Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-26

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mrs. Lila Goodspeed** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey;** **the Appellant, [text deleted], appeared on her own behalf**
HEARING DATE:	**February 25, 2000**
ISSUE:	**Whether Appellant's disability caused by motor vehicle accident.**
RELEVANT SECTIONS:	**Sections 70 (definition of 'bodily injury caused by an automobile') and 71(1) 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] was involved in a motor vehicle accident in [text deleted] on December 28th, 1996. At the time, she was employed as a facilitator by [text deleted] at its branch in [text deleted]. Her accident involved a collision wherein the front of the [text deleted] vehicle that she was driving collided with the left rear side panel of a [text deleted] which had attempted to make a left turn in front of [the Appellant's] vehicle which was going downhill on an icy road.

[The Appellant] returned to work until, on or about March 12th, 1997, she felt obliged to quit the workforce due to complaints of numbness in her right leg, below the knee, and shooting pains in her lower back. [The Appellant] testified that, by that point, she was unable to stand upright without excruciating pain. Due to her prolonged absence from work, she lost her job, made a personal assignment in bankruptcy in December 1997 or 1998 (she was unsure of the year), and is currently studying at an accounting school since her care-givers had suggested that she seek a different vocation.

[The Appellant] seeks Income Replacement Indemnity from March 12th, 1997, to the present, upon the basis that the pain in her lower back and right leg has its origins in her motor vehicle accident of December 1996 and that, because of it, she has been without gainful employment since March 12th, 1997.

The position of MPIC, simply put, is that while her pain is undoubtedly real, it was not caused by her motor vehicle accident but, rather, has its roots in a pre-existing condition.

It becomes necessary, therefore, to examine [the Appellant's] medical history, to the extent that it is available to us.

Evidence of [Appellant's chiropractor #1]:

[Appellant's chiropractor #1] is a chiropractor in [text deleted], Manitoba. His first report to MPIC bears date March 3rd, 1997. It describes

> headache, stiffness of neck, parasthesia in anterolateral right thigh, diminished functional mobility in cervical and sacroiliac joint areas, muscular hypertonicity and spasm in suboccipital, erector spine and right piriformis (external hip rotation) muscle groups, diminished range of motion of right thumb (proximal).

[Appellant's chiropractor #1's] report, which relates to his examination of [the Appellant] on January 9th, 1997, also notes "treatment given in 1996 for various spinal strains, neck, upper back and low back. Last treatment prior to MVA was December 19th, 1996." He diagnosed a cervical/sacroiliac strain, and right thumb strain.

In a later, narrative report dated September 17th, 1997, [Appellant's chiropractor #1] indicates that [the Appellant] was complaining, when he first saw her after her accident, of pain and stiffness in her right wrist at the base of her thumb, and of severe low back pain. While the wrist problem appears to have resolved in about six weeks, [the Appellant's] low back pain "continued to develop and radiated into both right hip and in the right leg, producing feelings of pins and needles in her leg and loss of normal sensation." It was [Appellant's chiropractor #1's] feeling that the rotation in [the Appellant's] hip area had caused compression of the sciatic nerve which should be responsive to treatment but can sometimes be very slow to heal once sufficiently damaged. While he reports that [the Appellant] initially appeared at his office on May 7th, 1996, and that he had treated her for upper back and neck dysfunction once to three times per month between that date and the time of her motor vehicle accident, for no apparent reason [Appellant's chiropractor #1] omits, from this letter of September 1996, his earlier report that he had also been treating [the Appellant] for low back pain during 1996.

In a further, narrative report of January 14th, 1999, [Appellant's chiropractor #1] elaborated upon his earlier comments related to [the Appellant's] pre-accident history. She had been complaining of low back discomfort when he had first seen her on May 1st, 1996, although her primary complaint had been of pain in her right upper back area. On examination in May 1996, he had noted "some diminishment in normal range of the sacroiliac joints of her pelvis…as well as hypertonicity in the…lower erector spinae muscles at the bottom of her low back." He had

treated her with electromassage therapy as well as spinal adjustments to the upper thoracic, lower right cervical and sacroiliac joint areas. He had seen her periodically over the next few months, usually requiring just one to two treatments per episode with "various recurrences of similar symptoms."

[Appellant's chiropractor #1] reports that [the Appellant] "had a more severe episode of lower back strain on August 8, 1996 that occurred after she had been cutting grass. Symptoms were similar as previous but a little more severe particularly in the lower back area at this time, and she was seen on a more regular basis until mid-October."

[Appellant's chiropractor #1] reports that

> The last episode of therapy she received here prior to her motor vehicle accident began December 3, 1996 when she complained of low back pain following an attempt to lift her car which had become stuck. At this point she first complained of having a feeling of "pins and needles" in her right posterior proximal thigh. This was found to be related to strain of the right posterior hip musculature which was thought to be causing some irritation to the sciatic nerve as it exited the pelvis. By her visit on December 12 the feeling of parasthesias had disappeared and her low back was only stiff when she had been sitting. On her next visit of December 19 she noted continued improvement with no recurrence of the "pins and needles." Throughout these visits there had been some discomfort in her neck that was treated as well, with occasional references to headaches that she had been getting. These were more similar to the level of her previous incidents and were not felt to be as severe a symptom as the low back complaints of this most recent episode.

Despite the foregoing notation that the "pins and needles" had not recurred between December 12th and December 19th, [Appellant's chiropractor #2's] report referred to below makes it quite clear that, on December 24th, 1996, those same symptoms (that is, low back pain and pins and needles down the right leg) had, indeed, recurred.

It should also be noted that, in her own evidence, [the Appellant] denies the suggestion that she had attempted to lift her vehicle. She testified that, in fact, she and a friend had been attempting to "rock" her vehicle when it became stuck. The fact is, however, that she did complain of increased low back pain as a result of that event, when attending upon [Appellant's chiropractor #1] shortly thereafter.

Evidence of [Appellant's chiropractor #2]:

[Appellant's chiropractor #2] is a chiropractor in [text deleted] whom [the Appellant] consulted on the same day as, and very shortly after, her accident of December 28th, 1996. He reports that [the Appellant] had presented with low back pain and pins and needles down the right leg. He also reports that [the Appellant] had presented to his office on December 24th, 1996, four days prior to her accident, also complaining of low back pain and pins and needles down the right leg. It was [Appellant's chiropractor #2's] view that her pre-existing problems had been exacerbated by her accident. [Appellant's chiropractor #2's] report of May 6th, 1997, contains a diagnosis of moderate lumbar acceleration-deceleration injury, together with right carpal tunnel syndrome. He noted that lumbar function had improved and [the Appellant's] response to treatment had been good. Her low back injury was exacerbated by repetitive bending and prolonged sitting and she had therefore been placed on total disability.

On September 4th, 1997, [Appellant's chiropractor #2] rendered a further, narrative report to MPIC. This report reiterates that, on December 24th, 1996, [the Appellant] had complained of pins and needles in her right leg which she had been experiencing for approximately three weeks on an intermittent basis. On December 28th, 1996, [the Appellant] had reported that the pins and needles sensation had been aggravated by her accident and was now accompanied by right leg pain down to the level of her calf. Her right leg pain had become progressively worse, said

[Appellant's chiropractor #2], and he had advised her to refrain from work until her low back injuries could be stabilized and reduced. As of September 2nd, 1997, she continued to experience intermittent right leg pain, exacerbated by weight bearing. He felt that, with continued care, she would return to a pre-accident state.

Evidence of [Appellant's doctor #1]:

[Appellant's doctor #1], a medical practitioner in [text deleted], had seen [the Appellant] in the outpatients' department in the [hospital] on March 5th, 1997. She had complained, mainly, of pain in her right gluteal region radiating into her thigh laterally and also into her hip. She had told [Appellant's doctor #1] that she had injured her right wrist, right hip, and lower back in her accident; she had received chiropractic treatments and had been told that she had a 'pinched nerve.' He had considered the possibility of right-sided sciatica. An x-ray of [the Appellant's] lumbar spine was reported as normal. He had prescribed Naproxen and advised her to see her family physician for a follow-up. Because her ankle reflex was absent on the right side, he had arranged for her to be seen by [text deleted], an orthopedic surgeon, to clarify his diagnosis and advise on treatment.

Evidence of [Appellant's doctor #2]:

[Appellant's doctor #2] is a physician practising in [text deleted]. He had seen [the Appellant] in September 1996 and "to the best of my knowledge she was healthy at that time." He had spoken to [the Appellant] on March 14th, 1997, when she complained of numbness in her right leg below the knee, and shooting pains in her back, unrelated to movement. He had seen her on March 17th, 1997, and she had evidence of a prolapsed disc and a pinched nerve in her lower back. He

was unable to say whether the Appellant's problems were a direct result of her accident, nor whether the prolapsed disc had been present at the time of the accident.

Evidence of [Appellant's orthopedic surgeon]:

[Appellant's orthopedic surgeon], to whom [the Appellant] had been referred by [Appellant's doctor #1], had not seen [the Appellant] since she had declined to attend for his examination. He had, however, reviewed a lumbar spine x-ray sent to him by [Appellant's doctor #1]. It had shown no developmental abnormalities at the lumbosacral level, disc spaces were well maintained but there was a suggestion of degenerative arthritic changes at the L5-S1 level in the facet joints.

Evidence of [Appellant's neurologist]:

It is not clear by whom [the Appellant] was referred to [text deleted], a neurologist with the [text deleted]. She had apparently seen [Appellant's doctor #3] of that clinic, but we have no report from [Appellant's doctor #3]. [Appellant's neurologist], in a brief, narrative report dated March 26th, 1998, indicates that he had initially seen [the Appellant] on November 26th, 1997, and that

> there was a sensory loss in the right leg. She was tender to palpation deep in the right buttock and right lumbar paraspinals. Straight-leg raising was positive at 45 degrees, with pain in the buttock. A CT scan revealed a right-sided disc herniation at L5-S1.

[Appellant's neurologist] felt that the Appellant "likely had a myofascial pain syndrome resulting from" her accident. He was not strongly convinced that she had an ongoing S1 root lesion but felt that a further assessment by [Appellant's rehab specialist] would help to rule that out.

Evidence of [Appellant's rehab specialist]:

[Text deleted] is a specialist in physical medicine and rehabilitation with [text deleted], to whom [the Appellant] had been referred by [Appellant's neurologist]. He first saw [the Appellant] on April 30th, 1998, when she presented with complaints of low back pain, pain radiation to her right leg, reduced functional capabilities, and an inability to return to her pre-accident job. [Appellant's rehab specialist's] report covering the weeks immediately after [the Appellant's] accident differs somewhat from the reports of her other care-givers. [The Appellant] apparently told him that, following the impact of her accident, she immediately noticed pain in the back and both wrists. She had not noticed any leg pain but had hip pain. She had been to see her chiropractor and received manipulations about twice weekly, but it was not until the first week of March 1997 that she had started experiencing numbness and pain in her right leg. In March 1997 she had moved to [text deleted] and started attending another chiropractor ([text deleted]) who had treated her once a week for some three months. In March 1997 her pain had become quite severe and she had attended at the emergency department of the [hospital] where she received a narcotic to control her pain. She had also been receiving physiotherapy three times weekly, including acupuncture and laser therapy, but without much improvement. The CT scan of her lumbar spine, ordered by [Appellant's neurologist] and performed on January 16th, 1998, showed a shallow left posteral lateral disc bulging at L4-L5, without evidence of disc herniation, spinal stenosis or nerve root compression. However, at L5-S1, there was a small right posterior lateral disc herniation with posterior displacement and compression of the right S1 nerve root.

On April 30th, 1998, [Appellant's rehab specialist] had therefore diagnosed an L5-S1 radiculopathy due to disc herniation and recommended epidural corticosteroid injection to control the inflammation of the nerve root, to be followed by dynamic lumbar stabilization exercise program to restore [the Appellant's] spinal function. He advised the Appellant to

discontinue chiropractic manipulation, recommended certain gentle exercises and prescribed Ibuprofen.

On June 29th, 1998, [Appellant's rehab specialist] notes that, following the corticosteroid injection referred to above and a prescription of Amitriptyline given to her by the anesthetists at the [text deleted] Clinic, [the Appellant] had noticed a 15 to 20% reduction in her pain and increased mobility of her spine. He felt that her radiculitis had improved, but not completely resolved. He recommended a second corticosteroid injection and prescribed Ibuprofen.

By August 17th, 1998, [Appellant's rehab specialist] felt that [the Appellant] had made "significant improvement" in her radiculitis, but still had low endurance and mild mechanical and discogenic lumbosacral pain. He encouraged her to continue her exercise program and to return to work in the first or second week of September 1998.

On November 12th, 1998, [the Appellant] reported to [Appellant's rehab specialist] that she had experienced increasing pain in the right low back, radiating into the buttocks and leg. However, he was of the opinion that her radiculopathy had resolved; his clinical assessment at that juncture was of a right L5-S1 facet joint arthritis/strain. He prescribed a lumbosacral belt and instructed [the Appellant] to do flexion exercises of the back and to avoid any extension strain on her spine. He did not feel that [the Appellant] was likely to make a complete recovery from that strain but was optimistic that she would make further improvement over the next two or three months and return to gainful employment or to her pre-accident job, with or without restrictions.

In a further narrative report rendered to this Commission on November 23rd, 1999, [Appellant's rehab specialist] also noted that

> …I have also discussed with her, her pre-accident history of back problems. She stated that in early December (most likely 2nd or 3rd of December 1996), at work, she was lifting a computer, twisted her back and noticed pins and needles in her right hip. She did not notice any pain radiation to her right leg or any significant numbness or weakness in the legs. She received 2 chiropractic manipulations and recovered completely within two weeks.

This is sharply at odds with the report of [Appellant's chiropractor #2].

The history of her back complaints given by [the Appellant] to [Appellant's rehab specialist] does not appear to have been complete. Alternatively, if he was given a complete history, he does not record it in his reports to MPIC or to this Commission. More specifically, [Appellant's rehab specialist] does not seem to have been made aware of the several episodes reflected in [Appellant's chiropractor #1's] report of January 14th, 1999, nor of the pre-accident condition reported by [Appellant's chiropractor #2].

Evidence of the Appellant:

[The Appellant] testified that, in December of 1996, she had "pinched my sciatic nerve while moving a computer." She said that she had been carrying a computer when someone called out to her; she had twisted suddenly to turn her torso around and "my right leg sort of gave way." She had not fallen and, by the time of her motor vehicle accident, she had no "pins and needles" but, merely, a slightly tender lower back.

The Appellant further testified that she had walked seriously bent over for two years, at which point she demonstrated walking with her torso at an angle of about 80° to the ground.

She had never missed work, never had any shooting pains going down into her leg, and had never been hunched over by reason of pain, prior to her accident.

At the time of the hearing of her appeal, [the Appellant] testified that she now had "numbness down my left leg and pins and needles in my left foot." She had recently had a serious relapse and had started to "hunch over" again, causing her to attend for a new CT scan on January 26th of this year on an emergency basis.

Since her work at [text deleted] entailed a great deal of standing and bending over students' desks to help them with their work, she had felt obliged to quit work since her pain would not allow her to continue. As noted earlier in these Reasons, she testified that she could not stand upright without excruciating pain which she normally felt across the lumbar region and down through the right leg. Meanwhile, [text deleted] had closed its branch in [text deleted] and, in any event, she had not felt capable of returning to work.

Evidence of [Appellant's friend #1] and [Appellant's friend #2]:

These two ladies are friends of [the Appellant]. Each of them testified that they had known [the Appellant] for quite some time before her accident and that they had not known her to complain of feeling unwell. After the accident, [the Appellant] had complained constantly of pain and had stopped much of her social life. [Appellant's friend #1], who had been a passenger in [the Appellant's] vehicle at the time of the accident, added that, after the collision, they had finished their journey to [Appellant's friend #1's] place of work. [The Appellant] came into the city on weekends in 1997 before moving back to [text deleted] permanently, and appeared constantly to be hunched over and complaining of pain.

Evidence of [MPIC's doctor]:

[Text deleted] is a specialist in physical medicine and rehabilitation; he is Medical Coordinator of the Claims Services Department of MPIC. [MPIC's doctor] has never seen the Appellant; his several reports are based purely upon his review of the medical and paramedical reports on MPIC's file related to [the Appellant]. [MPIC's doctor] provided several reports, not only to MPIC's claims adjusters but, as well, to the insurer's Internal Review Officer and to this Commission. In sum, [MPIC's doctor] was of the view that [the Appellant] had certainly sustained a right-sided radiculopathy at S1 and that, since her symptoms had persisted well beyond their natural history and as she was using narcotic medications, [the Appellant] was at risk for developing a chronic pain disorder.

In his first memorandum, prepared July 3rd, 1997, [MPIC's doctor] points out that it is unusual for disc herniation to occur in a motor vehicle accident. On December 22nd, 1997, [MPIC's doctor] comments that [the Appellant's] then current presentation might well be consistent with the natural history of her condition that had been developing in the weeks prior to her accident.

In a memorandum of December 15th, 1998, [MPIC's doctor] points out that, if the Appellant was wearing a shoulder restraint at the time of her accident, the magnitude of any trunk flexion imparted by the collision would be minimal. He comments that, in a frontal collision, axial distraction occurs rather than axial compression. "Depending on how oblique the frontal collision was, there may have been an element of rotation which would be minimized by the use of a shoulder restraint." He goes on to comment that

> while it is possible that a patient with a lumbosacral disc herniation and radiculopathy might have sustained a temporary flare-up of symptoms as a result of such a collision, the direction and magnitude of the collision force would be insufficient to alter the natural history of her pre-existing condition. The fact that this claimant has had a history of low back pain pre-dating the motor vehicle

> accident by several weeks to months and the fact that she continues to complain of ongoing symptoms in the absence of signs, weaken the relationship between the motor vehicle accident and any significant exacerbation or enhancement of her pre-existing condition.

A later memorandum of January 26th, 1999, prepared by [MPIC's doctor] after his receipt of [Appellant's chiropractor #1's] letter of January 14th, 1999, concludes that, since [Appellant's chiropractor #1's] records clearly established the onset of [the Appellant's] low back pain as having occurred before her motor vehicle accident, it was probable that she had sustained a disc herniation in early December of 1996; it was improbable that the accident of December 28th, 1996, directly caused the disc herniation reflected in the CT scan and also improbable that the motor vehicle accident had led to an adverse alteration in the natural history of that disc herniation. [MPIC's doctor] felt, from an evaluation of the entire file, that the findings associated with disc herniation and S1 radiculopathy had improved objectively and that [the Appellant] might well be developing signs and symptoms of a chronic pain disorder, contributing significantly to her pain complaint.

More recently, in a memorandum of January 24th, 2000, [MPIC's doctor] makes the following comments:

> It is now slightly greater than three years since the motor vehicle collision. If one attributes the diagnosis of disc herniation with radiculopathy to this collision, it must be acknowledged that the natural history of this condition would result in significant functional and symptomatic improvement within three to six months. Persistence of symptoms at three months, in the absence of neurologic findings, would be an indicator of a mechanical pain generator or the presentation of a chronic pain disorder. Notwithstanding [Appellant's rehab specialist's] diagnosis of "*right L5-S1 facet joint arthritis/strain*", there is not indication of a mechanical pain generator determined by valid methodological criteria. Therefore, it is probable that a chronic pain disorder is persisting and is affecting the claimant's current presentation.
>
> ….The distribution of symptoms presenting in early December 1996 (prior to the date of loss) is consistent with the disc herniation noted later on CT on January 14, 1998.

> Therefore, in consideration of the medical evidence presented, and with a reasonable degree of medical certainty, it is improbable that the final outcome of the claimant's medical condition was adversely affected by the motor vehicle collision. While it is possible that the collision may have temporarily aggravated her condition, it is improbable that it either produced a disc herniation or resulted in a neurologic decline.

Finally, [MPIC's doctor] provided a memorandum to this Commission under date of March 17th, 2000. We had asked him, *inter alia*, whether it could reasonably be said that [the Appellant's] chronic pain disorder (if that is, in fact, the major part of her current problems) had its origins in her motor vehicle accident of December 28th, 1996, particularly in light of the fact that there appeared to be no evidence of the presence of that syndrome prior to her accident. [MPIC's doctor] responds that, since [the Appellant's] low back pain condition appears to have begun prior to her motor vehicle collision, one must consider that the chronic pain disorder, which subsequently emerged, likely has a similar origin. The nature of a chronic pain disorder is indicative of a condition where the patient's symptoms take on a life of their own and become the condition itself. This would be consistent with the persistence of [the Appellant's] pain beyond the natural history of a disc herniation, in the absence of objective findings of neurologic impairment or dural irritation.

Discussion:

There is one other factor that should, perhaps, be mentioned. We refer to a motor vehicle accident in which [the Appellant] had been involved in August of 1997. Apparently her vehicle was written off in that accident. Since there is only one mention of that second collision in her file, we are unable to determine what effect, if any, it had upon [the Appellant's] physical condition.

The original accident of December 1996, the basis of this appeal, was one in which [the Appellant] was aware of the impending collision, had her foot firmly on the brake as her car slid into the other vehicle, and was wearing a three-point seatbelt. As [MPIC's doctor] points out, while it is possible for injury to the lower back to occur in such a situation, it is unusual and improbable. Spinal injury under those circumstances would normally result to the cervical spine and, occasionally, to the upper thoracic spine, but seldom to the lumbosacral area. While we recognize that, from [the Appellant's] own evidence and that of her friends, she had enjoyed an active social life without complaints of pain prior to her accident, the fact is that she had received chiropractic treatments over a course of some seven months prior to her accident, many of which related directly to the lower back and, in the week preceding her accident, reflected both signs and symptoms indicative of the very discopathy that was definitively diagnosed by the CT scan performed on January 14th, 1998.

It seems clear, as well, that those of [the Appellant's] care-givers who attribute her ongoing problems to the motor vehicle accident were not made aware of her pre-accident history. From a careful review of all the evidence, we are of the view that the incidents involving the lifting of the computer and the attempt to move the stuck vehicle are more likely to have brought about the disc herniation than the accident of December 28th, 1996.

Disposition:

We are not convinced, upon a reasonable balance of probabilities, that the condition which caused [the Appellant's] absence from the workforce from March 12th, 1997, to date is attributable to her motor vehicle accident of December 28th, 1996. It therefore follows that her appeal must be dismissed.

Dated at Winnipeg this 15th day of May, 2000.

J. F. REEH TAYLOR, Q.C.

LILA GOODSPEED

F. LES COX