Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-58

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Diane Beresford** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.**
HEARING DATE:	**March 5, 2004**
ISSUE(S):	**1. Entitlement to Income Replacement Indemnity Benefits** **2. Entitlement to Treatment Benefits**
RELEVANT SECTIONS:	**Sections 110(1)(c) and 136(1)(a)&(d) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) 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] was involved in a motor vehicle accident on April 26, 2000 and reported symptoms of neck and head soreness. [Appellant's doctor #1's] Initial Health Care Report, dated May 1, 2000, noted that the Appellant presented with symptoms in keeping with a cervical strain/spasm. [Appellant's doctor #1] found that the Appellant was fully functional, with symptoms, but was able to perform his full work duties.

The Appellant attended at his family doctor, [text deleted], on May 2, 2000. She identified a whiplash associated disorder, Grade 2, with upper and lower back strain. [Appellant's doctor #2] determined that the Appellant had less than full function due to symptoms and/or functional deficits. She advised the Appellant to stay off work until May 14, 2000 and recommended physiotherapy and/or chiropractic treatment.

As a result, the Appellant attended at [text deleted] Physiotherapy for treatment and was seen by [text deleted] (physiotherapist). In his report of May 10, 2000 [Appellant's physiotherapist #1] identified a moderate/severe cervical strain caused as a result of a blow the Appellant received to the back of his head. [Appellant's physiotherapist #1] classified the Appellant's injury as a whiplash associated disorder, Grade 2. The physiotherapist further indicated in his report that the Appellant could work in a supernumerary capacity with a lifting restriction of not more than 10 lbs. for a duration of two weeks. [Appellant's physiotherapist #1] also identified in his report an awareness of risk factors for delayed recovery including chronic pain relating to a previous low back injury and a high level of stress in the Appellant's life at that point in time.

A Functional Capacity Evaluation Report was completed on July 4, 2000 by [text deleted], an occupational therapist, who reported that:

(a) the Appellant's low back complaints were pre-existing and were aggravated by the physical demands of the Appellant's job;

(b) the Appellant advised her that he was using Tylenol #3 on a regular basis over the past two years prior to the motor vehicle accident to help minimize his pain;

(c) there were no current complaints relating to the Appellant's cervical region or upper limbs; and

(d) she was unable to objectively determine to what degree the Appellant's motor vehicle accident might have contributed to his previous functional impairment.

[Text deleted], MPIC's Medical Consultant, Health Care Services, provided an Inter-Departmental Memorandum to MPIC dated May 11, 2001. In this Memorandum [MPIC's doctor] indicates the reason for review of the Appellant's file was to determine the following:

1. What medical condition(s) did he develop as a direct result of the motor vehicle collision that occurred on the above date?
2. Does the medical evidence indicate that [the Appellant] developed an impairment of physical function as a result of the motor vehicle collision-related medical condition(s), and if so, to what extent?
3. Does the medical evidence identify an objective improvement in [the Appellant's] motor vehicle collision-related medical conditions as a result of the therapeutic interventions provided to him?
4. Does the medical evidence indicate that [the Appellant] is still physically impaired as a result of the motor vehicle collision-related medical condition(s) to the extent that he is not able to perform his occupational activities at [text deleted]?
5. Does the medical evidence indicate that further diagnostic and/or therapeutic interventions are medically required in the management of [the Appellant's] motor vehicle collision-related medical condition(s)?

[MPIC's doctor] also reviewed medical information that MPIC had obtained from the Workers Compensation Board relating to a 1998 work related injury sustained by the Appellant. [MPIC's doctor] states that this documentation indicates that:

(a) the Appellant sustained an injury to his lower back on March 16, 1998 in the course of his employment;

(b) the Appellant was also identified as having major depression which was chronic and not related to the compensable injury.

In respect of causation [MPIC's doctor] concluded as follows:

> Causation
> It is my opinion that [the Appellant] developed the following medical conditions as a result of the collision in question:
>
> 1. Cervical strain – resolved
> 2. Possible exacerbation of pre-existing chronic low back pain – resolved
>
> The medical evidence obtained from the documents reviewed does not identify a condition arising from the collision in question that would account for [the Appellant's] ongoing back symptoms.
>
> Impairment
> As a result of the motor vehicle collision-related medical conditions [the Appellant] experienced a temporary partial impairment of physical function. There is no documentation of [the Appellant] developing a permanent impairment of physical function as a result of the collision in question.

In respect of future treatments, [MPIC's doctor] stated:

> Therapeutic
> [The Appellant] was provided a variety of treatment programs to address the symptoms he was experiencing subsequent to the collision in question. It is documented that [the Appellant's] condition improved even though he reported no change in his symptomatology. [The Appellant] was provided education with regard to a home-based exercise program he was encouraged to perform independently. [Appellant's doctor #3] did not identify a condition for which a specific or invasive type of treatment was required. [Appellant's doctor #3] recommended a lumbar stabilization program, which [the Appellant] was provided.
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> Based on my review of [the Appellant's] file, it is my opinion that the medical conditions arising from the collision in question resolved with the treatment interventions provided to him and that further therapeutic interventions are not medically required.

Case Manager's Decision

The case manager, in a letter to the Appellant dated May 30, 2001, neatly summarizes the treatment provided to the Appellant subsequent to the completion of the Functional Capacity Evaluation Report. The case manager stated:

> 5. [Appellant's occupational therapist #2] of [vocational rehab consulting company] was hired to assist you in a gradual return to work plan. In [Appellant's occupational therapist #2]'s initial assessment of July 14, 2000 he identified you had a pre-existing condition of low back pain. You advised him you were

managing your back pain with Tylenol 3 with Codeine before the motor vehicle accident. You further advised him your back had never been the same since your work related accident of March 1998 and you never fully recovered from this. You also advised [Appellant's occupational therapist #2] at this time your neck pain had almost completely been resolved and it did not limit your ability to work. [Appellant's occupational therapist #2] recommended a four week lumbar stabilization program with [text deleted], athletic therapist, [vocational rehab consulting company]. You started a return to work plan of four hours per day beginning July 19, 2000 with a lifting restriction of 25 lbs., as recommended by your physician.

6. In September 2000 you were offered and participated in a reconditioning program at [text deleted] Physiotherapy which started on September 15, 2000. You were still working four hours per day. It was recommended that you continue with these hours for two weeks, then add one hour each week allowing you to reach a full eight hours per day at the end of your program. In a report from [Appellant's athletic therapist] dated September 6, 2000, he indicated there was consideration being given to stopping your gradual return to work program until you completed the reconditioning program. In his discharge report from the lumbar stabilization program, he reported you advised you were not following the restrictions outlined in your return to work plan due to the type of work you do. He further reported that [Appellant's doctor #2] advised you to stay off work from September 19 to October 6, 2000 because of low back pain.

7. In November 2000, you were referred to the [rehab clinic] for a work hardening program on the recommendation of [Appellant's doctor #2] as she felt you were unable to return to work on October 6, 2000 as previously indicated. The assessment took place on November 6, 2000 and it was recommended that you participate in a four week reconditioning program prior to a six week work hardening program. Psychological counselling was recommended by [Appellant's psychologist] but you declined this service.

8. You started a conditioning program at the [rehab clinic] on December 5, 2000 with a tentative discharge date of February 13, 2001. On January 5, 2001, [Appellant's doctor #2] suspended your rehabilitation program because you developed the flu. Subsequent to the flu you developed bronchial pneumonia and were not able to participate in your rehabilitation program again until February 26, 2001. [Rehab clinic] was not able to start you back on your program until March 21, 2001 because of scheduling.

9. A team meeting was held on May 11, 2001 with [Appellant's occupational therapist #2], occupational therapist from [vocational rehab consulting company]; [text deleted], physiotherapist at the [rehab clinic]; [Appellant's doctor #2], yourself and myself. It has been determined by clinical testing that there has been no significant improvement in your lower back strength or stability. [Appellant's physiotherapist #2] and your doctor both recommended counselling for pain management skills, which you again declined. [Appellant's physiotherapist #2] advised you were not ready to start a work hardening program because of trunk instability.

The case manager, in her letter dated May 30, 2001, further indicated to the Appellant:

> A review of the medical documentation on file in conjunction with the medical information from your Workers Compensation Board claim in March 1998 has been completed by our Health Care Services. The purpose was to determine if further entitlement to benefits under the Personal Injury Protection Plan would be extended to you.

The case manager adopted the medical opinion of [MPIC's doctor] and in her letter to the Appellant dated May 30, 2001 stated:

> A report has been provided by our Health Care Services Team, and the following was noted:
>
> - As a result of this motor vehicle accident you developed a cervical strain and possible exacerbation of pre-existing chronic low back pain. The medical evidence indicates that your cervical strain and the exacerbation you may have experienced as a result of the motor vehicle accident have resolved and therefore any disability stemming from your ongoing symptoms would not be a direct result of the above-noted motor vehicle accident.
>
> Taking all of the above into account, a causal relationship cannot be attributed to your inability to resume your pre-accident occupation, or for additional therapeutic intervention. As discussed in our conversation of May 22, 2001, you do not qualify for further entitlements to Income Replacement Indemnity or funding for additional therapeutic interventions. As also discussed in our conversation, Income Replacement Indemnity benefits will be paid up to and including June 1, 2001.
>
> The medical information on file does not identify you having an impairment of physical function to the extent that you would be disabled from performing your determined employment as a labourer with the specific job of mechanic/service person. As you have the capacity to hold employment as a labourer, as indicated previously your entitlement to Income Replacement Indemnity benefits concludes as of June 1, 2001. For your information and reference, we quote Section 110(1)(c) of The Manitoba Public Insurance Corporation Act which 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:
> **(c)** the victim is able to hold an employment determined for the victim under section 106;

On June 8, 2001 the case manager wrote to the Appellant in respect of his request for payment of a lower back support brace and stated:

> As per our letter of May 30, 2001 wherein we discussed your entitlement to benefits under the Personal Injury Protection Plan, the totality of the medical information on file determined that your current complaints and symptoms of lower back pain are not related to the motor vehicle accident of April 26, 2000. As such, you are not entitled to funding of a lower back support brace.

Internal Review Officer's Decision

The Appellant made application for an Internal Review Officer's review of the case manager's decision. On September 28, 2001 the Internal Review Officer wrote to the Appellant indicating that a review hearing took place on September 27, 2001 and the hearing was adjourned to permit the Appellant to provide further medical reports to the Internal Review Officer. The Appellant provided reports to the Internal Review Officer from [Appellant's doctor #2], [Appellant's doctor #4] and [Appellant's doctor #5].

On January 25, 2002 the Internal Review Officer wrote to the Appellant confirming the decisions of the case manager dated May 30, 2001 and June 8, 2001. The Internal Review Officer advised the Appellant that the three medical reports that he had provided to the Internal Review Officer, namely the report of [Appellant's doctor #2] undated, [Appellant's doctor #4] dated October 15, 2001 and [Appellant's doctor #5] dated October 1, 2001 were forwarded to [MPIC's doctor] for his assessment. [MPIC's doctor] provided two responses to the Internal Review Officer dated January 15 and January 21, 2002 and copies of these two opinions were enclosed in the Internal Review Officer's decision to the Appellant. The Internal Review Officer stated:

> Our consultant's basic conclusion is that the medical evidence available fails to show that your motor vehicle accident caused an objective impairment of your physical function which prevents you from returning to work or which requires further supervised care. This conclusion strongly supports the decisions I have for review. These decisions: (1) terminated your entitlement to treatment benefits and (2) ended your entitlement to IRI on the basis that you were capable of returning to your pre-accident work. I have no

reason to disregard our consultant's opinion. Accordingly, this Review will confirm the decisions under review.

Appeal

The Appellant filed a Notice of Appeal in respect of the decision by the Internal Review Officer to dismiss the Appellant's Application for Review and to confirm the decisions of the case manager to terminate the Appellant's entitlement to Income Replacement Indemnity ('IRI') benefits and to treatment benefits.

The relevant provisions of the MPIC Act governing this appeal is set out in Section 110(1)(c) and Section 136(1)(a)&(d) and Section 5(a) of Manitoba Regulation 40/94:

> **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:
> (c) the victim is able to hold an employment determined for the victim under section 106;
>
> **Reimbursement of victim for various expenses**
> **136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
> . . . .
> (d) such other expenses as may be prescribed by regulation.
>
> **M.R. 40/94**
> **Medical or paramedical care**
> **5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
> (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

At the appeal hearing the Appellant testified that, as a result of the motor vehicle accident, he was unable to return to work and therefore is entitled to receive IRI benefits and to be reimbursed for any costs and expenses he incurred in respect of the treatment relating to his motor vehicle accident injuries.

Counsel for MPIC reviewed the Appellant's medical history and referred to the Workers Compensation injury the Appellant sustained to his lower back ON March 16, 998 which was prior to the motor vehicle accident. This injury developed into a chronic pre-existing back pain which required the Appellant to regularly use Tylenol #3 in order to carry out his work at [text deleted] prior to the motor vehicle accident. MPIC's legal counsel submitted that the medical opinion of [MPIC's doctor] who reviewed all of the medical reports, concluded that as a result of the motor vehicle accident the Appellant did sustain a cervical strain which had resolved itself and that any possible exacerbation of his pre-existing chronic low back pain had also resolved itself. MPIC's legal counsel further submitted that the Internal Review Officer was correct in confirming the decision of the case manager who had adopted [MPIC's doctor]'s medical opinion that:

1. none of the motor vehicle accident injuries that the Appellant sustained prevented the Appellant from holding employment as determined by MPIC pursuant to Section 106 of the MPIC Act;
2. the therapeutic treatments that the Appellant received subsequent to June 1, 2001 were not medically required.

MPIC's legal counsel therefore submitted that subsequent to June 1, 2001 MPIC was correct in terminating the Appellant's IRI benefits and reimbursement for therapeutic treatments.

The Commission rejects the Appellant's submission and finds that the medical evidence does not support the Appellant's entitlement to either IRI benefits or reimbursement for therapeutic treatments. The Commission accepts the submission of MPIC's legal counsel which is supported by the medical evidence filed in these proceedings.

After a careful review of all of the evidence, both oral and documentary, the Commission concludes that as of June 1, 2001 MPIC was correct in terminating the Appellant's IRI benefits and reimbursement to the Appellant in respect of any therapeutic treatments.

The Commission finds, on the totality of the evidence that, we cannot conclude on a balance of probabilities, as of June 1, 2001 the Appellant could establish that:

(a) he was unable to hold employment as determined by MPIC pursuant to Section 110(1)(c) of the MPIC Act; and

(b) he is entitled to reimbursement for any therapeutic treatment benefits pursuant to Section 136(1)(a)&(d) and Section 5(a) of Manitoba Regulation 40/94.

As a result, and for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date January 25, 2002.

Dated at Winnipeg this 28th day of April, 2004.

MEL MYERS, Q.C.

DIANE BERESFORD

WILSON MACLENNAN