

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-44**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Ms. Deborah Stewart

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf, assisted by [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: August 23, 2002

ISSUE(S):

- 1. Entitlement to further chiropractic treatment benefits;**
- 2. Entitlement to Income Replacement Indemnity ('IRI') benefits.**

RELEVANT SECTIONS: Sections 81(1) and 136(1) 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 motor vehicle accident ('MVA') on April 25, 2001. As a result of the MVA, the Appellant sustained injuries to his neck, back, right arm and both knees. His family physician, [text deleted], in an Initial Health Care Report dated May 12, 2001, diagnosed the Appellant with cervical strain, lumbar strain, right bicep strain, and a right rib contusion. He noted that the Appellant could work modified duties, with no heavy lifting for two months, and referred the Appellant for physiotherapy treatments.

The Appellant was able to return to his position as a supervisor with [Text deleted] after the MVA, with no time lost due to his injuries. He testified at the hearing that as a supervisor, he was able to modify his duties to enable him to carry on with his job. He sought assistance with lifting bundles of leather and kept any lifting to a minimum.

On November 14, 2001, the Appellant hurt his back while lifting a heavy bundle of leather at work and experienced a flare-up in back pain. The Appellant was able to complete his shift that day, but was unable to get out of bed the following morning. He subsequently attended for chiropractic treatments to assist with his back injury and, on the advice of [Appellant's doctor #1], remained off work from November 15 to December 5, 2001. The Appellant subsequently claimed IRI benefits and reimbursement of the cost of chiropractic care from MPIC, on the basis that the flare-up of his back pain was related to his MVA of April 25, 2001.

In a letter dated December 20, 2001, MPIC's case manager wrote to the Appellant to advise him that:

In our meeting of December 10, 2001, you noted that you missed time from work in November 2001 as a result of bending and lifting while at work. You advised that your back had not been the same since the motor vehicle accident of April 25, 2001.

A review was completed by a member of Manitoba Public Insurance's Health Care Services Team with regards to the time you missed from work in November 2001. It had been noted that from April 25, 2001 to November 13, 2001 you were able to work. As of November 14, 2001, an incident at work resulted in you missing time from work.

As the time you missed from work in November 2001 was a result of an incident occurring at work, there is no entitlement to Income Replacement Indemnity under the Personal Injury Protection Plan.

In a letter dated December 27, 2001, MPIC's case manager wrote to the Appellant to advise him that:

It has been noted that you attended the care of the chiropractor after an incident of bending and lifting at work on November 14th, 2001. As chiropractic treatment was sought for your low back after the incident on November 14th, 2001, and the treatment was sought primarily due to the bending and lifting incident at work, no funding for chiropractic treatment or devices provided by the chiropractor will be provided.

The Appellant sought an Internal Review of both of those decisions. In a decision dated March 22, 2002, the Internal Review Officer confirmed the case manager's decisions and denied the Application for Review. In his decision, he noted the following:

Based on the contents of your file, there is insufficient evidence to establish a causal link between the back pain which you endured in November and December, 2001, and your motor vehicle accident of April 25, 2001.

...

Therefore, based on the evidence, I agree with the case manager's conclusion that you injured your back while doing heaving lifting on November 14, 2001, and your resulting back injury is unrelated to your car accident.

The Appellant has now appealed the decision of the Internal Review Officer, dated March 22, 2002, to this Commission. The issues which require determination in [the Appellant's] appeal are:

1. Entitlement to reimbursement of the cost of chiropractic treatments; and
2. Entitlement to Income Replacement Indemnity benefits for November 15, 2001, to December 5, 2001.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 81(1) of the MPIC Act:

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;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

Section 136(1) of the MPIC 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.

Section 5 of Manitoba Regulation 40/94:

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;

At the hearing of the appeal, the Appellant submitted that the flare-up of his back problems in November 2001 was connected to the injuries he sustained in the MVA of April 25, 2001. He noted that he had continued to attend for physiotherapy treatments for the neck and back injuries

since the MVA. In fact, he had attended for a physiotherapy session after the incident at work on November 14, 2001. The Appellant argued that he had minimized the amount of lifting he did at the workplace since the MVA. Only when the production lines became busier in September and October did he start to attempt more lifting. The incident on November 14, 2001, occurred because he lifted a heavy bundle himself, rather than having someone do it for him.

Counsel for MPIC submits that the incident on November 14, 2001, was a work-related incident, unconnected to the motor vehicle accident of April 25, 2001. He cites the Appellant's significant pre-accident history, which includes previous injuries to his lower back from work-related accidents. He notes the physiotherapist's comment in her report dated May 29, 2001, that the Appellant could "work full duties" and, in her Subsequent Physiotherapy Report dated August 7, 2001, that the Appellant's low back range of motion has improved and the paraspinal muscle tenderness along the lower back has gone. He concludes that the Appellant's condition had improved since the MVA and, accordingly, the lifting incident at work on November 14, 2001, caused the lower back pain which resulted in the Appellant's absence from the workplace.

In order to establish an entitlement to IRI and reimbursement of chiropractic care, the Appellant must demonstrate, on a balance of probabilities, a causal connection between the incident on November 14, 2001, and the MVA of April 25, 2001.

Throughout the hearing of this matter, the Appellant presented himself in a forthright and honest manner. The Commission found the Appellant to be a credible individual. We find that as of November 14, 2001, the Appellant had not yet made a full recovery from his MVA-related injuries. Rather, he was continuing to attend for physiotherapy treatment, he had been modifying

his work-related duties to minimize heavy lifting, and he had been referred to [Appellant's doctor #2] for assessment. [Appellant's doctor #2] noted in her report dated December 18, 2001, based upon an examination of the Appellant of October 22, 2001, that:

In response to your letter for information regarding my examination diagnosis and objective findings on [the Appellant]. I saw [the Appellant] on October 22, 2001, at which time he was complaining of pain in his neck and back since April 2001.

...

When he saw me most of his pain was related to his neck as well as in his back. He found that his limitation was that when driving and shoulder checking produced spasms and he was unable to turn his neck further. He has difficulty getting in and out of a car because of problems with his back. He was getting headaches twice a week for which he took some occasional Tylenol. He had some blurring of vision with the headaches but no nausea. He also does have some dizziness. He denies any tingling or numbness down his legs. His back pain is there all the time. Prolonged sitting produces pain and prolonged lifting increases his pain. He continued to work without any time off because he says that his work is supervisory.

He says that when he has to do some lifting he usually finds someone to help him. He does not do much of his housework because of the discomfort. He has problems with a sleep disorder and he is tired in the mornings and also he complains of stiffness.

The Commission finds that as a result of attempting to lift a heavy bundle of leather on November 14, 2001, the Appellant experienced an exacerbation of his low back injury that he sustained in the MVA of April 25, 2001. Accordingly, the Commission finds that the Appellant shall be entitled to IRI for the period from November 15, 2001, to December 4, 2001, both inclusive.

With regard to reimbursement of chiropractic treatments, the Commission finds that the Appellant is entitled to be reimbursed for the cost of the chiropractic treatments which he undertook as a result of the exacerbation of his MVA-related injury on November 14, 2001. The

Appellant shall be entitled to reimbursement for chiropractic treatments for the period commencing November 15, 2001, and for as long as those treatments were medically required. No evidence was submitted at the hearing of this appeal which would allow the Commission to make a determination as to how long chiropractic treatments were medically required. Therefore, this matter will be referred back to MPIC's case manager for determination of the duration of entitlement for reimbursement of chiropractic care.

Dated at Winnipeg this 18th day of September, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

DEBORAH STEWART