



---

## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-02-146**

**PANEL:** Ms. Yvonne Tavares, Chairperson  
Mr. Paul Johnston  
Mr. Les Marks

**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:** November 13, 2003

**ISSUE(S):** Reinstatement of Income Replacement Indemnity Benefits and Treatment Benefits

**RELEVANT SECTIONS:** Sections 117(1), 136(1) and 171(1) of the Manitoba Public Insurance Corporation Act ('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, [text deleted], was involved in a motor vehicle accident on September 4, 1999, when his vehicle was rear-ended while at a complete stop. As a result of the accident, the Appellant complained of pain in his lower back, shoulders and neck. Due to those injuries, the Appellant became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

At the time of the motor vehicle accident, the Appellant was employed as a baker with [text deleted] on a full-time basis. Due to the injuries he sustained in the accident, the Appellant was unable to resume his employment duties and thus became entitled to Income Replacement Indemnity (“IRI”) benefits.

After a few attempts to return to his full-time duties, the Appellant returned to his regular full-time employment as of January 10, 2000, although he continued to have difficulties performing his regular full-time duties. He worked until October 27, 2001, when he injured his back in a slip and fall accident at the workplace. As of February 18, 2002, he was deemed recovered from the workplace injury and returned to full-time work. He continued to work at his pre-accident job up to three days before the date of his lay-off in June 2002. During the three days before his lay-off, the Appellant worked on [text deleted] sandwich assembly line.

The Appellant advised his case manager at MPIC that his employment with [text deleted] had been terminated due to the fact that he was only able to work light duties as a result of the injuries sustained in the motor vehicle accident. In the circumstances, the Appellant sought reinstatement of his PIPP benefits, including IRI and further therapeutic and/or diagnostic interventions.

In a letter dated July 23, 2002, the case manager advised the Appellant that the medical information on file did not support a reconsideration of the January 25, 2000 decision, which had confirmed his termination of IRI benefits as of January 9, 2000. The case manager also confirmed that further review of the Appellant’s file determined that further therapeutic and/or diagnostic interventions could not be viewed as medically required in the management of the Appellant’s symptomatology relating to the motor vehicle accident. As such, the case manager

advised that there was no further entitlement to funding of further chiropractic and/or diagnostic interventions as of July 23, 2002.

The Appellant sought an internal review of the case manager's decision. The Internal Review Officer in his decision dated November 7, 2002, dismissed the Appellant's Application for Review and confirmed the case manager's decision. In his decision the Internal Review Officer determined that there was no basis in the evidence for reinstating the Appellant's IRI benefits or further treatment benefits.

The Appellant has now appealed from the Internal Review decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to reinstatement of IRI benefits and reinstatement of treatment benefits.

At the appeal hearing, the Appellant argued that he had in fact never fully recovered from his motor vehicle accident-related injuries and had pushed himself to return to work despite his continuing pain. He advised that he had been in continuous contact with his case manager and had consistently requested assistance from MPIC, including reinstatement of his IRI benefits. He had explained to his case manager that he was continuing to have difficulty with the work duties required of him as a result of his motor vehicle accident related injuries. Despite his return to work, the Appellant argued that he had not recovered from his motor vehicle accident related injuries, and that by June 2002 his pain had increased to the point that he was no longer able to continue with his pre-accident employment. The Appellant submits that he was only able to work light duties with certain restrictions and these physical limitations could not be accommodated by his employer. Therefore, he was laid-off from his employment. As a result,

the Appellant seeks reinstatement of IRI benefits and further therapeutic and/or diagnostic interventions in order to treat his ongoing symptoms and injuries.

Counsel for MPIC submits that the Appellant has not established that his current problems are related to the motor vehicle accident of September 4, 1999, or that they prevent him from holding his pre-accident employment. As a result, he argues that there is no basis for reinstating IRI benefits or treatment benefits.

**Discussion:**

Upon a review of all of the evidence made available to us, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was unable to hold employment beyond June 2002 due to injuries sustained in the motor vehicle accident of September 4, 1999. Additionally, the Commission finds that the Appellant has not established, on a balance of probabilities, that any further therapeutic and/or diagnostic interventions are medically required as a result of the September 4, 1999 motor vehicle accident.

In the Appellant's case, we find that his return to work at his pre-accident occupation from January 10, 2000 to October 27, 2001 is conclusive proof of his ability to work at that occupation. This is not the case of a temporary or unsuccessful return to work. Certainly an Appellant should not be discouraged from attempting to take up their form of work out of fear that the attempt might be held against him. However, in the circumstances of the case at hand, the Appellant managed a successful and sustained return to the workplace after his motor vehicle accident. We find that this establishes that he had the capacity to perform his work-related duties, despite any residual complaints.

Additionally, the evidence presented at the hearing did not constitute new information which would warrant the making of a “fresh decision” with regard to the termination of the Appellant’s IRI benefits. Furthermore, the Appellant’s continuing problems could not be related to the motor vehicle accident of September 4, 1999, on a balance of probabilities. Therefore, further therapeutic and/or diagnostic interventions could not be deemed as a medical requirement as a result of the motor vehicle accident of September 4, 1999.

Accordingly, for these reasons, the Appellant’s appeal is dismissed and the Internal Review decision dated November 7, 2002 is confirmed.

Dated at Winnipeg this 15<sup>th</sup> day of January, 2004.

---

**YVONNE TAVARES**

---

**PAUL JOHNSTON**

---

**LES MARKS**