

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-085

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Mr. Wilf DeGraves

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: August 12, 2011

ISSUE(S):

1. Entitlement to further Income Replacement Indemnity benefits; and
2. Entitlement to retraining.

RELEVANT SECTIONS: Sections 81(1) and 117 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on June 15, 2001. As a result of that accident, the Appellant developed symptoms of neck and shoulder pain. At the time of the accident, the Appellant was employed as a bank teller. After the motor vehicle accident, she was able to continue working as a bank teller. In July 2002, the Appellant continued to experience neck pain and tightness with decreased range of motion in the cervical spine. Her family physician suggested that she take some time off work in order to allow her neck a chance to heal. The Appellant received income replacement indemnity ("IRI") benefits

from MPIC from July 23, 2002 to January 19, 2003 when she returned to work doing her full normal duties.

On March 25, 2004, the Appellant contacted her case manager enquiring if MPIC would fund job retraining for her as she was not able to continue with her current employment and would like to try a different line of work. On August 28, 2004, the Appellant quit her job as a bank teller and enrolled in a nursing program at [text deleted] starting September 7, 2004.

On October 20, 2004, MPIC's case manager issued a decision which advised as follows:

In our telephone conversation on September 23, 2004 you advised that you had quit your job as a Teller at [TEXT DELETED] on August 28, 2004 as you returned to school, taking Nursing at [text deleted], which started September 7, 2004. You advised the reason you quit your job was due to the neck strain relating to your motor vehicle accident of June 15, 2001. You are requesting assistance for your retraining from Manitoba Public Insurance.

It is noted that you received Income Replacement Indemnity (IRI) from Manitoba Public Insurance from July 23, 2002 to January 19, 2003 and that you resumed your full duties as a Teller on January 20, 2003.

Your entire medical file, and [Appellant's Doctor's] report which was faxed to us on October 5, 2004, has been reviewed with a member of our Health Care Services Team. Based on this review the medical information does not indicate that you developed a physical impairment of function that precludes you from performing your work duties as a Teller. The file does not contain information indicating you sustained a bony injury or developed a neurological abnormality.

As your file does not contain documentation indicating you require retraining in another type of employment as a result of permanent impairment you developed secondary to the incident in question, there is no entitlement under the Personal Injury Protection Plan for retraining as it relates to your motor vehicle accident injuries.

The Appellant sought an Internal Review of that decision. In a decision dated February 18, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the Appellant had not suffered a relapse pursuant to Section 117 of the MPIC Act and that she was not entitled

to further IRI benefits as a result of the accident of June 15, 2001. Additionally, the Internal Review Officer found that there was no requirement for MPIC to retrain the Appellant as a nurse. Therefore, the Internal Review Officer confirmed the case manager's decision of October 20, 2004.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are whether the Appellant is entitled to further IRI benefits and whether she has suffered a relapse pursuant to Section 117 of the MPIC Act to the extent that she is no longer capable of holding the employment that she held at the time of the accident.

Appellant's Submission:

The Appellant submits that MPIC should fund her retraining as the automobile accident was responsible for the need to change careers. The Appellant argues that her neck injuries are aggravated by her duties as a bank teller, specifically the repetitious duties of using a computer terminal and standing and leaning over a counter for 6 hours per day. She submits that she chose nursing as a new career as she would not need to be at a computer terminal. She maintains that she had authorization to quit her permanent job as a teller prior to enrolling in the nursing program and that she consulted with [Appellant's Doctor]. [Appellant's Doctor] advised her to change jobs as the work as a teller aggravated the pain and soreness in her neck. She argues that she was in pain in her position as a bank teller and that she did not want to continue working in pain in that position. Therefore, she chose to change careers. Since her injuries were caused by the motor vehicle accident, she submits that it should be MPIC's obligation to fund her retraining program.

MPIC's Submission:

Council for MPIC submits that the evidence on the Appellant's file demonstrates that the Appellant possessed the functional ability to work full-time as a teller as she did in fact return to that job after the motor vehicle accident and again after her relapse in January 2003. Counsel for MPIC argues that the Appellant had aspirations of becoming a nurse, which is a more demanding career than a teller, and that is why she chose to change careers. Counsel for MPIC maintains that although the Appellant had ongoing symptoms, she was able to continue with her job. Counsel for MPIC argues that there was no objective medical evidence that the Appellant was unable to continue with her job as a teller in August 2004. Counsel for MPIC contends that the evidence from [Appellant's Doctor] is insufficient to provide an objective basis upon which to base a decision that the Appellant could no longer maintain her position as a bank teller. Lastly, counsel for MPIC notes that the Appellant continued to work as a bank teller on a casual basis even after she had started the nursing program at [text deleted]. Therefore, counsel for MPIC submits that the Appellant could work her full duties as a bank teller and therefore there is no requirement for MPIC to fund her retraining. As a result, counsel for MPIC submits that the Appellant's request was properly denied as she could work at her pre-accident employment and therefore the Internal Review Decision should be confirmed and the Appellant's appeal dismissed.

Decision:

After a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to further IRI benefits or funding for retraining as a nurse.

Reasons for Decision:

As noted in the Internal Review Decision dated February 18, 2005, unless the Appellant is “unable to continue” her employment “as a result of the motor vehicle accident” there is no entitlement to further IRI benefits. The Appellant returned to work in January 2003 and continued to work on a full-time basis until August 28, 2004. The medical evidence before the Commission did not establish, on a balance of probabilities, that the Appellant was unable to continue with her pre-accident employment as of August 28, 2004. In fact, the Appellant had returned to her employment as a teller for the twenty month period from January 2003 to August 28, 2004 and continued with this employment on a casual basis while attending the nursing program at [text deleted]. Although the Appellant had ongoing symptoms of neck and upper back pain, the evidence on the file was insufficient to establish that these symptoms prevented her from holding her employment as a bank teller beyond August 28, 2004.

As noted by the Internal Review Officer in the decision of February 18, 2005, the Appellant has not established an entitlement to IRI beyond August 28, 2004 and had not established that she suffered a relapse as of August 28, 2004. Rather, the Commission finds that the Appellant voluntarily quit her job as a bank teller on August 28, 2004 in order to pursue training as a registered nurse. As the Commission has found that the Appellant could work at her pre-accident employment beyond August 28, 2004 there was no obligation for MPIC to retrain the Appellant for a different occupation. Accordingly, the Commission finds that the Appellant is not entitled to further IRI benefits or retraining.

As a result, the Appellant’s appeal is dismissed and the Internal Review Decision dated February 18, 2005 is confirmed.

Dated at Winnipeg this 20th day of September, 2011.

YVONNE TAVARES

NEIL COHEN

WILF DEGRAVES