Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-151

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Charles T. Birt, Q.C.**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison;** **the Appellant, [text deleted] , appeared on her own behalf, accompanied by her sister, [text deleted]**
HEARING DATE:	**April 17th, 2000**
ISSUE(S):	**(i) Whether Appellant entitled to further therapies; and** **(ii) Whether Appellant's Income Replacement Indemnity ('IRI') terminated prematurely.**
RELEVANT SECTIONS:	**Sections 81(1)(a), 110(1)(a), 138 and 160(f) and (g) of the MPIC 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 Appellant, [text deleted], nearly [text deleted] years old at the time of her first accident, had been employed as a sewing machine operator in the garment industry for some 20 years. [The Appellant] was involved in two motor vehicle accidents, in each of which she was a passenger in the right front seat of the vehicle. Her first accident occurred on March 9th, 1997, when the truck in which she was riding overturned. She was subsequently assessed and, in some instances, treated by [text deleted], her chiropractor, [text deleted], an exercise therapist to whom

[Appellant's chiropractor] had referred her, [text deleted], her family physician, and [text deleted], an orthopedic specialist to whom [Appellant's doctor #1] had referred her. In that first accident she appears to have sustained musculo-ligamentous injuries to her neck and lower back, which became sore and stiff, with accompanying headaches. After some three or four months, most of those symptoms had eased markedly: headaches were only occasional, treatable with Tylenol; neck pain was no longer a problem; lower back pain was improving, at least by September 3rd, 1997, when she first saw [Appellant's orthopedic specialist]. By that same time, however, she had developed signs of trochanteric bursitis on the left side, which [Appellant's orthopedic specialist] treated by local steroid injection with Xylocaine.

A bone scan performed on September 8th, 1997, was interpreted as disclosing "unilateral sacroiliitis or post-traumatic changes in that area".

As a result of that first accident, [the Appellant] missed approximately three months of work. She initially returned to work on a part-time basis, worked for about two months and then quit, explaining that she was finding it difficult to work due to pain on the outer side of her left hip and in her lower back.

[The Appellant] had not yet returned to work when, on November 29th, 1997, she was involved in a second motor vehicle accident; the right front fender of her husband's truck struck a deer and overturned. In that second accident she re-injured her neck and low back, with accompanying headaches and, once again, remained off work for an extended period.

[The Appellant] then underwent an extensive rehabilitation program at the [rehab clinic #1], as well as continuing treatments from [Appellant's orthopedic specialist], [Appellant's chiropractor] and [Appellant's doctor #1].

On completion of her rehabilitation program, she was deemed functional and a gradual return-to-work program was scheduled to begin in the first week of February, 1998. [The Appellant] was to have started working three hours per day, increasing until she had finally reached a full working day. Her work station was ergonomically arranged by an occupational therapist at the expense of MPIC, and her coffee breaks were also adjusted to provide her with an earlier break, with the co-operation of her employer, [text deleted]. During the week of February 2nd to February 13th, 1998, [the Appellant] worked a total of 15 hours.

On February 15th, 1998, she awoke with back pain radiating into her left hip. She claimed that she could not sleep, could barely walk and had difficulty even dressing herself.

At this juncture, there appeared to be no objective medical findings to substantiate [the Appellant's] inability to return to work. A CT scan of her lumbar region disclosed totally normal results, other than signs of degenerative disease at the L-3/L-4 level.

MPIC then referred her to [Appellant's pain specialist], of the [text deleted], who saw her on April 1st, 1998. [Appellant's pain specialist] recommended that [the Appellant] be given antidepressant medication to help her with sleep and pain control, to be followed by a short course of trigger-point acupuncture for a period of four to six weeks. He felt that she would be able to recommence her return-to-work program on completion of that treatment. On May 27th, 1998, [Appellant's pain specialist] indicated that he had done all he could for [the Appellant] and

recommended that, now that she was sleeping better, she should embark on a gradual return to work, despite the fact that she was still complaining of pain. Blood tests for which [Appellant's pain specialist] had arranged did show some possible liver problems. A further report from [Appellant's pain specialist] on September 1st, 1998, again indicates that he could find no reason why [the Appellant] could not return to work. He felt that further physical therapies were unlikely to be beneficial.

On September 9th, 1998, MPIC retained the services of [text deleted], Rehabilitation Consultants, with instructions to conduct a vocational assessment in order to help [the Appellant] return to work. Over the course of the next several months, programs to facilitate [the Appellant's] gradual return to the workplace were developed and amended on several occasions due to [the Appellant's] frequent absences. Those absences were sometimes explained by the death of a family member, sometimes by an apparent onset of stomach flu that prevented the Appellant from going to work, sometimes by complaints of pain, and sometimes by reason of intra-family problems related to the separation of [the Appellant] from her husband. During that same period, MPIC was either continuing to pay Income Replacement Indemnity to [the Appellant] or, during the time that she was actually earning, was topping up her part-time salary to the full level of income replacement. After several warnings during the period leading up to mid-February, each time [the Appellant] missed work thereafter for reasons unrelated to her motor vehicle accident, MPIC reduced her IRI benefits proportionately.

By March 2nd, 1999, [the Appellant's] case manager at MPIC reached such a peak of frustration in her attempts to help the Appellant that she finally wrote to tell [the Appellant] that further IRI and other benefits would not be forthcoming. In that letter, the case manager attempted to summarize all of the attempts that had been made to return [the Appellant] to her pre-accident

condition, including payment for medication, transportation, chiropractic treatment, physiotherapy and other rehabilitation modalities, the course of treatment by [Appellant's pain specialist] for pain and stress management, the retention of [vocational rehab consulting company], all against a background of what the case manager perceived to be a consistent lack of co-operation on [the Appellant's] part and an absence of any objective, clinical evidence to support [the Appellant's] complaints. The case manager concluded by advising [the Appellant] that IRI benefits would be terminated on March 26th, 1999.

Despite having written that letter of March 2nd, 1999, MPIC's case manager continued her efforts to reintegrate [the Appellant] to the workplace. She met with representatives of [text deleted] on March 4th, 1999, to discuss any further changes that might be made to [the Appellant's] work station beyond the ergonomically designed chair that MPIC had already provided. Several attempts were made by the case manager to meet with [the Appellant] and representatives of the employer at the work site, all of which were frustrated by [the Appellant's] continued absences, of which neither the case manager nor the employer had been made aware ahead of time. As one, simple example, the case manager noted on March 30th that her last conversation with [the Appellant] had been on March 15th of 1999, when [the Appellant] indicated she would be off for "a couple of days" due to the recent death of her mother-in-law. She was to have returned to work on March 17th but had not done so by March 30th. As the case manager noted, "there has been a lot of effort by all persons involved in this claim to rehabilitate this woman. She, however, continues to put up barriers and as soon as it is time to increase her work hours she misses work."

On April 26th, 1999, [the Appellant] applied for an internal review of the case manager's decision. The Internal Review Officer confirmed that decision by letter of August 30th, 1999.

[The Appellant] appealed from that decision to this Commission by Notice of Appeal dated November 25th, 1999.

Meanwhile, [the Appellant] had been referred by her family physician, [text deleted], to [text deleted], a specialist in physical medicine and rehabilitation, who had first seen [the Appellant] on September 2nd, 1999. He addressed a lengthy and thorough report to MPIC on December 20th. After outlining the history that he had taken from [the Appellant] of the complaints with which she presented to him, and detailing his findings on physical examination of the Appellant, [Appellant's rehab specialist] summarized his clinical assessment as follows:

1. [The Appellant] has mechanical and regional myofascial neck pain syndrome. She has developed a tension myalgia and headaches due to spasm of the paracervical and shoulder girdle muscles.
2. She has developed some degree of reactive depression to the long-standing soft tissue pain syndrome and has become emotionally labile.
3. She has reduced functional capabilities and has not been able to return to gainful employment.

[Appellant's rehab specialist] did not feel that any further radiological investigations were called for. He felt that [the Appellant] would require local, trigger-point needling on a weekly basis for three or four weeks, followed by specific stretching exercises to resolve the myofascial trigger points and soft tissue pain syndrome. She was to be given home stretching exercises and, as well, relaxation exercises. He prescribed Amitriptyline.

[Appellant's rehab specialist] saw [the Appellant] on several subsequent occasions, specifically, on September 7th, 14th and 22nd, November 18th and December 13th, 1999. On this latter occasion, he was able to report that she had made good recovery from her regional myofascial pain of the neck, shoulders, back and hips. She still had low endurance and reduced functional capabilities, for which he recommended four to six weeks of conditioning exercise at [rehab

clinic #2]. He felt she would be able to return to gainful employment by the end of January or the first week of February 2000.

[Appellant's rehab specialist] examined [the Appellant] again on February 3rd, 2000, and his report to MPIC of that date says, in part:

> [The Appellant] tells me that she has not been contacted by [rehab clinic #2] [sic] because MPIC has not approved the recommended treatment.
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> [The Appellant] was doing well until a week ago when she tried to do sewing for four hours and the second morning she woke up with acute exacerbation of the neck and right hip pain. Since then, the pain has persisted.
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> [There follows a brief description of [Appellant's rehab specialist's] findings from a physical examination of the Appellant.]
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> Impression: Unfortunately [the Appellant] has developed reoccurrence of regional myofascial trigger points of the right trapezius and piriformis muscle after she worked for four hours.
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> …..With the appropriate treatments prescribed to her in the past three months, she made significant improvement in her pain syndrome and all the trigger points were resolved. Because of her low endurance for any prolonged static and dynamic activities, she developed reoccurrence of pain when she worked for more than four hours on a sewing machine. I am afraid that if she does not undergo a recommended conditioning exercise program, she may go into phase of regional myofascial pain syndrome, it will take several weeks before she will improve.

[Appellant's rehab specialist's] February 3rd report concludes with a request that [the Appellant] undergo a conditioning and work-hardening program to improve her endurance and strength so that she might return to her pre-injury occupation.

This Commission heard [the Appellant's] appeal from the Internal Review Officer's decision on April 19th, 2000. On that same date, we wrote to [Appellant's rehab specialist] to ask for certain clarification and for an updated assessment. On June 15th we received his reply which, in essence, tells us that as of June 1st of this year, [the Appellant] no longer has neck pain when at rest but, when she does any medium to moderate activities, she starts experiencing pain in the

neck and shoulder muscles. She has made good recovery but still has low endurance for any repetitive and medium to heavy level of activities and work. As a result, [Appellant's rehab specialist] is still strongly recommending a four- to six-week conditioning and work-hardening program to be provided by [rehab clinic #2] or some other rehabilitation institute in order to restore her spinal function and improve her endurance. Her treatment, he suggests, should encompass three to five sessions per week for four to six weeks.

There is no question that MPIC's case manager and other personnel have worked very hard in their attempts to rehabilitate [the Appellant]. We have no criticism of the way in which this claim has been handled from the beginning. We also tend to agree with the observation of counsel for MPIC, to the effect that [Appellant's rehab specialist's] first report is almost identical to that of [Appellant's pain specialist] when he first saw her. The difference between the two situations appears to be that, whereas [the Appellant's] life was somewhat tumultuous during the time that she was seeing [Appellant's pain specialist], causing a psychological barrier to full co-operation with the people who were trying to help her, she seems now to have reached a point where that co-operation may be possible. The optimism expressed by [Appellant's rehab specialist], combined with his cautionary comment, persuades us that it is worthwhile making this one final effort to complete [the Appellant's] rehabilitation and return her to the workplace.

This matter will therefore be remitted back to MPIC's case manager who, working in conjunction with [Appellant's rehab specialist], will arrange for a conditioning and work-hardening program for [the Appellant] for a period not exceeding six weeks at [rehab clinic #2], encompassing three to five sessions per week. The case manager will need to explain to [the Appellant] that any failure to comply fully with that program will, in the absence of reasonable,

credible and provable excuse, bring about the immediate discontinuance of any further participation by MPIC in her rehabilitation.

Since the program described by [Appellant's rehab specialist] will be fairly intensive, precluding any work for which [the Appellant] might otherwise be suited, her Income Replacement Indemnity will be reinstated, but only for the period during which she is actively participating in that reconditioning and work-hardening program. If, either during or at the conclusion of that program, [Appellant's rehab specialist] and the therapists at [rehab clinic #2] working with [the Appellant] are of the view that a graduated return to work ('GRTW') is appropriate (and provided that [text deleted] or some other suitable garment manufacturer is willing to accommodate her) then she will be entitled to have her earnings 'topped up' to IRI level while she is actively participating in that GRTW, for a period not exceeding six weeks. Any reference to [rehab clinic #2] in this and the preceding paragraph may be interpreted to include the [rehab clinic #1] or other, similar institute able to provide comparable services.

In all other respects the decision of MPIC's Internal Review Officer is confirmed.

Dated at Winnipeg this 18th day of August, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

CHARLES T. BIRT, Q.C.