

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-00-113**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Mr. F. Les Cox  
Mr. Wilson MacLennan

**APPEARANCES:** The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

**HEARING DATE:** November 28, 2001

**ISSUE(S):** (i) Reinstatement of Income Replacement Indemnity ('IRI') benefits.  
(ii) Reimbursement for chiropractic treatments and travel allowance with respect to attending chiropractic treatment appointments.

**RELEVANT SECTIONS:** Sections 110(1)(a), 136(1)(a), 70(1), and 81(1)(a) of The Manitoba Public Insurance Corporation Act ('the Act') and Section 5 of Manitoba Regulation P215 RM 40/94.

**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], was involved in a motor vehicle accident on October 3, 1998. The Appellant was the driver of a [text deleted] and came into collision with another motor vehicle. Upon impact, she jolted forward, hitting her left knee against the dashboard. She initially had pain to her neck, upper back, chest, back of her left arm, left knee, which was lacerated, and

abdominal pain from the seatbelt engaging. She was transported by ambulance to the [hospital] at which time she was examined, x-rayed, and had her left knee sutured.

The Appellant was initially treated by her family physicians, [Appellant's doctor #1] and [Appellant's doctor #2], in respect of her neck, upper back pain and left knee and received several physiotherapy treatments to her neck, upper back and, to a lesser degree, her left knee. After terminating her physiotherapy treatments, in November 1999, the Appellant consulted with [text deleted], who is a chiropractor, and commenced receiving chiropractic treatments from [Appellant's chiropractor #1]. MPIC, who had been providing Income Replacement Indemnity (IRI) benefits and had reimbursed her for chiropractic treatments and travel expenses incurred to attend these treatment, terminated these benefits effective March 21, 2000. The Appellant made Application for Review in respect of these benefits which were rejected by the Internal Review Officer and, in respect of these rejections, appealed to the Commission.

### **IRI Benefits**

The Legislation in respect of IRI benefits is set out in the Act as follows:

Section 81(1)(a) of the Act states

**Entitlement to I.R.I.**

**81(1)** A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment....

Section 110(1)(a) of the Act states as follows:

**Events that end entitlement to I.R.I.**

**110(1)** A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

- (a) the victim is able to hold the employment that he or she held at the time of the accident....

Victim is defined in Section 70(1) of the Act as follows: “**“victim”** means a person who suffers bodily injury in an accident.”

The Appellant had made two separate claims for IRI payments from MPIC. The first claim related to employment with the I[text deleted]. Prior to the accident, the Appellant had been employed by the [text deleted] in a clerical position on an hourly/casual basis, and her employment was expected to continue until April 30, 2000. As a result of the motor vehicle accident, the Appellant was unable to continue her employment with the [text deleted] and was provided with IRI payments by MPIC until March 21, 2000, when the IRI payments were terminated by MPIC based on the medical opinion of [text deleted], a chiropractor, who concluded that the Appellant was no longer disabled and was able to continue her employment with the [text deleted]. As a result, the Appellant made a claim from MPIC for the payment of IRI benefits for the period March 21, 2000, until April 30, 2000.

Subsequently, the Appellant commenced employment as a customer service representative at an [text deleted]. The Appellant claimed that she was unable to continue employment with the [text deleted] effective June 13, 2000, due to the injuries she sustained in the motor vehicle accident and, as a result, claimed IRI benefits from June 13, 2000, until she is able to return to work.

#### **IRI Benefits at the [text deleted]**

The case manager for MPIC, in a letter to the Appellant dated March 21, 2000, terminated IRI payments based on a report from [independent chiropractor] to MPIC dated March 13, 2000.

The case manager wrote to [independent chiropractor] on March 12, 2000, requesting him to conduct an independent chiropractic examination of the Appellant, and to provide the case manager with certain information as set out in his letter, which states:

This will confirm my request for an Independent Chiropractic Examination of [the Appellant], scheduled for March 8<sup>th</sup>, 2000, at 11:15 a.m.

This accident occurred in October of 1998. I have enclosed copies of all our medical information to date, including a recent Treatment Plan Report from [Appellant's chiropractor #1]. [Appellant's chiropractor #1] first became involved in November of 1999, a year after the accident.

When conducting your examination, I ask that you explore with [the Appellant] what method was being used to measure her range of motion. Also, I ask that you explore each of the symptoms that [Appellant's chiropractor #1] has reported.

You will note that in the early physiotherapy and medical reports, there is little or no reference to low back pain. I would also ask that you attempt to determine the sequence of events leading to the low back pain.

If you feel there are any non-motor vehicle accident related problems that are prolonging recovery, I ask that you comment. I would also appreciate your opinion as to an appropriate Treatment Plan....

In addition, in this letter the case manager provided a medical authorization form signed by the Appellant.

It should be noted that the case manager did not request an opinion from [independent chiropractor] as to whether or not the Appellant was capable of returning to work at the [text deleted]. [Independent chiropractor] provided a report to MPIC dated March 13, 2000, and responded to the questions raised by the case manager in his letter to [independent chiropractor] dated March 1, 2000. [Independent chiropractor] noted that the Appellant had suffered a neck injury consistent with Whiplash Associated Disorder Grade II type category. He further stated that the Appellant had developed a lower back pain a number of months after the motor vehicle accident and that there was no documentation in the earlier reports about an injury to her lower back.

In specific response to the questions raised by the case manager, [independent chiropractor] was of the opinion that the Appellant had reached maximum therapeutic benefit from chiropractic treatment, and a continuance of this treatment would not alter her residual symptom expressions. However, [independent chiropractor] did recommend that a trial of acupuncture for her left knee, along with her neck and upper back, could prove helpful. In respect of her continued symptoms, [independent chiropractor] recommended that this issue should be reviewed by a physical medicine/rehabilitation specialist, with any treatment dependent on the advice from such a practitioner.

[Independent chiropractor] further stated: “In conclusion, she is not disabled and I believe that she will recover fully with no permanent spinal impairment. Her overall prognosis is good however at the same time, it will be dependent on her participation.”

The case manager, in a letter to the Appellant dated March 21, 2000, relying on [independent chiropractor's] medical report, terminated the payment of further chiropractic treatments and, in addition, further IRI payments effective March 21, 2000.

As indicated earlier, [independent chiropractor] was not requested by the case manager to provide an opinion as to whether or not the Appellant was capable of returning to work at the [text deleted]. There is no evidence in the correspondence between the case manager and [independent chiropractor] that [independent chiropractor] was ever provided with a job description of the Appellant's duties at the [text deleted], nor that he had discussed the Appellant's job duties with her. The said correspondence does not indicate that [independent chiropractor] had the opportunity of discussing the Appellant's job duties with a representative

of the employer, nor whether the Appellant did complain to the employer about neck pain when carrying out her duties.

Given the case manager's instructions to [independent chiropractor], it is not surprising that [independent chiropractor] was not provided with a job description or any information in respect to the job, nor was he requested to conduct an investigation into the issue of whether or not the Appellant was capable of returning to work at the [text deleted]. [Independent chiropractor] was requested by MPIC to respond to the Treatment Plan Report of [Appellant's chiropractor #1] and to determine whether or not, in his view, [Appellant's chiropractor #1's] treatment of the Appellant should be continued. [Independent chiropractor] advised MPIC that the chiropractic treatments should not be continued.

The Commission, therefore, concludes that when [independent chiropractor] indicated that the Appellant was no longer disabled, [independent chiropractor] was advising MPIC that the Appellant no longer suffered from a disability which required chiropractic treatments. [Independent chiropractor] was not advising MPIC that the Appellant was capable of returning to work. [Independent chiropractor] did not, in his report, state that the Appellant was fully recovered but, on the contrary, stated the Appellant would fully recover with no permanent spinal impairment. He further stated "Her overall prognosis is good, however at the same time it will be dependent on her participation."

The Appellant testified at the appeal hearing in respect of her claims for IRI benefits. In respect of her claim for IRI benefits relating to clerical duties, the Appellant asserted that she was unable to continue to carry out her clerical duties at the time she saw [independent chiropractor] because

she had not recovered from the neck pain and the headaches that she had as a result of the motor vehicle accident in question.

There is ample medical evidence to support the Appellant's testimony that as a result of the motor vehicle accident, she suffered headaches and neck pain, and that this rendered her unable to return to work at the [text deleted] at the time she saw [independent chiropractor].

The medical evidence is as follows :

1. [Appellant's doctor #1]:

[Appellant's doctor #1] was the Appellant's family physician and initially treated her in respect of her neck, upper back pain, and left knee, as well as recommending that the Appellant receive physiotherapy treatments for her neck and upper back. [Appellant's doctor #1] saw the Appellant shortly after the accident on October 13, 1998, and on June 29 and July 15, 1999. On February 21, 2000, [Appellant's doctor #1] provided a narrative report to MPIC where he notes that as a result of the motor vehicle accident, the Appellant had cervicothoracic myofascial pain, a left knee scar, and occasional back pain.

2. [Text deleted] Physiotherapy:

The Appellant received physiotherapy treatment from [text deleted] Physiotherapy and [text deleted] Physiotherapy.

In the month of November 1999, the Appellant terminated physiotherapy treatment and commenced to receive chiropractic treatment from [Appellant's chiropractor #1]. After [independent chiropractor] examined the Appellant, MPIC referred her to [text deleted], a

physiatrist, for treatment. [text deleted], a chiropractor, was requested to provide a paper review of all of the medical reports, and he provided a narrative report to MPIC dated July 20, 2000.

In this report, [MPIC's chiropractor] noted that [text deleted] Physiotherapy had treated the Appellant on three separate occasions after the accident and refers to the report of [Appellant's physiotherapist #1] of [text deleted] Physiotherapy as follows:

In this report, the physiotherapist notes that the claimant was assessed on three separate occasions due to exacerbations of symptoms related to the motor vehicle accident.

Her initial complaints to the physiotherapist were right shoulder and sternal discomfort with complaints of left shoulder and upper thoracic pain as well. There was occasional paresthesia to the left upper extremity and the elbow to the fourth and fifth digit. She noted occasional dizziness related to medications but no cervical discomfort.

On examination November, 1998, cervical ranges of motion were limited in right rotation and side flexion bilaterally. All other ranges were full. There was slight localized tenderness to the lower cervical spine with compression, foraminal compression was negative for upper extremity symptoms. Upper limb tension tests revealed positive reproduction of upper extremity symptoms with testing.

Thoracic range of motion was slightly limited in flexion, rotation and side flexion. There was some fixation of the costovertebral joints. Left shoulder range was full with discomfort and decreased strength in flexion and abduction. Left glenohumeral and scapular passive accessory mobility testing was normal.

Postural examination revealed some abnormalities. The impression at that time was of left cervicothoracic myofascial pain with adverse neural tension.

The claimant was assessed again on January 8, 1999 with complaints of cervicothoracic pain. Cervical ranges of motion was restricted with flexion and rotation with mild restriction in extension and side flexion. Traction revealed cervical discomfort in all positions as well as cervical discomfort with compression. There was tenderness at C6 and 7 and multiple areas of myofascial tightness.

Again, the impression was of cervicothoracic myofascial pain.

The claimant presented again on July 17, 1999 with complaints of cervicothoracic pain of insidious onset. Examination findings were similar as to before with the impression of cervicothoracic myofascial pain with facet joint irritation secondary to poor posture.

*(underlining added)*



3. [text deleted] Physiotherapy:

[MPIC's chiropractor] notes that the Appellant was also treated by [text deleted], a physiotherapist at [text deleted] Physiotherapy. [MPIC's chiropractor's] review of [Appellant's physiotherapist #2's] report is as follows:

This report begins by detailing that the claimant's initial presentation to the clinic. She complained of lower neck pain, scapular pain and thoracic spine pain to approximately T8. There is no indication on the pain drawing of lumbar spine pain, lower or upper extremity pain. However, the claimant did complain of soreness to the left knee and upper extremities during the history. She did not complain of any low back pain.

The report goes on to detail treatment to the neck and shoulder including scapular stabilization.

On August 25, 1999, the claimant complained of left knee pain. She was prescribed appropriate stretching exercises. The balance of this report details specifics of individual examinations which would appear to mostly revolve around neck pain. The claimant was discharged January 18, 2000 due to lack of attendance.

*(underlining added)*

4. [independent chiropractor]:

[MPIC's chiropractor] further notes that [independent chiropractor] was requested by MPIC to conduct an independent third-party examination of the Appellant on March 13, 2000. [independent chiropractor's] impression after the examination is that the Appellant sustained a soft tissue injury to her cervicothoracic spine, along with laceration to her left knee.

[Independent chiropractor] reports that the Appellant informed him that in respect to her neck, she was not any better. She was still experiencing sharp and achy pains across the back of her neck with the pain being mild-moderate-severe. The symptoms are very constant, with her average pain measuring 5.4/10 on the Visual Analog Scale for pain with a 9.9/10 rating at its extreme. She had extreme pain a few times per week, especially when turning the wrong way or with quick movements. Her present level of pain measured 4.6/10. He reported that her neck

was aggravated by turning quickly, as well as by lying down and sitting. She finds relief by using ice, Vioxx, and indicates that the chiropractic adjustments and exercises help only for a few hours maximum.

In respect to her headaches, she indicated that she is not improved significantly. She described having a sharp pain at the back of her skull extending towards the front. She further indicated that these headaches occurred three times per week.

[Independent chiropractor] concluded that the findings appear consistent with Whiplash Associated Disorder Grade II type category.

5. [Appellant's physiatrist]:

Since [independent chiropractor] advised MPIC that, in respect of any future care, any further treatment required a well-structured and time-framed rehabilitation program, MPIC referred the Appellant to [Appellant's physiatrist], to provide such a rehabilitation program. On March 26, 2000, the case manager wrote to [Appellant's physiatrist] and advised [Appellant's physiatrist] that MPIC had discontinued payment of chiropractic expenses based on an independent report from [independent chiropractor] who was of the opinion that the Appellant might benefit from acupuncture. The case manager did not specifically request [Appellant's physiatrist] to assess whether or not the Appellant is capable of carrying out her clerical duties at the [text deleted].

[Appellant's physiatrist] did provide a variety of treatments to the Appellant, including acupuncture, chiropractic, and physiotherapy treatment. In his report to MPIC dated April 12, 2000, [Appellant's physiatrist] states:

'Left Thoracic and Scapular Area Discomfort.' [The Appellant] indicates that this area is her worst area for pain. She indicates that there is an area of aching that ranges over her scapular area on the left side. In addition, there is a stabbing discomfort to her left sided

thoracic paraspinal muscles. She states that, with prolonged sitting, this pain will increase. In addition, lifting or pushing and pulling “heavy stuff” will also increase discomforts. To relieve the discomfort she will apply a cold pack to this area. At its worst, this pain is a nine out of ten on a visual analog scale. At its best, it will be a two out of ten, and an average pain would be a six out of ten.

*(underlining added)*

In addition, the Appellant complained to [Appellant’s physiatrist] about posterior cervical discomfort, left upper chest discomfort, and left-sided knee area discomfort. The Appellant continued to note, as in [independent chiropractor’s] report, that the pain is rather significant, up to 9/10 on the Visual Analog Scale. Pain is at least 6/10, and the average is 8/10.

[Appellant’s physiatrist] further stated:

The claimant states that she is in discomfort approximately five days a week, between four and eight hours per day. Overall, her worst pain is a nine out of ten on a visual analog scale. Her least pain is a six out of ten, and her average is an eight out of ten. She was unable to indicate when the best time of day is for her pain complaints. She indicates that essentially all times of the day are the worst for pain complaints. She indicates that her pain is moderate to severe in terms of overall severity. She states that it is ruining her quality of life and she is having difficulty dealing with it. The only things that will decrease pain are walking and lying down. Sitting, standing, bending forward or backward, or lifting will all increase pain. To relieve her pain complaints, she will employ the use of ice/cold packs, viol, or she will go skating or go for a walk.

*(underlining added)*

Unlike [independent chiropractor], [Appellant’s physiatrist] in his report clearly indicates that he did discuss with the Appellant the nature of her employment at the [text deleted]. In this respect, [Appellant’s physiatrist] does indicate that the Appellant had the sedentary work capacity as defined by the physical characteristics of the job. Although [Appellant’s physiatrist] states the Appellant had the capacity to carry out the job in question, he does not comment on the Appellant’s consistent complaints of neck pain between four to eight hours per day and approximately five days a week when determining whether or not she was capable of returning to work at the [text deleted].

[Appellant's physiatrist's] diagnosis in respect to the Appellant was of myofascial pain syndrome of the posterior cervical, mild; myofascial pain syndrome of the lumbar area, mild; and myofascial pain syndrome of the gluteal area, mild. In respect of his prognosis, [Appellant's physiatrist] states as follows:

[The Appellant's] prognosis for complete resolution of pain complaints is poor. The painful condition has now been present for in excess of a year and a half and has been resistant to treatment. [The Appellant] has **not** reached her Maximal Medical Improvement (MMI) from a physical point of view. It is medically probable that [the Appellant] will achieve further symptomatic reduction with other rehabilitation efforts.

[The Appellant's] prognosis for complete restoration of function is excellent. I am of the opinion that in her present condition, [the Appellant] is capable of resuming her pre-accident occupation.

The overall prognosis is fair.

It should be noted that [Appellant's physiatrist] was not specifically requested to examine the Appellant in respect of her ability to return to work, but was asked to provide a rehabilitation program for the Appellant, which he did. [Appellant's physiatrist] states that the Appellant did have the capacity to physically carry out the job in question. Although [Appellant's physiatrist] recognized that the Appellant had not made a complete recovery from her neck pain, he nonetheless concludes that the Appellant was capable of resuming her pre-accident occupation.

The Commission finds that there appears to be a conflict between [Appellant's physiatrist's] diagnosis of the Appellant's neck injury, the ongoing pain that resulted from that injury, and [Appellant's physiatrist's] opinion as to the ability of the Appellant to return to work at the [text deleted]. In light of [Appellant's physiatrist's] diagnosis of the neck injury, and the Appellant's complaints about the neck injury which [Appellant's physiatrist] has confirmed, there is no

analysis of these issues in any of [Appellant's physiatrist's] reports which justified his opinion that the Appellant was capable of returning to work on March 21, 2000.

The Appellant testified at the hearing and confirmed the complaints as set out in the medical reports. The Appellant testified in a straightforward and direct manner, and the Commission accepts her evidence as to her inability to return to work in respect of her clerical duties at the [text deleted] due primarily to neck pain and intermittent headaches. The Appellant's complaints of ongoing neck pain and intermittent headaches, which occurred immediately after the accident and which continued thereafter, are corroborated by the medical, chiropractic, and physiotherapy reports referred to above.

Although [Appellant's physiatrist] is correct in concluding that the Appellant had the physical capacity to carry out her clerical duties at the [text deleted], the Commission finds that, on the balance of probabilities, her constant neck pain and her headaches would have prevented her from returning to work at [text deleted] subsequent to [independent chiropractor's] examination of her on March 8, 2000.

[MPIC's chiropractor], who had been requested by MPIC to conduct a paper review of the medical, chiropractic, and physiotherapy opinions referred to above, confirmed in a report to MPIC, dated July 20, 2000, the ongoing complaints of neck pain suffered by the Appellant and that the neck pain was a result of the motor vehicle accident.

In this report, [MPIC's chiropractor] concludes as follows:

The most probable diagnosis of the claimant's ongoing complaints of neck pain is chronic regional myofascial cervicothoracic pain.

## 1) Cause

There is consistent reporting throughout the file since the beginning of this file, that the claimant complains of cervicothoracic pain and left shoulder girdle pain. These complaints are consistent with those which you may expect following a motor vehicle accident as described by the file.

## 2) Effect

It is previously mentioned that the diagnosis for this claimant's condition is of myofascial pain of the cervicothoracic area. Based on the initial information on file, it would appear that this claimant could be classified as having a whiplash associated disorder Grade 2 with the presence of cervicogenic-type headaches.

Several reports on file have noted decreased cervicothoracic range of motion and hypertonic and painful musculature of this area.

It would appear that this would be a reasonable effect from the purported cause as outlined in the file contents.

## 3) Biologic Plausibility

After reviewing the information on file, it would appear that this claimant had an impact and accident sufficient to cause the purported effect and I would suggest that there is a biologic plausibility between the cause, i.e. the motor vehicle accident and the current diagnosis of regional myofascial pain of the cervicothoracic area.

## 4) Conclusion

It would appear after reviewing the file that there is a probable relationship between this claimant's complaint of cervicothoracic pain and the motor vehicle accident in question.

On August 30, 2000, [MPIC's chiropractor] provided a further report to MPIC with respect to the Appellant and confirmed his earlier assessment.

Previously, I have dictated on this report and have done a medical causality assessment. The results of that assessment lead me to the opinion that on the balance of probability, the claimant's accident-related diagnoses were of regional myofascial pain to the cervicothoracic area as well as intermittent episodes of soft tissue pain of the left knee. It is further my opinion that the claimant's mechanical low back pain was on the balance of probabilities, not related to the motor vehicle accident in question.

[MPIC's chiropractor], in his medical report dated July 20, 2000, comments on the work status of the Appellant between March 21 and April 30, 2000.

As it would happen, there is relatively recent information pertinent to those particular dates from both [independent chiropractor] and [Appellant's physiatrist] dated March 13, 2000 from [independent chiropractor] and April 12, 2000 from [Appellant's physiatrist]. At the time of [independent chiropractor's] report, he did not feel that she was disabled nor did he feel that the claimant would have permanent impairment. [Appellant's physiatrist's] report of April 12, 2000 speaks specifically to this topic indicating that the claimant at least had at the date of his report, a sedentary work capacity as defined by the physical characteristics of work.

With the above information in mind, it is my opinion that the file contents are not supportive of this claimant being disabled from an occupation as a clerical staff person between March 21 and April 30, 2000.

[MPIC's chiropractor] relies on the medical assessments of [independent chiropractor] and [Appellant's physiatrist] in respect to employability in arriving at the conclusion that the Appellant was not disabled from her occupation as a clerical staff person between March 21 and April 30, 2000. The Commission, however, for the reasons outlined above, is unable to place a great deal of weight on the medical opinions of [independent chiropractor] and [Appellant's physiatrist] in respect to the ability of the Appellant to continue employment with the [text deleted]. As a result, the Commission is also unable to give a great deal of weight to [MPIC's chiropractor's] opinion as to the ability of the Appellant to return to work on March 21, 2000.

The Commission finds that the Appellant testified in a direct and straightforward manner and accepts her testimony as to her inability to continue working at the [text deleted] as of March 21, 2000. The medical, chiropractic, and physiotherapy reports filed at the appeal hearing corroborate her testimony that she suffered from myofascial pain to her neck, that she consistently complained about this pain from the time of the motor vehicle accident, and that the neck pain prevented her from returning to work for the [text deleted] on March 21, 2000.

The Commission finds that:

1. the Appellant's complaints in respect of the regional myofascial pain to the cervicothoracic area was caused by the motor vehicle accident; and that
2. the regional myofascial pain to the cervicothoracic area rendered the Appellant unable to continue her employment with the [text deleted].

### **IRI Benefits at the [text deleted]**

The Internal Review Officer rejected the Appellant's request for IRI payments in respect of her employment at the IGA bakery from June 13, 2000. The Internal Review Officer adopted the opinion of [MPIC's chiropractor] in his report dated July 20, 2000, wherein [MPIC's chiropractor] determined that the Appellant was capable of performing her duties at the [text deleted] effective June 13, 2000.

[MPIC's chiropractor] stated in his report:

In the June 9, 2000 narrative report, [Appellant's physiatrist] speaks specifically to the issue of her employability as of that time. He is of the opinion that the claimant has a strength rating which qualifies her to have a physical capacity to perform an occupation within a sedentary to light capacity without the risk of further harm to herself.

Although there is no specific description of her duties as a Customer Service Representative in the [text deleted], it is my opinion that my understanding of this position would qualify it as a light to medium position. As such, I would suggest that the file contents are supportive of this claimant having the physical capacity to perform this duty although she may have to do it on a modified basis limiting the weight of the items that she stocks.

It should be noted that [MPIC's chiropractor] did not personally discuss with the Appellant the nature of her duties at the [text deleted], nor did he discuss with her any problems that she had in respect of carrying out her duties at the [text deleted]. Instead, [MPIC's chiropractor] relied on



[Appellant's physiatrist's] narrative report, wherein [Appellant's physiatrist] addresses the physical capacity of the Appellant to carry out her clerical duties at the [text deleted]. [Appellant's physiatrist] was not requested by the case manager to address the capacity of the Appellant to carry out her job functions at the [text deleted] and, as a result, did not carry out any investigation to determine whether or not the Appellant was justified in terminating her employment at the on June 13, 2000. [Appellant's physiatrist] was not provided with a copy of a job description and did not have an opportunity to discuss the Appellant's job functions with a representative of the employer at the [text deleted].

Subsequent to [MPIC's chiropractor's] report, dated July 20, 2000, the MPIC Internal Review Officer obtained a copy of the job description of a customer service representative at the [text deleted] (the Appellant's job), provided that report to [MPIC's chiropractor], and requested [MPIC's chiropractor's] comments in respect of the job description.

In his report dated August 8, 2000, [MPIC's chiropractor] confirmed that the Appellant had accident-related complaints of regional myofascial pain of the cervicothoracic spine and intermittent episodes of knee pain. In [MPIC's chiropractor's] view, having regard to the job description, the position in question was a light to medium position, and the Appellant had the physical capacity to perform these duties without causing any further harm to her cervicothoracic spine or to her knee. In respect to the Appellant's complaints relating to pain and discomfort when bending over, bagging and traying, it was [MPIC's chiropractor's] opinion it would primarily affect her low back.

It should be noted that [MPIC's chiropractor] did not personally interview the Appellant with respect to her job duties but instead relied on a handwritten job description from the employer

who described the Appellant's duties as slicing and bagging of bread, bagels and buns, traying of pies, cookies, tarts, cinnamon buns, and keeping the shelves stocked. When [MPIC's chiropractor] testified at the appeal, he did acknowledge, in response to questions from the Commission, that a handwritten job description does not always accurately reflect the specific duties of the job.

The Appellant, when testifying before the appeal Commission, discussed her job duties at the [text deleted]. In respect of traying of pies, cookies, etc., the Appellant described in some detail the traying function. Since [MPIC's chiropractor] did not personally interview the Appellant or her employer, and relied on the job description provided by the employer, [MPIC's chiropractor] was not aware of the specific details of the traying function.

However, in her testimony before the Commission, the Appellant described in some detail the traying function. She testified that traying was a regular, recurring duty that she was required to perform during the course of employment. She testified that she was required to swing trays from the front of her body, over her head to the back of her body, and that this movement increased the level of pain to her neck and made it impossible for her to carry on her duties. She further testified that she did complain to her employer about difficulties in bending over the counter while bagging and traying, but she also testified that she complained to her employer about her neck pain while carrying out her duties. She testified that it was the increased pain to her neck from traying, not her low back pain, which caused her to terminate her employment at the [text deleted].

MPIC did not call a representative of the employer to testify as to the specific nature of the duties of the Appellant, the complaints that the Appellant had in respect of carrying out her duties, or

the specific arm movement of the Appellant when traying. As well, MPIC did not choose to call any rebuttal evidence from the employer in respect of the Appellant's testimony with respect to the specific manner in which she carried out her traying duties and the nature of her complaints while working at the bakery.

The Commission finds that the Appellant testified in a direct and straightforward manner and accepts her testimony on this issue. The medical, chiropractic, and physiotherapy reports filed at the appeal hearing corroborate that the neck pain the Appellant suffered as a result of the motor vehicle accident prevented the Appellant from continuing her employment with [text deleted] on June 13, 2000.

The Commission finds that:

1. the Appellant's complaints in respect of the regional myofascial pain to the cervicothoracic area were caused by the motor vehicle accident; and that
2. the regional myofascial pain to the cervicothoracic area rendered the Appellant unable to continue her employment with the [text deleted] on June 13, 2000.

### **Chiropractic Care**

On March 21, 2000, the case manager for MPIC advised the Appellant by letter that MPIC would no longer pay for further chiropractic treatments or for mileage to attend these treatments. The case manager's decision was based on an independent chiropractic examination conducted by [independent chiropractor]. The Appellant sought an Application for Review in respect of the termination of the reimbursement for chiropractic treatments, and the Internal Review Officer, in a report dated September 7, 2000, rejected the Application for Review in respect of this matter, from which decision the Appellant is now appealing.

Reimbursement for chiropractic treatment is governed by Section 136(1)(a) of the Act.

**Reimbursement of victim for various expenses**

**136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care....

Victim is defined in Section 70(1) as follows: “**“victim”** means a person who suffers bodily injury in an accident.”

Section 5 of Manitoba Regulation P215 RM 40/94 provides as follows:

**Medical or paramedical care**

**5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under The Health Services Insurance Act or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician....

Subsequent to the motor vehicle accident of October 3, 1998, the Appellant was treated by [Appellant’s doctor #1] and subsequently referred by [Appellant’s doctor #1] for physiotherapy.

The Appellant discontinued physiotherapy treatments on November 12, 1999, approximately 12 months after her motor vehicle accident, and consulted [Appellant’s chiropractor #1].

[Appellant’s chiropractor #1] determined that chiropractic treatments were required by the Appellant and commenced intensive chiropractic treatments to deal with a variety of problems that the Appellant had, including low back pain.

It should be noted that prior to seeing [Appellant's chiropractor #1], the primary major complaints of the Appellant were:

1. regional myofascial neck pain of the cervicothoracic area; and
2. left knee pain.

However, approximately one year after the accident, the Appellant reported low back pain to [Appellant's chiropractor #1]. [Appellant's doctor #1], the Appellant's personal physician, in his narrative report dated February 21, 2000, details the history of the Appellant's visits to him and his referral of the Appellant for physiotherapy for her neck pain. [Appellant's doctor #1] diagnosed that the Appellant's medical problems that resulted from the accident were a cervicothoracic myofascial pain and a left knee scar, with occasional low back pain.

The narrative report from the physiotherapist at [text deleted] Physiotherapy, dated February 15, 2000, noted that the initial complaints from the Appellant were external discomfort, with complaints of left shoulder and upper thoracic pain. As a result of an examination in November 1998, the physiotherapist concluded that the Appellant was suffering from left cervicothoracic myofascial pain with adverse neural tension. The Appellant was again assessed on January 8, 1999, with complaints of cervicothoracic pain. Again the impression was of cervicothoracic myofascial pain. The Appellant was seen again on July 17, 1999, with complaints of cervicothoracic myofascial pain similar to what the Appellant had complained about in earlier visits. It should be noted that the physiotherapist did not report that the Appellant complained of low back pain.

The narrative report from [text deleted] Physiotherapy, dated March 8, 2000, indicates that the Appellant was initially seen on August 9, 1999, again in September and October 1999, and on

two occasions in the month of November 1999, but not thereafter. In the narrative report, the physiotherapist notes that the Appellant complained of lower neck pain, scapular pain, and thoracic spine pain approximately T8. This narrative report does not indicate that the Appellant complained of lumbar spine pain, lower or upper pain extremity.

[Appellant's chiropractor #1], in his several reports, indicates that the Appellant suffered a head injury, loss of consciousness, and lower back pain as a result of the motor vehicle accident on October 3, 1998. However, [Appellant's chiropractor #1] did not examine the Appellant until 13 months after the motor vehicle accident. [Appellant's chiropractor #1's] medical opinion fundamentally disagrees with the reports of the ambulance attendants, of [Appellant's doctor #1], and of the physiotherapist who observed and/or treated the Appellant immediately after the accident and for some months thereafter.

As a result of these conflicting opinions, MPIC requested [independent chiropractor], a chiropractor, to examine the Appellant and to provide a report to MPIC with respect to this matter. [Independent chiropractor] examined the Appellant on March 13, 2000, and subsequently provided a report to MPIC. In this report, [independent chiropractor] reviewed the history of the accident and noted that the Appellant did not initially complain about low back pain. He further notes that the first occasion on which the Appellant reports low back pain is when she consults with [Appellant's chiropractor #1] at the end of November 1999. [Independent chiropractor] also reports that [Appellant's chiropractor #1] initially treated the Appellant four or five times per week and sometimes up to three or four times per day.

In respect of her present status, [independent chiropractor] reports that the Appellant felt she was only 20% better, although some days were better than others, specifically with respect to her

headaches, and that neither her headaches nor her upper and mid-back areas have improved significantly. [Independent chiropractor] further reports that the Appellant advised him that her low back, however, is much improved, and notes that she is 90% better. [Independent chiropractor] concludes by noting that the Appellant does not feel she is really getting any better, but she believes that she needs to continue receiving chiropractic treatments from [Appellant's chiropractor #1].

[Independent chiropractor] determined that the Appellant sustained a soft tissue injury to her cervicothoracic spine, along with a laceration to her left knee. With respect to her low back pain, he notes that this pain developed a number of months after the accident and does not relate directly to the motor vehicle accident.

[Independent chiropractor] made a number of recommendations, including the following:

1. that the Appellant should continue with her home exercise program;
2. that she should alter her sleep patterns;
3. that she would benefit from weight reduction;
4. that she had reached maximum therapeutic benefit and that a continuance of the chiropractic treatment would not alter her residual symptom expressions;
5. that any future care or treatment given only at pain relief would likely not have any lasting effects unless supported by a well-structured and time-framed rehabilitation program focusing on function as opposed to pain, with only minimal passive intervention; and
6. that a trial of acupuncture for her left knee, along with her neck and upper back, could prove helpful.

The Appellant was then referred by MPIC to [Appellant's physiatrist] at [rehab clinic] for rehabilitation treatment. [Appellant's physiatrist], in a report dated April 12, 2000, confirms [independent chiropractor's] opinion that the Appellant has reached maximum therapeutic benefit from chiropractic treatments. In a further report dated April 12, 2000, [Appellant's physiatrist] offers a diagnosis of Myofascial Pain Syndrome – posterior cervical – mild, Myofascial Pain Syndrome – lumbar area – mild, and Myofascial Pain Syndrome – gluteal area - mild.

On June 9, 2000, [Appellant's physiatrist] provided a further report to MPIC, setting out the treatment that was provided to the Appellant which included cardiovascular conditioning, postural exercises, pain management efforts, massage, chiropractic treatment, and acupuncture. Despite this significant intervention, the Appellant continued to report that her pain changed little, and during this period of time she continued to receive [Appellant's chiropractor #1's] chiropractic treatments.

[Appellant's physiatrist] was of the view that with regard to the multitude of passive and active rehabilitative therapy received since her October 1998 motor vehicle accident, the Appellant would not likely benefit from any further forms of passive rehabilitation. However, [Appellant's physiatrist] did recommend a form of a prescribed home exercise program.

In a supplementary report dated June 20, 2000, [Appellant's physiatrist] reiterates his previously rendered opinion that the Appellant would not benefit from any further chiropractic treatment as she has received maximum medical and chiropractic improvement.

After reviewing all of these reports, [MPIC's chiropractor], in his report dated July 20, 2000, concluded that the probable diagnosis of the Appellant's ongoing complaints of neck pain with



chronic regional myofascial cervicothoracic pain is that they were caused by the motor vehicle accident. However, in respect of the low back pain, [MPIC's chiropractor] disagrees with [Appellant's chiropractor #1] and concludes that the low back pain was not a result of the motor vehicle accident.

[MPIC's chiropractor], in his report dated July 20, 2000, stated:

**Low Back Pain**

1) Cause

It would appear that [Appellant's chiropractor #1's] purported cause of low back pain is the motor vehicle accident in question. However, several reports early on failed to mention that there was low back findings and in fact, [independent chiropractor] was quite specific in saying that although the claimant did mention her low back pain, that it became symptomatic some time after the accident. Although [independent chiropractor] was not clear on when it became symptomatic, it would appear that the earliest information with respect to the low back is in December 1999 from [Appellant's chiropractor #1].

[MPIC's chiropractor], in this report, states that the most likely clinical diagnosis of the Appellant's back condition is that of a mechanical low back pain with the presence of vertebral subluxation complex. [MPIC's chiropractor] determined that the low back symptoms did not appear until some months following the motor vehicle accident and that the Appellant's height-to-weight ratio would certainly be a risk factor for mechanical low back pain.

[MPIC's chiropractor], in his report, concluded:

It is my opinion that the file contents are not supportive of the claimant's mechanical low back pain being directly related to the motor vehicle accident in question. There is a poor temporal relationship between the collision and the onset of low back pain as the low back pain is not documented until several months following the collision. Several reports early on in the file specifically note the absence of low back complaints.

In respect of ongoing chiropractic treatments, [MPIC's chiropractor] agrees with [independent chiropractor] and [Appellant's physiatrist] that these treatments were not medically required.

In his report dated July 20, 2000, [MPIC's chiropractor] states:

**NECESSITY FOR ONGOING INTERVENTION**

There have been several opinions on file that this claimant has reached maximum therapeutic benefit with respect to her chiropractic care, both from [independent chiropractor] and [Appellant's physiatrist].

This claimant has had significant exposure to chiropractic intervention under [Appellant's chiropractor #1's] care as well as some exposure under [Appellant's chiropractor #2's] care. However, despite what would appear to be initially intensive care at four to five times per week and sometimes three to four times per day as outlined by [independent chiropractor], this claimant feels only 20% overall improvement.

With the above in mind, it is my opinion that the file contents are not supportive of ongoing chiropractic care as being a therapeutic necessity as it would relate to the motor vehicle accident in question.

This claimant has had significant exposure to date and there is little subjective or objective evidence that this care has been successful in speeding this claimant's recovery.

[Appellant's chiropractor #1] and [MPIC's chiropractor] both testified at the appeal hearing, and both confirmed their medical opinions as set out in their respective medical reports. [Appellant's chiropractor #1], in his testimony, was of the view that the Appellant's low back pain was a direct result of the motor vehicle accident and had not been treated until he saw the Appellant some 13 months after the accident had occurred. [Appellant's chiropractor #1] was further of the view that the chiropractic treatments he administered had been beneficial to the Appellant and that continued chiropractic treatments were medically required.

On the other hand, [MPIC's chiropractor] testified that, in his view, the low back pain was not caused by the motor vehicle accident but was a mechanical low back pain which, on the balance of probabilities, was not related to the motor vehicle accident in question.

Having regard to:

- (a) the medical reports of [Appellant's doctor #1];
- (b) the physiotherapy reports from [text deleted] Physiotherapy and [text deleted] Physiotherapy;
- (c) the medical reports of [independent chiropractor], [Appellant's physiatrist], [Appellant's chiropractor #1] and [MPIC's chiropractor]; and
- (d) the testimony of [Appellant's chiropractor #1] and [MPIC's chiropractor];

the Commission concludes, on the balance of probabilities, that:

1. the low back pain suffered by the Appellant was not caused by the motor vehicle accident which occurred on October 3, 1998; and that
2. the chiropractic treatments were not medically required after March 21, 2000.

The appeal officer was correct in terminating the reimbursement of the cost of chiropractic treatments received by the Appellant and any travel expenses she may have incurred in attending these treatments.

## **Decision**

The Commission determines that:

1. the Appellant's complaints in respect of the regional myofascial pain to the cervicothoracic area were caused by the motor vehicle accident;
2. pursuant to Section 81(1)(a) of the Act, the Appellant has established, on a balance of probabilities, that on March 21, 2000, she was unable to continue her employment at a clerical position with the [text deleted] until April 30, 2000, and with the [text deleted] from June 13, 2000, until she is able to return to work;

3. the Appellant's entitlement to Income Replacement Indemnity benefits should be reinstated effective March 21, 2000, until April 30, 2000, and from June 13, 2000, and interest to the date of payment at the prescribed rate should be added to the amount due and owing to her;
4. the Commission retains jurisdiction in this matter, and if the parties are unable to agree as to the amount of Income Replacement Indemnity benefits, then either party may refer this dispute back to this Commission for final determination;
5. the decision of MPIC's Internal Review Officer, dated September 7, 2000, in respect of Income Replacement Indemnity payments, is rescinded;
6. chiropractic treatments from March 21, 2000, were not "medically required" within the meaning of Section 5 of Manitoba Regulation 40/94 and, as a result, the Appellant's appeal in this respect is hereby dismissed; and that
7. the decision of the Internal Review Officer, dated September 7, 2000, in respect to the termination of payment for chiropractic treatments is therefore confirmed.

Dated at Winnipeg this 9th day of January, 2002.

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**MEL MYERS, Q.C.**

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**F. LES COX**

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**WILSON MacLENNAN**