Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-12

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [the Appellant], was represented by [Appellant's representative];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.**
HEARING DATE:	**September 17, 2002**
ISSUE(S):	**1. Whether Appellant is entitled to further medical treatment benefits.** **2. Whether Appellant's Income Replacement Indemnity ('IRI') benefits were properly terminated effective May 10, 2000.**
RELEVANT SECTIONS:	**Sections 110(1)(a) and 136(1)(a) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 5 of Manitoba Regulation 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 ('MVA') on December 14, 1999, and sustained soft tissue injuries to her neck and back. On December 15, 1999, she attended the office of [text deleted], a family physician, and complained about pain to her back and neck. In her report dated January 19, 2000, [text deleted] indicated that the Appellant would

be expected to return to work in approximately two weeks. The Appellant also attended at the office of [text deleted] Physiotherapy and was assessed by [text deleted], a physiotherapist, who also indicated that it was expected that the Appellant would return to work in two weeks.

At the time of the accident, the Appellant was employed on a casual basis as a home-care worker doing general housekeeping work. She typically worked 31 hours bi-weekly but often worked less, depending on the availability of work.

In a report to MPIC dated March 14, 2000, [Appellant's doctor #1] noted that the Appellant had a documented history of degenerative disc diseases in all areas of her spine prior to the MVA of December 14, 1999. She also indicated that the only reason she had suggested the Appellant remain off work was because the Appellant indicated she could not work, and not because of any particular ongoing sequelae which would necessitate the Appellant's continued absence from work.

On March 15, 2000, the Appellant attended the office of [Appellant's doctor #2] who advised her to return to work on a graduated basis and indicated in this report that he did so only because he thought it would increase the likelihood that the Appellant would comply with a return-to-work program. He also indicated in his report that there was no "medical contraindication" to work.

In a report to MPIC, dated April 19, 2000, [Appellant's doctor #2] advised MPIC, based on his examination of the Appellant on March 15, 2000, that:

> In my opinion, [the Appellant's] previous injuries do not render her incapable of resuming her employment. I feel our prospects for successfully returning [the

> Appellant] to her position of previous employment will be greatest if we can allow her to go through a graded return to work rather than immediate resumption of all her duties. However, I do not feel that there is a medical contraindication to full resumption of duties. Rather I feel that [the Appellant] may be more accepting of a graded return to work.

Based on the opinions received from [Appellant's doctor #2], the case manager set up a graduated return-to-work program with the Appellant's employer. The program was to start in April 2000. Unfortunately, apart from working one two-hour shift, the Appellant refused to participate in the program on the grounds that her pain made it impossible for her to work.

[Appellant's doctor #2] had referred the Appellant to [Appellant's doctor #3] and his associate, [Appellant's doctor #4], for an assessment. [Appellant's doctor #4] assessed the Appellant on May 2, 2000, and in his consultation report to [Appellant's doctor #2], dated May 15, 2000, [Appellant's doctor #4] does not address the Appellant's ability to work but simply suggests an active rehabilitation program of spinal stabilization. However, [Appellant's doctor #4] does refer to the degenerative condition of the Appellant's spine but does not otherwise attempt to attribute her complaints to the motor vehicle accident.

On July 7, 2000, the Appellant consulted with a third physician, [Appellant's doctor #5], who, in his report to MPIC indicated that, in his opinion, the Appellant required two months of physiotherapy and could only work part-time with no lifting and repetitive bending.

Having regard to the above-mentioned medical opinions, MPIC terminated the payment of physiotherapy treatments and Income Replacement Indemnity benefits.

The Appellant sought and made Application for Review to an Internal Review Officer of the termination of the IRI benefits she was receiving from MPIC and the reimbursement by MPIC of her costs in respect of physiotherapy treatments.

In a decision dated August 14, 2000, the Internal Review Officer, after reviewing all of the medical reports referred to herein, concluded that the case manager had properly applied Section 110(1)(a) of the MPIC Act and that the case manager's decision to terminate the Appellant's IRI on May 10, 2000, was correct and, therefore, dismissed the Appellant's Application for Review in this respect.

In a further Internal Review decision dated February 12, 2002, the Internal Review Officer, after reviewing all of the medical evidence referred to, as well as the medical reports of [Appellant's doctor #3] and [MPIC's doctor], as well as other relevant documentation on the file, confirmed that the case manager was correct in terminating payment for physiotherapy treatments pursuant to Section 136(1)(a) of the MPIC Act and Section 5 of Manitoba Regulation 40/94 and rejected the Application for Review.

The Appellant now appeals the decisions of the Internal Review Officer, dated August 14, 2000, and February 12, 2002, to the Automobile Injury Compensation Commission (the 'Commission'). Issues which require determination in this appeal are:

1. Entitlement to reimbursement of the costs of physiotherapy treatments; and
2. Entitlement to Income Replacement Indemnity benefits from May 10, 2000.

At the commencement of the appeal hearing in this matter, on September 17, 2002, [text deleted], who represented the Appellant in these proceedings, indicated that the Appellant was withdrawing her appeal in respect of her entitlement to reimbursement of the costs of physiotherapy treatments.

In respect of the issue of IRI benefits, the relevant section of the MPIC Act is Section 110(1)(a) which provides:

> **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.

At the appeal hearing, the Appellant testified that, as a result of the MVA, she sustained injuries to her neck and her back and, as a result of the neck and back pain, she was unable to continue her employment as a home-care worker doing general housekeeping work.

Upon a careful review of all the documentary evidence made available to the Commission, and upon hearing the testimony of the Appellant and the submissions made by [text deleted], the Appellant's representative, and by legal counsel for MPIC, the Commission finds that the Appellant has not established on the balance of probabilities that she was unable to hold the employment that she held at the time of the MVA.

The medical evidence from the Appellant's family physician, [Appellant's doctor #1], and the physiotherapist, [text deleted], showed that the Appellant was capable of returning to work within a few weeks of the MVA. [Appellant's doctor #2] also confirmed that the Appellant was

capable of returning to work, and there was no medical contraindication in respect of her ability to work.

The Commission is satisfied that, on the balance of probabilities, the symptoms that the Appellant is complaining about, and which render her unable to work, are not connected to any injuries she sustained in the MVA.

The Commission, therefore, finds that the Appellant has been unable to demonstrate, on a balance of probabilities, a causal connection between the symptoms she is complaining about, which prevented her from working, and the motor vehicle accident of December 14, 1999. The Commission, therefore, dismisses the Appellant's appeal and confirms the two decisions of the Internal Review Officer, bearing the dates August 14, 2000, and February 12, 2002.

Dated at Winnipeg this 27th day of September, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN