, this claim was not specifically denied by the Case Manager. The Case Manager merely stated that,

> Regarding your e-mail of July 7, 2000 requesting reimbursement for the cost of the massager purchased March 23, 2000, we are not in possession of a prescription or medical report confirming that this item was required, or had any therapeutic benefit to you to assist in your recovery from the injuries sustained in this accident. We will attempt to obtain further medical information to support entitlement in this area.

However, we note that the claim must have been subsequently rejected by the Case Manager as evidenced by a note on the invoice directly beside the massager which states "Do not pay". It would appear then that a decision was made by the Case Manger not to reimburse the Appellant for this item, although never communicated to the Appellant formally in writing.

In his decision dated October 2, 2000, although the Internal Review Officer did not specifically render a decision on the claim for the massager, he did indicate that, "Although you have not

specifically asked me to review the responses to the other claims matters dealt with in the July 10, 2000 decision letter, I have done so anyway and have concluded that those decisions are amply supported. Had I been called upon to render decisions regarding those matters, I would have confirmed the decision made by the case manager on each point." Counsel for MPIC did not raise any objection to the Commission's jurisdiction on this issue at the hearing of this matter.

We find that the decision of the Internal Review Officer clearly meant to adopt the previous decisions of the Case Manager (whether in writing or not). As such, we find that there is an Internal Review Decision denying the Appellant's claim for the reimbursement for the cost of the massager and accordingly we have the requisite jurisdiction to deal with her appeal on this issue.

The entitlement to reimbursement for the cost of a massager is governed by Section 138 of the MPIC Act and Section 10 of Manitoba Regulation No. 40/94. It provides as follows:

> **Corporation to assist in rehabilitation**
> **138** Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Section 10 of Manitoba Regulation No. 40/94 provides as follows:

> **Rehabilitation expenses**
> **10(1)** Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:
>
> (d) reimbursement of the victim at the sole discretion of the corporation for
>
> (iv) specialized medical supplies.

The Appellant originally purchased the massager on March 23, 2000. Shortly thereafter, she informed her Case Manager that she would not be seeking reimbursement for the cost of the massager as she was not using it and would be returning the massager to the place of purchase. On July 7, 2000, she wrote to the Case Manager and requested reimbursement for the cost of the massager purchased on March 23, 2000. She had found that since discontinuing physiotherapy treatments, she was actually using the massager for relief of muscle pain. MPIC was not in possession of a prescription or medical report confirming that this item was required, or had any therapeutic benefit to assist in the Appellant's recovery from her injuries sustained in the accident and, therefore, refused to reimburse the Appellant. The Appellant subsequently provided a prescription from her family doctor for the massager.

The issues for this Commission to determine in respect of the purchase of the massager are whether or not MPIC exercised its discretion appropriately and whether the massager is necessary or advisable for the rehabilitation of the Appellant.

Evidence was lead at the hearing that the Appellant had on her own initiative purchased the massager without prior approval from MPIC. Since MPIC was not in possession of a prescription or medical report confirming that this item was required, or had any therapeutic benefit to assist in the Appellant's recovery from the injuries sustained in the accident, we find that it properly exercised its discretion in refusing to reimburse the Appellant for the cost of the massager. Furthermore, notwithstanding the provision of the prescription from her family physician on September 8, 2000, some five and a half months after the purchase, we are not convinced that a massager of this cost was necessary or advisable for the rehabilitation of the Appellant.

5. Entitlement to Reimbursement of the Cost of Certain Vitamins

The Appellant withdrew her appeal with regard to this claim at the hearing.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date October 2, 2000.

Dated at Winnipeg this 18th day of January, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

DEBORAH STEWART