

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-01-128**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Neil Cohen  
Dr. Patrick Doyle

**APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Danielle Robinson.

**HEARING DATE:** November 15, 2011

**ISSUE(S):** Entitlement to Personal Injury Protection Plan benefits

**RELEVANT SECTIONS:** Section 81(1) 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 February 28, 1998 in [Manitoba], when his vehicle was rear-ended. As a result of that accident, the Appellant noticed pain in his neck and the back of his head. He attended upon his family doctor and was prescribed painkillers and referred for physiotherapy. The Appellant continued with the painkillers and attended physiotherapy treatments for a number of months following the motor vehicle accident.

At the time of the accident, the Appellant testified that he was working as a chef at a hotel in [Manitoba]. However, he was having difficulty handling that work and accepted a position in [Manitoba] as director of food and beverage services at the [text deleted]. He commenced that position on or about May 12, 1998. However, by December 1999, the Appellant described himself as suffering headaches at the base of his skull, neck pain radiating down his left arm and sometimes down his right arm as well, ringing in his ears and fatigue and anxiety. In addition, the Appellant's sleep was increasingly disturbed because the pain he was experiencing would wake him up during the night. The Appellant testified that he was having difficulty working due to his extreme fatigue.

Following December 1999, the Appellant took a month off work and worked only half-time for another month following that. The Appellant's contract with the [text deleted] was finished in May of 2000 at which point he decided to move to British Columbia. In B.C., the Appellant continued to look for employment while on Employment Insurance benefits. Those benefits ran out on February 3, 2001 and the Appellant contacted his case manager at MPIC enquiring about his entitlement to income replacement indemnity ("IRI") benefits and possible retraining.

On July 25, 2001, MPIC's case manager wrote to the Appellant to advise him that there was insufficient medical evidence identifying the Appellant as having a physical and/or psychological condition arising from the motor vehicle accident that would prevent him from performing his occupational duties. Therefore, MPIC was unable to consider his request to fund IRI and vocational rehabilitation.

The Appellant sought an Internal Review of that decision. In a decision dated October 31, 2001, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the

case manager's decision. The Internal Review Officer found that there was no new information which would warrant reassessment of the case manager's conclusions. Specifically, the Internal Review Officer found that there was insufficient medical evidence identifying a condition arising from the motor vehicle accident that would account for the Appellant's persistent symptomatology. Therefore, he found no basis for interfering with the case manager's decision.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to further Personal Injury Protection Plan ("PIPP") benefits, specifically IRI benefits and vocational rehabilitation, arising from the motor vehicle accident of February 28, 1998.

**Appellant's Submission:**

The Appellant submits that as a result of the motor vehicle accident of February 28, 1998, he suffered an injury which has led to a loss of energy, fatigue and pain. These conditions have limited his ability to be gainfully employed and he has not been able to resume his level of pre-accident employment since the motor vehicle accident. The Appellant contends that because of his pain, he has been unable to attain the level of function which he had prior to the motor vehicle accident. He attributes all of his problems to the accident of February 28, 1998. The Appellant maintains that he has done everything that he can to return to a productive life since the motor vehicle accident, but because of his injuries he has been unable to do so. The Appellant submits that his injuries were caused by the motor vehicle accident of February 28, 1998 and therefore he should be entitled to PIPP benefits arising from that accident.

**MPIC's Submission:**

Counsel for MPIC submits that the Appellant has not established that his inability to work is due to any injuries resulting from the motor vehicle accident of February 28, 1998. Additionally, counsel for MPIC submits that the Appellant's current condition is not related to the motor vehicle accident of February 28, 1998 and therefore he has not established an entitlement to any further PIPP benefits.

Counsel for MPIC argues that the Appellant was gainfully employed for over two years following after the motor vehicle accident and has maintained a fairly steady stream of employment and/or education throughout the intervening years. He held the position of food and beverage services manager at the [text deleted] in [text deleted] for two years following the accident. Thereafter, she claims that he has continued to hold employment and/or participate in educational courses on a consistent basis. As a result, she maintains that the Appellant has not established an inability to hold employment.

Counsel for MPIC submits that if anything has prevented the Appellant from working, more than likely it was his heart condition and his pre-existing history of anxiety. Counsel for MPIC argues that the Appellant has not established that any of his medical conditions are related to the motor vehicle accident of February 28, 1998. In that regard, she argues that the Commission should accept the opinion of [MPIC's Doctor] as set out in his interdepartmental memorandum of June 14, 2001. In that memorandum, [MPIC's Doctor] states that:

**Causation**

Based on the medical evidence obtained from [the Appellant's] file, it is my opinion that as a result of the collision in question, he developed symptoms in keeping with Whiplash-Associated Disorder Type II. There is insufficient medical evidence identifying a condition arising from the collision in question that in turn would account for his persistent symptomatology.

It is my opinion that the medical evidence does not support the conclusion that the C3-4 facet arthropathy is a direct result of the collision in question.

It is also my opinion that the medical evidence does not identify [the Appellant] as developing a psychological problem as a result of the collision in question.

#### Impairment

The medical evidence indicates that [the Appellant's] symptoms arising from the motor vehicle collision-related medical condition did not result in an impairment of physical function.

The medical evidence indicates that as a result of psychological difficulties and resulting symptomatology [the Appellant] was unable to return to a certain level of occupational duty. It is noted that [the Appellant] was capable of a sedentary/light work level and therefore there is insufficient evidence to support a total occupational disability.

At the time of the collision in question [the Appellant] was a manager of a restaurant, lounge and banquet area performing 40-45 hours per week. It is my understanding that this type of employment would not be physically demanding for [the Appellant] in most situations. With this in mind, there is insufficient medical evidence identifying [the Appellant] as having a physical and/or psychological condition that would prevent him from performing these type of occupational duties and therefore require [the Appellant] to be retrained in another type of occupation.

Relying upon [MPIC's Doctor's] opinion, counsel for MPIC submits that there is no relation between the Appellant's current condition and the motor vehicle accident of February 28, 1998. She also argues that the Appellant's condition does not prevent him from working. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated October 31, 2001 should be confirmed.

#### **Decision:**

Upon hearing the testimony of the Appellant, and 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 is not entitled to further PIPP benefits as a result of the motor vehicle accident of February 28, 1998.

**Reasons for Decision:**

The onus is on the Appellant to show that, on a balance of probabilities, he had been unable to perform the essential duties of his pre-accident employment as a result of injuries arising from the motor vehicle accident of February 28, 1998. The Commission has carefully reviewed the medical evidence before it and has concluded that the evidence fails to establish, on a balance of probabilities, that the Appellant is unable to hold his pre-accident employment as a result of any injuries sustained from the motor vehicle accident of February 28, 1998. The Commission finds that the Appellant has failed to establish, on a balance of probabilities that his ongoing complaints of loss of energy and fatigue are caused by the motor vehicle accident. While the Appellant presented significant information relating to these symptoms, there was a lack of evidence to relate these conditions to the motor vehicle accident of February 28, 1998. We find that there is insufficient medical evidence in the file before us that would connect his persistent symptomatology to the accident of February 28, 1998.

The Commission further finds that the Appellant has not established that any inability to work at his pre-accident employment arises from a condition related to the motor vehicle accident of February 28, 1998. As previously noted, the medical evidence before the Commission failed to establish that the Appellant's persistent complaints were caused by the motor vehicle accident of February 28, 1998. As a result, we are unable to conclude that any inability to perform his pre-accident occupation is a result of any injuries arising from the motor vehicle accident.

Accordingly, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was substantially unable to perform his pre-accident employment as a result of injuries arising from the motor vehicle accident of February 28, 1998. As a result, the

Commission finds that the Appellant is not entitled to IRI benefits or vocational retraining arising from the February 28, 1998 motor vehicle accident. Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated October 31, 2001 is confirmed.

Dated at Winnipeg this 17<sup>th</sup> day of January, 2012.

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**YVONNE TAVARES**

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**NEIL COHEN**

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**DR. PATRICK DOYLE**