AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-98-152

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairman)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;** **Appellant represented herself .**
HEARING DATE:	**March 29th, 1999**
ISSUE:	**Had the Appellant reached pre-accident status by the time her benefits were terminated by MPIC ?**
RELEVANT SECTIONS:	**Section 160 of the Manitoba Public Insurance Corporation Act ('the 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 FACTS:

The Appellant's car was rear-ended on August 21st, 1996; she sustained injuries to lower neck, right shoulder, back and knees. She consulted her family doctor, [text deleted], who advised her to stay off work and recommended a program of physiotherapy. [the Appellant] was assessed at the [text deleted] Physiotherapy Clinic and they developed a rehabilitation program that they believed would return her to her pre-accident status in four to six weeks.

At the time of the accident [the Appellant] was working as an accountant for [text deleted]. Her job started at 7:30 am: she would pick up money bags and attended at several safes located throughout the building to collect the cash, which consisted mostly of coins, from the preceding day's activities. The safes were located at or near floor level and [the Appellant] had to bend down to extract the money and place it in a money bag. This process was repeated until she had picked up all of the funds. She then carried the cash bags, which were now heavy, to the office where she would sit and count the cash, which would then be picked up by a security service and taken to the bank. This part of her job usually lasted non-stop till 11:00 a.m., then she would enter the financial information into a computer which took another two hours. [the Appellant] then did payroll until 3:00 pm when she finished her work and went home. These latter two jobs required her to sit in front of a computer to enter the data.

The Appellant felt she should try to return to her job even though she did not feel she had fully recovered; she worked from September 4th to the 20th. She found the work difficult and could not sit for more than 15 minutes at a time and then would have to lie on the floor for a few minutes to relieve her pain. She had difficulty in bending down to get access to the safes and in one instance she lost her balance and fell, hurting her arm. [The Appellant] finally realized that until she fully recovered she could not do her job and advised her employer that she would have to take time off work. [Appellant's doctor #1] had given her a note excusing her from work as of September 19th, 1996. During this period [the Appellant] was attending physiotherapy and doing her prescribed exercise program at home.

On September 17th, 1996 the Appellant told her Adjuster at MPIC that she had returned to work on September 4th, 1996 despite her Doctor's advice that she was not ready to return, and that she needed additional time to recover properly from her injuries. [Appellant's doctor #1] confirmed that advice by way of a report to MPIC, dated September 25th, 1996, indicating that he did not believe the Appellant was ready to return to work.

On October 8th, 1996 the Adjuster contacted [text deleted], [the Appellant's] treating physiotherapist, who said that he had noticed an improvement in her lower back but that she still had some problems in her pelvic area. [Appellant's physiotherapist] indicated that he felt she should be able to return to work by the end of October 1996. On October 18th the Adjuster again contacted [Appellant's physiotherapist] and was informed that [the Appellant]'s condition had improved and that she was near her pre-accident status.

On October 23rd, 1996 the Adjuster 'phoned the Appellant, who advised him that she thought she was improving but that her hip was still sore. The adjuster told her of his October 18th discussion with [Appellant's physiotherapist]. There was a discussion of a suggested return to work date of November 4th, 1996. The appellant informed the adjuster that she felt she could only return to work on a part time basis rather than full time. She also advised that her employer would only take her back on a full time basis. It would appear from the evidence that, based on his conversation with [Appellant's physiotherapist], the Adjuster felt [the Appellant] could return to work on a full time basis. [The Appellant] said she would contact her employer to arrange a return to work for November 4th, 1996 but indicated she would be doing different duties as her previous job was not available to her.

In a letter dated October 29th, 1996, to [the Appellant], her Adjuster stated that she should be able to return to full work duties on November 4th, 1996 and that her Income Replacement Indemnity (IRI) would terminate as of November 3rd, 1996. The Appellant did contact her employer about returning to work on November 4th, 1996 but she was advised there was no work and was laid off.
On November 12th, 1996 [the Appellant] decided to see [Appellant's doctor #2] in [text deleted] as his office was closer to her home than [Appellant's doctor #1's] and, after his examination, he advised the Appellant and then MPIC, on or about November 18, 1996, that she was unable to work and had less than full function due to her low back problem.

In light of this information the Adjuster attempted to find out what the Appellant's condition was in respect of her ability to do her pre- accident work. He consulted [Appellant's physiotherapist] and [Appellant's doctor #2]. The latter provided him with a letter, dated January 30th, 1997, and addressed "To Whom It May Concern" recommending sick leave from August 21st 1996 (the date of the accident) to February 14th, 1997. [Appellant's physiotherapist], of [text deleted] Physiotherapy, provided a written report dated February 3, 1997 in which he states "by early October, 1996, she had few complaints regarding her cervical and thoracic pain. She reported that lower back/ right buttock pain was her primary complaint. ... it was agreed that she could try returning to work in mid-November, 1996. <u>At the time of this decision, her functional limitations were, sitting for extended periods, lifting and any excessive pushing or pulling."</u> We must note that these limitations seem to be at odds with the recommendation that she return to a workplace that required those very kinds of sitting for extended periods and lifting.

[Appellant's doctor #2] referred [the Appellant] for an assessment by [text deleted], an orthopoedic specialist, who examined her in February of 1997. He diagnosed a right sacroiliac joint sprain or strain, sustained in her motor vehicle accident, expressed the view that she was, in consequence, precluded from doing her work "…..This would include sedentary work such as just sitting and bookkeeping", and recommended a reconditioning, work hardening programme at the [hospital]. [Appellant's orthopedic specialist] also noted that the Appellant had taken responsibility for her own life by, amongst other things, looking for work that she could do closer to her home. However, MPIC, upon the advice of its own medical consultant, declined to assist her further. That decision was supported by MPIC's Internal Review Officer, giving rise to the present appeal.

The Appellant had stopped taking physiotherapy in early 1997 as she felt it was not helping. She was convinced that her condition had not achieved any permanent, material improvement and, in October of 1997, she decided to try the services of a chiropractor. She had used a chiropractor as a result of an injury prior to the auto accident and she felt he had helped in her recovery. The treatment period lasted about eighteen months with the frequency of treatments gradually reducing to one or two per month by the fall of 1998. At the hearing of her appeal, [the Appellant] testified that, although she did not believe she had yet returned to her pre- accident status, she felt she could now do her previous job and credited her chiropractic treatments for helping with this improvement .

THE ISSUE:

The question we have to answer is whether or not [the Appellant] was capable of performing her pre-

accident job on November 3rd, 1996 when MPIC terminated her IRI benefits.

The evidence of [the Appellant] both at the hearing and in her conversations with her Adjuster was that she could not yet do her old job by that date. She had attempted to return to work on September 4th,1996, and had stuck with it until September 20th, only to discover that she was not capable of doing it. Her employer, unfortunately, did not seem disposed to help her return to work on a gradual basis and thd full load was more than she could handle. There may have been some improvement in her general condition in late October 1996 but she had not returned to her pre-accident status and could not do her job. This was confirmed by [Appellant's doctor #2] and by [Appellant's physiotherapist] in their reports referred to above. Clearly the functional limitations contained in [Appellant's physiotherapist's] report made it impossible for the Appellant to do her old accounting job on a full-time basis.

As she was not capable of returning to her old job on November 3rd, 1996 then the question we must answer is "when was she capable of doing her old job?" The only evidence we have on this point is that of the Appellant herself. [The Appellant], whom we found to be a credible witness, gave evidence at the hearing that she felt that she had improved to the point that would have allowed her to return to her old accounting job by June 30th, 1998 if it had still been available. Therefore we find that [the Appellant's] IRI benefits were prematurely terminated on November 3rd, 1996, and she should receive IRI from that date up to and including June 30th, 1998. [The Appellant] attempted to mitigate her loss of income by working part-time at a lunch program in a local school during the period in question, and her earnings from that source will have to be taken into consideration when

calculating her IRI for that period.

We are in agreement with the Appellant that her chiropractic treatment program was helpful and necessary in returning her to her pre-accident status and we direct MPIC to compensate her for the expense of that program. In that context, the evidence of the Appellant was that she had reached a maintenance phase by November, 1998, and therefore she is entitled to be paid the sum of $ 1,420.00 to cover the invoice submitted by the [text deleted] Chiropractic Centre. There will be no further compensation for any other chiropractic treatments.

[The Appellant] will be entitled to interest on the above noted payments, mileage for attending her chiropractic treatments, prescribed medication (if any) and the cost of any medical reports she may have obtained for the hearings. MPIC will need to contact [the Appellant] in order to determine the amount of compensation to which she may be entitled pursuant to the Act and Regulations as a result of the foregoing decisions.

DISPOSITION:

The Acting Review Officer's decisions of August 26th and November 17th, 1998, are hereby rescinded and the foregoing substituted therefor.

Dated at Winnipeg this 28th day of April, 1999.

J. F. R.TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED