Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-53

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's husband];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.**
HEARING DATE:	**July 15, 2003**
ISSUE(S):	**1. Entitlement to Caregiver Weekly Indemnity benefits from the date of the accident, October 20, 2000, to the 180th day post-accident** **2. Entitlement to Income Replacement Indemnity (IRI) benefits starting on the 181st day after the accident of October 20, 2000**
RELEVANT SECTIONS:	**Sections 86(1) and 132(1)(a) of The Manitoba Public Insurance Corporation Act (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 Automobile Injury Compensation Appeal Commission held a hearing on July 15, 2003 in respect of the Appellant's two appeals arising out of a motor vehicle accident on October 20,

2000. The first appeal related to the entitlement of the Appellant to Caregiver Weekly Indemnity ("CGWI") benefits pursuant to Section 132(1)(a) of the MPIC Act from the date of the motor vehicle accident to the 180th day post-accident. The second appeal related to the entitlement of the Appellant to Income Replacement Indemnity ("IRI") benefits starting on the 181st day after the accident pursuant to Section 86(1) of the MPIC Act.

The Appellant had also filed an appeal in respect of the denial of funding for chiropractic treatments after October 1, 2001 but, prior to the appeal hearing, withdrew this appeal.

The Appellant attended the hearing on July 15, 2003 and requested an adjournment of the appeal hearing. The Commission, after hearing submissions from the Appellant, her husband, [text deleted], and MPIC's legal counsel, determined that the appeal should proceed and invited the Appellant to adduce her evidence and make her submissions in support of the two appeals. The Appellant refused to participate in the appeal proceedings and withdrew from the hearing. (For a complete discussion of the Commission's reasons respecting the refusal to grant the adjournment, please see the Reasons issued separately by this Commission dated September 24, 2003)

MPIC's legal counsel submitted that the Appellant had not established, on the balance of probabilities, entitlement to either CGWI benefits or IRI benefits and requested that the Commission dismiss the appeal in respect of these two issues. At the conclusion of MPIC's legal counsel's submission, the Commission adjourned the proceedings.

The motor vehicle accident in question occurred on October 20, 2000. The Appellant when operating a vehicle, lost control on a gravel road near [text deleted], Manitoba and struck a hydro

pole. The Appellant attended at the [hospital] and the hospital records indicate that the Appellant sustained multiple soft tissue contusions and a minor closed head injury. There were no fractures seen on any x-rays taken and she was sent home from the hospital at 1:25 p.m. on October 20, 2000.

Entitlement to Care Giver Weekly Indemnity benefit (CGWI)

The appeal in respect of this benefit is governed by Section 132(1)(a) of the MPIC Act, which provides as follows:

> "Subject to subsection (2), a part-time earner or a non-earner whose main occupation at the time of the accident is taking care, without remuneration, of one or more persons who are under 16 years of age or who are regularly unable for any reason to hold any employment is entitled to a weekly indemnity in the following amount:
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> (a) $290. where one person is cared for ;"

The application by the Appellant for entitlement to CGWI benefits was rejected by the case manager in her decision of June 28, 2001. The Appellant made an application to the Internal Review Officer to review the case manager's decision. The Internal Review Officer rejected the Application for Review and confirmed the case manager's decision.

The Commission carefully examined all of the documentary evidence that was filed in respect of this claim and carefully examined the decision of the case manager, dated June 28, 2001, and the Internal Review Officer's decision dated December 14, 2001.

The case manager, in her decision dated June 28, 2001, stated:

> In a letter dated April 24, 2001, addressed to [text deleted], Vice-President, Corporate Public Relations, [Appellant's husband] requested "Weekly Indemnity." As explained in my correspondence of March 20, 2001, I spoke with

> [Appellant's husband] regarding this issue on January 19, 2001 and he refused to allow an occupational therapist into his home to assess the situation. In order to qualify for Caregiver Weekly Indemnity, the caregiver must reside in the same household as the person receiving the care. By not allowing an occupational therapist to do an assessment of your home and situation, we had no way of determining if you qualified for Caregiver Weekly Indemnity. However, the medical evidence on file does not identify a condition arising from the motor vehicle accident that in turn would prevent you from providing care to a child. As a result, there is no entitlement to Caregiver Weekly Indemnity. (underlining added)

The Internal Review Officer stated at page 4 of the Internal Review decision:

> 3. The Application for Compensation lists, as dependants, yourself (as the spouse), your daughter, [text deleted] (DOB – [text deleted]), and an infant named [text deleted] (DOB – [text deleted]). The infant is listed as "Child #2", but you advised me at the hearing that this is your granddaughter. I cannot see anything on the file identifying the parents of this child.
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> 4. The Application for Compensation indicates that, at the time of the accident, [the Appellant] did not provide financial support for [infant] but did "take care of" her. No other particulars of the care being provided to the child have ever been given to MPI. You would not permit an occupational therapist to attend at your home shortly after the accident to assess the situation, nor would you permit the MPI case manager to attend for this purpose.
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> 5. When I asked at the hearing whether anybody else took care of [infant] after the accident, you told me this was irrelevant to the claim. When pressed, you stated that other people were helping out, and that they were being paid by [the Appellant], but you declined to identify these other caregivers. You confirmed that no receipts for these services had ever been provided to MPI.
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> 6. You also stated that, prior to the accident, [the Appellant] had been providing full-time care for [infant], without remuneration. Once again, the parents of [infant] were not identified, nor was any explanation offered as to why the parents were not providing the requisite care.

The Internal Review Officer, in his decision dated December 14, 2001, determined:

> 1. No evidence of entitlement to a CGWI has been provided to MPI. In the circumstances, I am in no position to direct that this benefit be paid. I am, therefore, confirming the decision of the case manager dated June 26 (sic, should be June 28), 2001 on this point.

The Appellant appealed the denial of the CGWI benefit to the Commission. Prior to the appeal hearing MPIC's legal counsel requested particulars from the Appellant in respect of this appeal but the Appellant did not provide the relevant information to MPIC's legal counsel. As indicated earlier in this decision the Appellant voluntarily withdrew from the appeal hearing without testifying in respect to this claim and without adducing any other evidence to support the claim for a CGWI benefit.

The Commission, upon examination of the documentary material filed in these proceedings, agrees with the Internal Review Officer that no evidence was provided by the Appellant to MPIC to establish an entitlement to the CGWI benefit. The Commission has also not been provided with any evidence by the Appellant to support her claim for a CGWI benefit. The Commission, therefore, finds that the Appellant failed to establish on a balance of probabilities that, pursuant to Section 132(1)(a) of the Act, she was entitled to the CGWI benefit. The Commission therefore dismisses the Appellant's appeal in respect of this claim and confirms the Internal Review Officer's decision dated December 14, 2001 in respect to this issue.

Entitlement to Income Replacement Indemnity (IRI) benefits on the 181st day after the accident of October 20, 2000

The appeal in respect of this benefit is governed by Section 86(1) of this Act which provides:

> **Entitlement to I.R.I. after first 180 days**
> **86(1)** For the purpose of compensation from the 181st day after the accident, the corporation shall determine an employment for the non-earner in accordance with section 106, and the non-earner is entitled to an income replacement indemnity if he or she is not able because of the accident to hold the employment, and the income replacement indemnity shall be not less than any income replacement indemnity the non-earner was receiving during the first 180 days after the accident.

A non-earner, defined under Section 70(1) as:

> **Definitions**
> **70(1)** In this Part,
> **"non-earner"** means a victim who, at the time of the accident, is not employed but who is able to work, but does not include a minor or student;

As a result of the motor vehicle accident, the Appellant's injuries were treated by a chiropractor, [text deleted], who provided Treatment Plan Reports to MPIC dated December 15, 2000 and February 27, 2001. [Appellant's chiropractor], in his report dated February 27, 2001, indicated that the Appellant was suffering from continuing difficulties, mainly involving the neck region, and provided a plan of management for active and passive strategies with the treatment reducing until a May 2001 re-evaluation. At the request of MPIC the Appellant attended an independent chiropractic examination by [independent chiropractor] on April 10, 2001. [Independent chiropractor] provided a report to MPIC dated April 12, 2001, wherein he stated:

> "[The Appellant's] presentation was not consistent with the effects of an accident such as that described by her….. The prevalence of non-organic pain indicators and psychosocial factors are germane to her present status and there is no indication that these contributing influences stem from the accident of October 20, 2000."
> . . . .
> "The assessment did not readily identify any distinct physical limitations or disabilities that could reasonably be attributed in direct ongoing causation to the accident of October 20, 2000. In the greatest balance of probabilities, [the Appellant's] present disability stems from her prior history and psychosocial factors that are extraneous to her most recent accident."

The medical information that MPIC had on file from [Appellant's chiropractor] and [independent chiropractor], together with the [hospital] emergency reports, were forwarded to MPIC's Health Care Services Team for review. [MPIC's doctor], in his Inter Departmental Memorandum to MPIC, dated May 28, 2001, concludes:

> The information obtained from the documents reviewed indicates that [the Appellant] developed various symptoms as a result of the October 20, 2000 motor vehicle collision. Based on the information obtained from [Appellant's chiropractor], it appears that [the Appellant] made significant improvements with the treatment program provided to her. This seems to contradict the information obtained from [independent chiropractor's] report in which [the Appellant] was noted to be significantly disabled and presented with

> non-organic pain features and inappropriate pain behaviour. [Independent chiropractor] did not identify a physical condition that would account for [the Appellant's] various symptoms. It was his opinion that [the Appellant] exhibited features in keeping with a somatization disorder and that the non-organic pain indicators and psychosocial factors that were germane to her present status did not develop as a result of the October 20, 2000 motor vehicle collision.
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> It is therefore my opinion that the information obtained from the documents reviewed does not identify a condition arising from the collision in question that in turn would account for [the Appellant's] symptomatology. The information does indicate that the non-organic features, somatization disorder, psychological factors, and inappropriate pain behaviour, which could not be reasonably attributed in direction ongoing causation to the October 20, 2000 motor vehicle collision factor into her symptom presentation and perceived level of dysfunction.

The case manager therefore concluded, based on the totality of the medical information on file, that the Appellant's inability to return to work following the 181st day after the motor vehicle accident could not be attributed to the injuries directly related to the motor vehicle accident of October 20, 2000. As a result, the case manager determined that the Appellant was not entitled to any IRI benefits, in a decision dated June 28, 2001.

The Appellant made an Application to have the decision of the case manager reviewed by an Internal Review Officer. The internal review hearing occurred on November 30, 2001 and the Appellant was represented by her spouse, [text deleted].

The Internal Review Officer, in his decision, stated:

> 9. There was a delay of almost three weeks in getting the report released to MPI because you were not responding to requests from [independent chiropractor] for an authorization to release the report. According to the file, his request made at the time of the examination was refused, and the form which he sent you on April 12, 2001 (at your request) was not returned in spite of two follow-up phone messages left at your home (neither of which was returned by you.)
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> The case manager also sent a letter to you requesting that the authorization be provided to [independent chiropractor], and I understand you gave him a handwritten, "made up" authorization a few days later.

10. The report from [independent chiropractor] documents the difficulties he encountered with the examination, including extreme pain response and reactions, and prominent somatizing behaviors. He suggested a weaning from the cervical collar (which was worn throughout the examination, again hindering a full examination) because her neck was already showing signs of deconditioning, which was only expected to worsen with the continued us of the collar. He also suggested that a referral be made to a mental health professional for an assessment. (underlining added)

11. On the issue of disability, [independent chiropractor] wrote:

    The assessment did not readily identify any distinct physical limitations of disabilities that could reasonably be attributed in direct, ongoing causation to the accident of October 20, 2000. In the greatest balance of probabilities, [the Appellant's] present disability stems from her prior history and psychological factors that are extraneous to her most recent accident." (underlining added)

The Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Appellant has appealed the Internal Review decision to this Commission.

As indicated earlier in this decision, the Appellant chose not to testify at the appeal hearing and chose not to produce any additional medical information at the appeal hearing in respect of her claim for IRI benefits. As a result, the Commission heard no evidence from the Appellant as to the injuries she sustained from the motor vehicle accident on October 20, 2000 which prevented her from working on the 181st day after the motor vehicle accident.

The onus rests upon the Appellant to establish her case on the balance of probabilities. The Commission accepts the assessment of [independent chiropractor] which was corroborated by the review of the MPIC's Medical Services Team that the Appellant did not sustain any motor vehicle accident injuries which would have prevented the Appellant from working on the 181st day after the motor vehicle accident. The Commission therefore concludes the Appellant has not

established on a balance of probabilities that the injuries the Appellant sustained in the motor vehicle accident prevented her from working on the 181st day after the motor vehicle accident.

Accordingly, for the foregoing reasons, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated December 14, 2001 is confirmed.

Dated at Winnipeg this 24th day of September, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MACLENNAN