



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-162

PANEL: Ms Laura Diamond, Chairperson
Mr. Antoine Frechette
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], was represented by Ms Marla Garinger Niekamp of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Kathy Kalinowsky.

HEARING DATE: July 11, 2005 and May 18, 2006

ISSUE(S): Entitlement to further Income Replacement Indemnity benefits

RELEVANT SECTIONS: Sections 86(1) and 110(1)(c) of The Manitoba Public Insurance Corporation Act (the 'Act') and Section 8 of Manitoba Regulation 37/94

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 injured in a motor vehicle accident on August 12, 2002. She sustained a fractured sternum and whiplash type injuries involving her neck, back and arms.

At the time of the accident, the Appellant had been off work on a medical leave of absence, due to depression. She had previously been employed as a part-time cashier at [text deleted]. As a

non-earner at the time of the accident, the Appellant's employment was "determined" in a 180-day determination letter from her case manager on April 24, 2003. Her determined employment was that of cashier.

The Appellant did not seek Internal Review of this decision and received Income Replacement Indemnity ('IRI') benefits on the basis of her determined employment as a cashier.

Following continued pain complaints, in March 2003, an MRI was performed on the Appellant, which indicated that she had a post-traumatic syrinx in her spinal cord. A syrinx is a form of tubular opening or cavity in the spinal cord.

The Appellant was seen by [Appellant's physiatrist], [text deleted], and [text deleted], [Appellant's neurosurgeon].

A Physical Demand Analysis of the Appellant's job was completed, on July 9, 2003, by [text deleted], [Appellant's occupational therapist]. She was then referred to [rehab clinic] for a pain management assessment. This assessment recommended a pain management program. She started this program in September 2003.

A follow-up MRI in October 2003 showed no further changes to the spinal cord syrinx. [Rehab clinic] provided a Discharge Report dated December 2, 2003 indicating that the Appellant was fit for an immediate unmodified return to pre-injury employment.

The Appellant's case manager issued a decision letter on December 12, 2003 stating that the Appellant was now able to return to work in her determined employment as a cashier and was no longer entitled to IRI benefits.

The Appellant sought an Internal Review of the case manager's decision. On September 2, 2004, an Internal Review Officer for MPIC considered the Appellant's arguments that she was not able to work as a cashier because of the lifting, turning and standing requirements, as well as difficulty in transporting herself to work on the bus.

Prior to issuing a decision, the Internal Review Officer wrote to the Appellant's family doctor, [text deleted]. [Appellant's family doctor] replied that she did not think that a return to work would pose a safety risk to the Appellant or other employees or that a return to work would adversely alter the natural history of her medical condition, although she had concerns about the Appellant riding the bus daily for one and a half (1 ½) hours to get to work. She opined that the Appellant could perform the essential tasks of a cashier although not on a repetitive basis for the time cashiers normally work. She indicated that she based this opinion on the evolution and the progression of the Appellant's improvement to date.

The Internal Review Officer, in a decision dated September 2, 2004, found that the Appellant was able to return to work as a cashier. He based his decision on a statement set out in the [rehab clinic] report indicating that the Appellant had demonstrated the consistent ability to perform prolonged standing, repetitive reaching, repetitive crouching/squatting, walking and prolonged neck flexion in a manner that met the physical demands of her pre-accident position. The case manager's decision was confirmed.

It is from this decision of the Internal Review Officer that the Appellant has appealed.

At the hearing into the Appellant's appeal, the panel reviewed the documentary evidence, including medical reports from [rehab clinic], [Appellant's family doctor], [Appellant's neurologist], [Appellant's physiatrist], [Appellant's neurosurgeon], and [MPIC's doctor], a medical consultant with MPIC's Health Care Services Team. The panel also heard testimony from the Appellant and from [MPIC's doctor].

Submissions

The Appellant submitted that the syrinx was a post-traumatic syrinx caused by the motor vehicle accident. She further submitted that this, and her other injuries, prevented her from returning to work as a cashier.

On the issue of what had caused the syrinx and whether it is related to the motor vehicle accident, the Appellant pointed to the opinions of her caregivers, and in particular of [Appellant's physiatrist] and [Appellant's neurosurgeon], that the Appellant suffered from a post-traumatic syrinx caused by the motor vehicle accident. She questioned the opinion of [MPIC's doctor], who had not treated or examined her, but who was of the view that the etiology of the syrinx was unknown and may have had no connection to the motor vehicle accident.

Regarding the issue of the Appellant's ability to return to work, the Appellant submitted that her injuries, and particularly the pain resulting from those injuries, prevented her from working productively as a cashier. The Appellant urged the panel not to focus solely on the Appellant's functional abilities as reported by [rehab clinic], but also to consider her chronic pain, which she described as "severe and significant". The Appellant's difficulties with traveling by car or bus

contributed to this inability to work. In her submission, the ability to perform certain exercises in a clinical setting during the [rehab clinic] program should be distinguished from the ability to perform the duties of a cashier on a repetitive basis, in a real work setting. The Appellant, it was submitted, suffered from chronic pain as a result of her injuries, which had been shown by MRI to be significant neurological injuries caused by the accident, and as such, should be entitled to IRI benefits.

Counsel for MPIC submitted that the Appellant suffered from a variety of pre-existing medical conditions prior to the motor vehicle accident. The medical evidence showed that these pre-existing medical conditions included a fracture at T3, congenital fusion at C6-C7 and anterolisthesis (forward slippage) at C5-6. She also had a history of headaches dating back to 1988 and neck pain prior to the accident.

Counsel for MPIC submitted that the diagnosis of the Appellant's syringomyelia, a disorder in which a cyst (syrinx) forms within the spinal cord, was serendipitous. She pointed to the opinion of [MPIC's doctor] that the Appellant had a primarily latent syrinx without physical signs of spinal cord dysfunction or evidence of expansion on subsequent imaging.

She noted that in referring to the discovery of the syrinx in the MRI exam, [Appellant's neurologist], stated that he could not speculate whether there was cause and effect relationship between the syrinx and the motor vehicle accident although it was reasonable to state that her symptoms were not related to the syrinx.

It was the submission of counsel for MPIC that no causal link exists between the motor vehicle accident and the syrinx.

In regard to the Appellant's ability to return to work as a cashier, counsel for MPIC submitted that the syrinx was asymptomatic. The medical evidence, in the form of reports from [Appellant's physiatrist] and [Appellant's neurosurgeon], showed that the status of the syrinx was stable and her neurologic functions resolved.

Counsel for MPIC also pointed to the Appellant's history of depression and argued that the Appellant had had difficulties in her job as a cashier at [text deleted] and never liked that job.

She also referred to [MPIC's doctor's] evidence that the Appellant, due to psychosocial stressors, might be at risk for a chronic pain syndrome. [MPIC's doctor] identified the three A's connected to chronic pain syndrome, abuse, abandonment and addiction, although the Appellant, on cross-examination, had not been responsive to questions in regard to these issues.

Counsel for MPIC reviewed the Physical Demands Analysis of the Appellant's cashier job and noted that, while imposing some physical exertion restrictions in June 2003, [Appellant's neurosurgeon] did not preclude a return to work and suggested active rehabilitation to return to work.

[Appellant's neurologist] did not opine on the Appellant's ability to return to work, but did state that normal and routine physiotherapy would be reasonable.

The staff at [rehab clinic] recommended an immediate return to pre-accident employment after a rehabilitation program which the Appellant underwent for the purposes of returning her to work.

Counsel for MPIC argued that although the Appellant had identified herself as severely disabled, this was inconsistent with her evidence that after two (2) months of rehabilitation, she had been capable of doing two (2) daily thirty-five (35) minute cardiovascular sessions such as on an exercise bike or treadmill. She also testified that she was able to and consistently did walk on a treadmill at a fast walk or light job for one (1) hour, preceeded and followed by twenty (20) minutes of stretching. [MPIC's doctor] testified that this ability put the Appellant in a very high percentile of fitness in the population. He testified that the Appellant needed to break the cycle of self perceived disability and pain by returning to activity, including returning to work. He testified that in his view her physical condition did not preclude travel to and from the workplace, pose a safety risk to the claimant or her co-workers, prevent her from performing the essential tasks of her operation or pose a risk of adversely prolonging the natural history of her condition.

Counsel for MPIC argued that the legal test was whether the Appellant could return to work as a cashier, which was her determined employment. It was not necessary that she return to work at [text deleted], as she had been classified as a non-earner at the time of her motor vehicle accident. Counsel for MPIC pointed out a variety of cashier positions with various organizations which the Appellant could perform. It was the submission of counsel for MPIC that the Appellant is capable of holding employment and failed to meet the onus required to demonstrate that the Internal Review decision was incorrect.

Discussion

Section 86(1) of the MPIC Act provides:

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

86(1) For the purpose of compensation from the 181st day after the accident, the corporation shall determine an employment for the non-earner in accordance with section

106, and the non-earner is entitled to an income replacement indemnity if he or she is not able because of the accident to hold the employment, and the income replacement indemnity shall be not less than any income replacement indemnity the non-earner was receiving during the first 180 days after the accident.

Section 110(1)(c) of the MPIC Act 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:

...

(c) the victim is able to hold an employment determined for the victim under section 106;

Section 8 of Manitoba Regulation 37/94 provides:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

Causation

The onus is on the Appellant to establish that she was not able to hold the determined employment of cashier due to the accident.

Counsel for MPIC has submitted that the Appellant had several pre-existing medical conditions related to her neck, and that the diagnosis of syringomyelia was not related to the motor vehicle accident.

The panel has reviewed several medical reports, from various practitioners, which deal with the question of the cause of the syrinx in the Appellant's spinal cord.

In a narrative report dated April 18, 2003, neurologist, [Appellant's neurologist], reviewed the Appellant's MRI scan report dated March 8, 2003. He noted that this scan showed increased

signal intensity within the central spinal cord extending from C6 to T1 and that the radiologist reported this as likely being a posttraumatic syrinx. He stated:

. . . It is impossible for me to state whether this finding on the MRI scan is related to the motor vehicle accident or not. Some of these lesions can be congenital and therefore I cannot speculate whether there is a cause and effect relationship. It is reasonable to state that her symptoms, as we see them now, are not related to the syrinx.

The Appellant was also seen by [Appellant's physiatrist]. On April 15, 2003, [Appellant's physiatrist] reported:

Impression:

[The Appellant] is felt to have sustained some neurological injury, presumably following her motor vehicle collision. Interestingly, she had several possible sources including the foraminal stenosis, and of course, presumed posttraumatic syrinx. Clinically, most of her issues seem related to the syrinx. There was no clear evidence of ongoing significant spondylomyelopathy, with no bladder or bowel dysfunction or significant lower extremity dysfunction, although some mild effect is certainly possible.

In review of the imaging, no clear reason for the syrinx has been identified. Specifically, no clear surgical lesion exists at present. As well, no true ligamentous disruption is noted, although her MRI was done 6 months post event, and therefore is harder to interpret the lack of findings. The vertebral body fracture at T3 does still seem to be co-contributing – both in its loss of height, contributing to her exaggerated thoracic kyphosis and exaggerated cervical flexion. The MRI films were reviewed later and did appear to demonstrate a non-shuntable syrinx. In essence, I felt that the findings reflected a bridging of the spinal cord over her congenital fusion, most probably from the trauma. This caused secondary injury.

. . .

Without additional evidence to the contrary, her injuries seem related to the collision of August 12, 2003 (sic). With no significant changes on at least two neck extension/flexion views, a negative bone scan, and no clear evidence on MRI of ligamentous injury/column disruption, she is not restricted from neck movement. Instability does not seem a significant issue here. No bony injury exists to preclude neck extension. She appears to be avoiding neck extension so as to avoid aggravating her neurological issue, which is more likely due to the syrinx than the C6 right foraminal stenosis.

The Appellant was also seen by [Appellant's neurosurgeon]. In a report to [Appellant's physiatrist], dated June 6, 2003, [Appellant's neurosurgeon] states:

Assessment: This lady presents with a post traumatic syrinx most likely as the consequence of some central cord contusion.

On June 6, 2003, he reported to [text deleted], the Appellant's Senior Case Manger for MPIC:

. . . The diagnosis in this instant is most likely a flexion/extension injury of the cervical spine and central cord syringomyelia. In all likelihood the lesion found is a consequence of the accident and I have no alternate etiology to propose for you. . . .

The Appellant's physiotherapist, [text deleted], noted, on July 9, 2003 that:

This patient has had severe trauma to her neck enough to cause a slippage of C5 on C6 of 4 mm. A C6 to T1 syrinx and compression # at T3. . .

[MPIC's doctor], Medical Education Director to MPIC's Health Care Services Team, provided a report of his review of the Appellant's medical file, dated May 30, 2005.

In addressing the etiology of the Appellant's syrinx, he stated:

It is not possible to further classify the etiology of the syrinx. Since there is no history of congenital anomaly or spinal cord infection, some examiners have concluded (by exclusion) that it must be post-traumatic in origin. Given that the claimant is known to have sustained a motor vehicle collision prior to diagnosis, the syrinx has been presumed to be due to some trauma sustained in the course of the collision.

There are flaws in this *post hoc* reasoning. . .

. . .

In summary, the claimant's syrinx was discovered serendipitously in the absence of clinical features. A causal link has not been established between the syrinx and the motor vehicle collision. In addition, there are alternative possible explanations for its etiology, unrelated to the motor vehicle collision including post-traumatic, congenital and idiopathic.

[MPIC's doctor] also testified at the hearing of the Appellant's appeal on July 11, 2005 and on May 18, 2006. During the course of his testimony, [MPIC's doctor] stated that the etiology of the syrinx was unknown and may have had no connection to the motor vehicle accident, having

been discovered serendipitously during radiological examinations following the motor vehicle accident.

Following the evidence heard by the panel on July 11, 2005, [Appellant's physiatrist] provided an additional report dated October 14, 2005. He stated:

. . . Nonetheless, I do believe the following: she does have a syrinx; the syrinx was contributing to some neurologic abnormalities, most if not all of which have resolved; and, the syrinx is most likely, on the balance of probabilities, given her other fractures and injuries, related to the motor vehicle collision of August 12, 2002.

[Appellant's neurosurgeon] also provided a further report, dated February 9, 2006. On the issue of the cause of the syrinx, [Appellant's neurosurgeon] stated:

In addition, it appears that [MPIC's doctor] wishes to downplay the relationship between the traumatic event and the development of the syringomyelia, but [Appellant's physiatrist] and myself have no other explanation for the development of this lesion within the spinal cord. Posttraumatic syringomyelia found "serendipitously" in relation to a thoracic fracture would most likely relate to a traumatic event, given the various causes of syringomyelia.

It would seem to me to be "nonsensical" that a spontaneous idiopathic syringomyelia would arise independent of a second pathology. Nonetheless, [MPIC's doctor] is a very well respected spinal physician and I personally generally value his opinion, and thus he and I will have to agree to disagree.

[MPIC's doctor] provided a further report dated February 22, 2006. He reviewed [Appellant's physiatrist's] and [Appellant's neurosurgeon's] most recent reports, as well as reports from [Appellant's family doctor]. He noted:

There is much common ground with [Appellant's physiatrist's] report and my prior memorandum to file. I note he has concluded a causal link between the syrinx and the motor vehicle collision. This is possible, He acknowledges other possibilities as well.

[MPIC's doctor] confirmed this view during his testimony given at the hearing of May 18, 2006.

Having reviewed all of the medical evidence referred to above, the panel has concluded that we accept the evidence of the specialists who examined the Appellant, [Appellant's physiatrist] and [Appellant's neurosurgeon], that the Appellant's syringomyelia is a condition that was caused by the motor vehicle accident of August 12, 2002. [MPIC's doctor] admits that this is possible. We find that the Appellant has established, on a balance of probabilities, that the syrinx in her spinal cord was a result of the motor vehicle accident.

Ability to return to work

Prior to the motor vehicle accident, the Appellant was employed as a part-time cashier at [text deleted]. At the time of the motor vehicle accident, she was on a leave of absence from her position, due to medical difficulties.

Counsel for MPIC took the position that by December 2003, the Appellant was capable of holding employment and returning to work as a cashier. Accordingly, she was no longer entitled to receive IRI benefits under the Act.

The onus is on the Appellant to establish, on a balance of probabilities, that she is unable to work as a cashier as a result of injuries from the accident.

The Appellant took the position that she was unable to return to work as a cashier, and, in fact, in her evidence, testified that, although she would like to return to work, she had made no attempt to do so, and that she could not think of an occupation which she would be able to perform.

The panel has reviewed the evidence of the Appellant, her caregivers, and the medical evidence presented by MPIC, and has determined that the Internal Review Officer was correct in finding

that the Appellant was not disabled from working as a cashier as a result of a condition arising out of the motor vehicle accident.

The Appellant participated in a rehabilitation program with [rehab clinic] for assessment (August 2003) reconditioning (September 2003) and pain management (October through November 2003). The [rehab clinic] Discharge Report dated December 3, 2003 found the Appellant improved and fit for an immediate unmodified return to pre-injury employment.

In regard to the Appellant's general physical conditioning, the [rehab clinic] practitioners found:

[The Appellant] demonstrated the ability to tolerate cardiovascular sessions of 35 minutes, twice per day; [the Appellant] increased her muscular strength, as was demonstrated in her performance on the rehabilitation floor. As a result of her increased tolerance and performance, [the Appellant] lost 9 pounds.

In regard to the Appellant's ability to meet the strength demands of her pre-accident position as a cashier, the [rehab clinic] practitioners found:

Despite inconsistent, and sub-maximal effort, [the Appellant] demonstrated the ability to perform the essential demands of her pre-accident position.

[MPIC's doctor] reviewed the Appellant's work capacity in his Memorandum of May 30, 2005.

He stated:

To date, the claimant's work incapacity has been attributed to her "pain" rather than to a specific anatomic lesion that precludes activity. In her particular case, her physical condition does not:

- ◆ Preclude travel to and from the workplace
- ◆ Pose a safety risk to the claimant or her coworkers.
- ◆ Prevent her from performing the essential tasks of her occupation
- ◆ Pose a risk of adversely prolonging the natural history of her condition.

By December 2003 she was documented to be capable of performing physical activity commensurate with the physical demands of her occupation. Accordingly, the claimant appears currently fit to return to her occupation.

In his report dated February 27, 2006, [MPIC's doctor] stated that notwithstanding the cause of the syringomyelia, it is stable and has not progressed over time. He states:

Moreover, it is important to note that symptoms are not equivalent to loss of function, nor are they objectifiable by medical means. The fact that she presents with a variety of symptoms (many which may not be motor vehicle collision-related), does not necessarily imply that the claimant's medical condition precludes her from gainful occupation.

. . . Given that the status of the claimant's neurologic function and syrinx size are both stable, there is insufficient objective evidence of work incapacity arising from her current condition to preclude her from engaging in the essential tasks of her occupation.

[MPIC's doctor] also commented, during his testimony, on the evidence given by the Appellant when she described her ability to work out on a treadmill, two (2) or three (3) times per week. The Appellant described a workout consisting of twenty (20) minutes of stretching, one (1) hour of fast walking or light jogging on the treadmill, followed by another twenty (20) minutes of stretching. It was submitted that she lost forty-five (45) pounds as a result of this exercise regime.

[MPIC's doctor] commented upon this evidence regarding the Appellant's exercise regime. In his view, an individual who exercises at this level demonstrates a high level of fitness which would fall into the top five (5) to ten (10) percent of the population and would not be considered sedentary.

In his report of April 15, 2003 (when the Appellant was still in receipt of IRI benefits), [Appellant's physiatrist] noted the medical restrictions which applied to the Appellant at that time.

Medical restrictions remain unchanged from previous, especially in regards to lifting. In terms of working at her cashiers' job, further injury would be unlikely to be incurred. I do not know if modified duties would be feasible, both at this job, and at her current functional state.

[Appellant's physiatrist] was asked to comment upon the Appellant's ability to work in his report of October 14, 2005. He stated:

I cannot and will not comment on her current status or functional issues. It is quite feasible that she did demonstrate suitable capabilities of light to medium workload consistent with performing her tasks, as per her family physician's opinion. Latest neurologic examination ([Appellant's neurosurgeon]; March 30, 2005) suggests that neurologic abnormalities have resolved. Her underlying pain problems may well not solely be due to the syrinx, to which I am primarily restricting my comments to focus upon. . .

[Appellant's physiatrist] went on to note that while the syrinx contributed to some neurologic abnormalities, most if not all of these have resolved.

[Appellant's neurosurgeon], in April of 2005, advised that the Appellant shall "avoid lifting and carrying heavy objects and should treat her neck pain conservatively at this point by way of physiotherapy and anti-inflammatories".

In February of 2006, he stated:

As to whether or not [the Appellant] is able to return to work is a very difficult decision for me to make. As I have mentioned before, I am primarily a surgeon concerned with conditions affecting the central nervous system, and, in particular, conditions affecting the spine. It is my experience that patients who have a constellation of symptoms such as this patient does, are not likely to find gainful employment where they are required to do significant activities requiring bending, lifting, and carrying. However, we have established before that this is probably pure nonsense, and therefore I am not certain that my input is of much use to you.

The Appellant's family physician, [text deleted], was also asked to comment upon the Appellant's ability to return to work. On June 28, 2004, she noted:

My diagnosis is myofascial pain of the neck and shoulders.

(2) In my opinion, a return to cashier work would not pose a safety risk to her or other employees.

- (3) Her transport to and from work involves for her (sic) riding a city bus for 1 to 1.5 hours in each direction. Although it would not cause further injury, I doubt she is able to do it on a daily basis.
- (4) A return to cashier work would not adversely alter the natural history of her medical condition.
- (5) In my opinion, she is able to perform the essential tasks of a cashier, however, I do not think she is able to perform them on a repetitive basis, for the length of time usually cashiers work. In other words, I do not think she would be productive at her job, although she could perform individual tasks.

When asked to clarify these comments, [Appellant's family doctor] stated, on August 24, 2004:

I have based my comment regarding [the Appellant's] ability to return to full time cashier position, on the evolution and the progression of [the Appellant's] improvement to date.

...

When she is to return at her cashier position at [text deleted], she will need a slowly graduated plan which will require some flexibility on the part of her employer.

[Appellant's family doctor] addressed the issue of the Appellant's ability to return to work again on February 8, 2006. While expressing some reservations about the Appellant's ability to ride the bus to and from work, she also noted:

(5) I do not have any proposal by Manitoba Public Insurance for a "slowly graduated return to work plan", however in the Physical Demand Analysis done by [text deleted] for [text deleted] dated the 09th of July, 2003, it is mentioned that the Human Resources Manager, Ms T., of [text deleted], indicated that "light duties and gradual return to work programs are available".

Following a review of the evidence in this case including oral testimony and medical reports, the panel finds that the Appellant is not disabled from returning to work as a cashier and was able to return, on a graduated basis, in December of 2003.

The Appellant's caregivers are of the view that her neurologic difficulties have largely resolved. She has reached a high degree of fitness and regained the ability to perform the essential duties of her occupation as a cashier.

However, the Appellant's family physician continued to have concerns regarding the Appellant's ability to perform the tasks required of cashiers on a repetitive basis and recommended that when she returned to her cashier position she would need a "fully graduated plan which will require some flexibility on the part of her employer".

The panel accepts this opinion of the Appellant's physician, who has had the opportunity to examine her and care for her over time. While the [rehab clinic] report called for the Appellant's immediate reinstatement of full-time, unmodified duties, the Appellant's own physician has urged a more cautious approach toward re-employment, recommending a graduated return to work program which was not provided for the Appellant by MPIC.

The panel finds that the Appellant did require, at the recommendation of her family physician, [text deleted], that a graduated return to work plan be implemented.

Accordingly, the Commission finds that the Appellant should be provided with a six (6) week graduated return to work program funded by MPIC. In order for such a program to be successful, it should be undertaken under the supervision of an individual who is qualified and has the experience to ensure an effective return to work program. The Appellant will be entitled to receive IRI benefits, subject to any applicable reductions for employment income which may be earned during the program, and calculated pursuant to the Act and Regulations, for the duration of this six (6) week return to work program.

The Commission will retain jurisdiction in this matter and if the parties are unable to agree on the Appellant's compensation, either party may refer this matter back to this Commission for determination.

The decision of the Internal Review Officer regarding the Appellant's entitlement to IRI benefits is hereby confirmed, with the exception of the Appellant's entitlement to receive IRI benefits during the period of her participation in a six (6) week graduated return to work program, and the decision is varied accordingly.

Dated at Winnipeg this 27th day of June, 2006.

LAURA DIAMOND

ANTOINE FRECHETTE

LES MARKS