

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-12-155**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Mr. Neil Cohen  
Ms Janet Frohlich

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

**HEARING DATE:** October 24, 2013

**ISSUE(S):** Entitlement to income replacement indemnity benefits  
beyond August 31, 2011.

**RELEVANT SECTIONS:** Section 110(1) (a) 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**

On July 23, 2010, the Appellant, [text deleted], was involved in a high speed single vehicle rollover. He was taken by ambulance to the [hospital] with a head injury, a C-5 fracture, bruising and lacerations. Due to the injuries which the Appellant sustained in this motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

At the time of the accident, the Appellant was employed as a labourer with the [text deleted]. Due to the injuries which he sustained in the motor vehicle accident of July 23, 2010 he was

unable to return to that employment. As a result, the Appellant became to income replacement indemnity (“IRI”) benefits.

The Appellant attended a Work Hardening Program with [Rehabilitation (Rehab) Clinic] which commenced on May 9, 2011 and ended on July 15, 2011. At the time of his discharge, [Rehab Clinic] documented that the Appellant achieved a functional level of “Very Heavy” and that he was fit to return to work at that level or lighter.

On July 29, 2011, MPIC’s case manager issued a decision confirming that the Appellant’s entitlement to IRI benefits would cease as of August 31, 2011 as he was functionally able to do his pre-accident employment duties.

The Appellant disagreed with the case manager’s decision and sought an Internal Review of that decision. The Internal Review Officer, in a decision dated August 9, 2012, dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. The Internal Review Officer confirmed that the Appellant was not entitled to IRI benefits beyond August 31, 2011. The Internal Review Officer found that there were no objective findings that precluded the Appellant from working at the job that he held at the time of the accident on a full-time basis.

The Appellant appealed the Internal Review decision of August 9, 2012 to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to IRI benefits beyond August 31, 2011.

**Appellant's Submission:**

At the appeal hearing the Appellant submitted that he has not regained the physical strength to return to his pre-accident employment as a labourer. The Appellant claims that he has ongoing intense upper back pain which prevents him from working. The back pain also disrupts his sleep and he is not able to obtain a restful sleep. The Appellant stated that when he does too much physical labour, his shoulders lock up and he is unable to move. He maintains that his doctors have not listened to him and taken his complaints seriously. The Appellant argued that even when he gets a light duty job, he has trouble completing a full eight hour shift. He therefore submits that his IRI benefits should not have been terminated on August 31, 2011, as he is still not able to hold the employment that he held at the time of the accident.

**MPIC's Submission:**

Counsel for MPIC submits that the Appellant demonstrated the ability to work at the very heavy demand level following the completion of his Work Hardening Program with [Rehab Clinic]. She relies upon the Discharge Report from [Rehab Clinic] which documented that the Appellant achieved a functional level of "Very Heavy" and that the Appellant was fit to return to work at that level.

Counsel for MPIC also relies upon the medical report of [Appellant's Doctor] dated March 30, 2012 wherein [Appellant's Doctor] notes that:

[The Appellant] displays no further findings as a result of his motor vehicle accident. I am slowly weaning him off Tylenol #3. As far as I know, he has been keeping active and exercising. Although it took a long time, [the Appellant] has recovered quite well and there are no further restrictions on his activities of daily life or employment.

Relying upon the [Rehab Clinic] Discharge Report and the medical report of [Appellant's Doctor], counsel for MPIC submits that the objective evidence on the Appellant's file establishes

that the Appellant demonstrated the ability to return to his pre-accident employment as of August 31, 2011. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision of August 9, 2012 should be confirmed.

**Decision:**

Upon 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 an entitlement to IRI benefits beyond August 31, 2011.

**Reasons for Decision:**

Upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was unable to hold his pre-accident employment as a labourer as of August 31, 2011. Rather, having reviewed all of the information on the Appellant's file, the Commission finds that currently there is no medical evidence establishing that the Appellant could not return to work at a labourer position. The report from [Appellant's Doctor] dated March 30, 2012 states that the Appellant displayed no further findings as a result of the motor vehicle accident. Further [Appellant's Doctor] states that the Appellant had recovered quite well and there were no further restrictions on his activities of daily life or employment. Based upon the medical information received from [Rehab Clinic] and [Appellant's Doctor], the objective evidence on the Appellant's file establishes that the Appellant was functionally able to do his pre-accident employment duties as of July 13, 2011. The Commission finds that the Appellant has provided no evidence, beyond his own testimony, to establish an inability to return to work as of that date. As a result, based upon a review of all

of the evidence before us, the Commission finds that the Appellant has failed to establish that he was unable to return to work as of August 31, 2011.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated August 9, 2012 is hereby confirmed.

Dated at Winnipeg this 22<sup>nd</sup> day of November, 2013.

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**YVONNE TAVARES**

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**NEIL COHEN**

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**JANET FROHLICH**