



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-53

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], was represented by her husband [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATES: January 16, 2002, May 23, 2002, September 27, 2002, December 2, 2002, March 21, 2003, April 22, 2003, June 4, 2003 and July 15, 2003

ISSUE(S): Entitlement to income replacement indemnity (IRI) benefits during the first 180 days after the motor vehicle accident of June 7, 1997.

RELEVANT SECTIONS: Section 83(1) The Manitoba Public Insurance Corporation Act (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.

Addendum to Reasons For Decision

This is an Addendum to the Reasons for Decision issued by this Commission on July 30th, 2002.

The Appellant is appealing the Internal Review decision dated June 26, 2000, which denied her IRI benefits for the first 180 days after the motor vehicle accident of June 7, 1997. The events leading up to the Commission's refusal to grant the Appellant a further adjournment on March

21, 2003 and on July 15, 2003 have been briefly summarized below. (For a complete discussion of the Commission's reasons respecting the refusal to grant the adjournment, please see the Reasons issued separately by this Commission dated September 24, 2003)

At the hearing of this matter on May 23, 2002, an adjournment was granted to the Appellant to allow her additional time to gather evidence and summon witnesses on the issue of whether she would have held employment during the first 180 days after the motor vehicle accident of June 7, 1997. A hearing was subsequently scheduled for September 27, 2002 to deal solely with this issue. (The Appellant also had a separate appeal pending before this Commission with respect to her appeal from the decision of the Internal Review Officer dated December 14, 2001).

At the hearing of this matter on September 27, 2002, [Appellant's representative] requested a further adjournment of the hearing because of the unavailability of his witnesses. The Commission granted [Appellant representative's] request for an adjournment to November 29, 2002, on the basis that, on that date the Commission would hear both of [the Appellant's] pending appeals. The hearing scheduled for November 29, 2002 was subsequently rescheduled for December 2, 2002.

On December 2, 2002, [Appellant's representative] once again requested an adjournment of the hearing due to personal reasons. The Commission, upon due consideration of this request, agreed to adjourn the matter to March 21, 2003.

At the hearing of the appeal on March 21, 2003, [Appellant's representative] advised that he was not prepared to proceed with the hearing, as he had not received sufficient notice of the hearing date. The Commission found that reasonable notice had been provided to the Appellant and her

representative, in order to allow them to prepare for the hearing of March 21, 2003. The Commission determined that it would proceed with the hearing of [the Appellant's] appeal of the Internal Review decision dated June 26, 2000 after the lunch recess. An adjournment of the appeal of the Internal Review decision dated December 14, 2001 was granted to April 22, 2003. When the hearing reconvened, after the lunch recess, [Appellant's representative] failed to appear. The Commission determined that, unless reasonable medical grounds were provided for [Appellant's representative's] failure to attend and proceed with the hearing on the afternoon of March 21, 2003, no further evidence would be accepted on the Appellant's behalf. The Appellant did not provide substantiated medical grounds for his refusal to continue with the hearing on the afternoon of March 21, 2003.

The Appellant did not attend the hearing scheduled for April 22, 2003, and once again requested an adjournment due to personal medical reasons. Notwithstanding the determination that [Appellant's representative] had not provided the Commission with satisfactory evidence that he was medically unable to continue with the appeal hearing on March 21, 2003, the Commission granted a further adjournment to the Appellant until June 4, 2003.

On June 4, 2003, the Appellant's representative appeared at the hearing and advised that the Appellant had recently retained legal counsel, [text deleted], to represent her on the appeals pending before the Commission. [Appellant's legal counsel] requested a further adjournment of the appeal hearing, as he had not had the opportunity to fully review all of the documentary evidence and meet with the Appellant. The Commission granted the adjournment to July 15, 2003, on the basis that no further adjournments would be granted and that the hearing of [the Appellant's] appeals would proceed on that date, even if [Appellant's legal counsel] no longer represented the Appellant.

On July 15, 2003, [Appellant's legal counsel] appeared at the appeal hearing and advised the Commission that he was withdrawing from the matter, as he had not had the opportunity to meet with the Appellant, he had not received instructions from her, and the terms of his retainer had not been met. The Commission accepted [Appellant's legal counsel's] withdrawal as counsel.

[Appellant's representative] and [the Appellant] asked for a further adjournment, on basis that they were relying upon legal counsel and not prepared to proceed. The Commission refused to grant any further adjournments of [the Appellant's] appeals, citing the conditions of the previous adjournment. [Appellant's representative] and [the Appellant] were aware that the hearing of her appeals was to proceed on July 15, 2003, whether or not [Appellant's legal counsel] was representing the Appellant.

[Appellant's representative] and [the Appellant] refused to make any submission in regard to the appeals pending before the Commission, or present any arguments on the basis of the documentary evidence filed with the Commission and withdrew from the hearing. Counsel for MPIC submitted that the onus rested with the Appellant to establish her case on the balance of probabilities. He argued that the Appellant had failed to establish, on the balance of probabilities, that either of the Internal Review decisions under appeal were incorrect. Counsel for MPIC therefore maintained that [the Appellant's] appeals should be dismissed, and the Internal Review decisions confirmed.

After a careful review of all the evidence before the Commission, we are unable to conclude, on a balance of probabilities, that [the Appellant] would have held employment during the first 180 days after the motor vehicle accident of June 7, 1997. We therefore find that there is no entitlement to income replacement indemnity benefits during that period of time.

[The Appellant] was properly classified as a temporary earner within the meaning of the MPIC Act on the date of the accident. Accordingly, her entitlement to income replacement indemnity benefits for the first 180 days after the accident is determined in accordance with subsection 83(1)(a) of the MPIC Act, which provides as follows:

Entitlement to I.R.I. for first 180 days

83(1) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

- (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred.

The evidence presented to the Commission clearly established that the Appellant's employment with [text deleted] was scheduled to end on June 14, 1997. There was no evidence submitted to the Commission that the Appellant would have held any other employment, or had any potential job prospects, beyond that date. As a result, we find that the Appellant:

1. has not established that she would have held employment during the first 180 days after the accident of June 7, 1997; and
2. has not established an entitlement to income replacement indemnity benefits pursuant to 83(1)(a) of the MPIC Act.

Accordingly, for the foregoing reasons, the Appellant's appeal is dismissed, and the decision of the Internal Review Officer dated June 26, 2000, is confirmed.

Dated at Winnipeg this 24th day of September, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN