AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF AN APPEAL BY [the Appellant]
AICAC File No.: AC-94-1

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('M.P.I.C.'), represented by Mr. Matthew Land** **[Text deleted], the Appellant, appeared in person**
HEARING DATE:	**December 22nd, 1994**
ISSUE:	**Time/Wages lost when attending for medical treatment.**
RELEVANT SECTIONS:	**81(1), 136(1) and 144(1).**

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.

DISPOSITION

[The Appellant] was injured on March 24th, 1994 as a result of a rear-end automobile collision. His injuries were primarily to the soft tissue in the neck, upper back and lumbar regions, resulting in muscle spasm and tenderness in those areas which, although somewhat alleviated, continue to this day. He was off work as a result, for about 25 days. [The Appellant] received income replacement indemnity ('I.R.I.') until April 18th, 1994, when he was able to return to work. His employer, [text deleted], has assigned him to light duties, but without

reduction in salary, pending sufficient recovery to allow him to resume his full, normal duties as a [text deleted].

M.P.I.C. has assumed liability for the payment of medically prescribed physiotherapy costs, although not of therapeutic massage (of which more will appear below), in addition to I.R.I. [the Appellant's] physician, [text deleted], has prescribed a course of physiotherapy on August 22nd, 1994, to be applied three days per week for the four succeeding weeks, following more than twenty prior physiotherapy sessions that commenced in May. Although the treatments initially prescribed have run their course, [the Appellant] has continued to attend for physiotherapy, doing so, we believe, upon the advice of [Appellant's doctor] although the evidence on that point is somewhat vague.

[The Appellant] claimed compensation from M.P.I.C. for time necessarily lost from his workplace in order to attend his physiotherapist. The claims department of M.P.I.C. denied that claim; that ruling was upheld by the Internal Review Officer under Section 173(1) of the Manitoba Public Insurance Corporation Act ('the Act'), and it is from that latter decision that [the Appellant] now appeals.

We may say that we were very favourably impressed with the forthright evidence of [the Appellant]. His position, simply put, was that he had been obliged to take time off work as a direct result of an automobile accident, that the treatments he was receiving had been prescribed professionally and were calculated not only to relieve his pain (for which he receives no compensation in any event) but also to restore him to the full duties for which he is being paid and to which he wishes to return.

As it happens, [the Appellant] is covered by a collective agreement whereby he accumulates sick leave credits which 'vest' in the employee after a certain period. In consequence, he has not actually been out of pocket as a result of taking time away from work for his treatments; he has, however, lost certain other financial benefits and potential benefits such as vacation accruals, pensionable earnings and contributions and the like. Those are lost to him even if he were to be compensated by M.P.I.C. for his days off work and then, in effect, to re-purchase those sick leave credits from his employer.

But [the Appellant] makes the point, with which we concur, that the presence or absence of a sick-leave plan should not affect the outcome of a claim such as his: a claimant is either entitled, or not entitled, to be paid by M.P.I.C. for time necessarily lost from work in order to receive medical or paramedical treatment.

We have come to the conclusion that, with one minor qualification, [the Appellant's] claim must fail.

Any authority for the payment by M.P.I.C. of a claim must be found within the four corners of the Act and the Regulations adopted pursuant to the Act. The relevant Sections of the Act are:

> '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.'

and '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;

(b) the purchase of prostheses or orthopedic devices;

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

(d) such other expenses as may be prescribed by regulation.'

[The Appellant] is not unable to continue his full-time employment since, although his duties have been lightened to accommodate his temporary disability, he is still able to work full-time at his original salary. Section 81(1) is therefore inapplicable.

It is clear that the language of Section 136(1) is directed towards the repayment of monies actually disbursed by the claimant. Thus, the fees of physicians, dentists and duly authorized paramedical personnel, as well as transportation services, prosthetic and orthopedic devices and other, direct expenses would, if proven, properly be the subject of claims for compensation, whereas the equivalent value of sick leave used up through the need to take time off work to visit the medical or paramedical professional is not recoverable.

It may be viewed as something of an anomaly that M.P.I.C. is willing to pay I.R.I. under Section 116(1) of the Act for intermittent absences from work, provided that each absence is for a full day and the claimant is unable to work for that day as a result of the automobile accident, but is unwilling to pay for a lesser period of absence taken pursuant to a course of therapy directed

towards full rehabilitation. It might be thought that such an approach would encourage less loyal employees than [the Appellant] to 'swing the lead'. But, having said that, the task of this Commission is to interpret and apply the Act and the Regulations as we find them, and we can find no peg upon which to hang [the Appellant's] hat.

We spoke, earlier, of one qualification. [The Appellant] was specifically requested by his adjuster, by letter of June 28th, 1994, to obtain an up-to-date assessment of [the Appellant's] condition and prognosis. This request is covered by Section 144(1), which reads:

'144(1) A claimant shall, at the request of the Corporation and at its expense, undergo a medical examination by a practitioner chosen by the claimant.'

In our view, the phrase 'and at its expense' in the foregoing context is capable of a broader interpretation than the more limited benefits provided under Section 136(1), and encompasses all of the expense or loss necessarily incurred by the claimant in complying with M.P.I.C.'s request. [The Appellant], in order to put himself at least partly back in the position that he occupied prior to that visit to [Appellant's doctor], should be compensated for time taken to obtain the requested medical information.

If the parties are unable to agree upon that amount, we shall remain seized of the matter so that, at the request of [the Appellant] or of the Corporation, we may hold a further, brief hearing to decide that small question.

There is one, final question that was raised by [the Appellant] and upon which, although not technically encompassed by his present appeal, we undertook to comment when rendering our decision. [The Appellant's] evidence was that he had been told by a member of

M.P.I.C.'s adjusting team, that the Corporation's decision to pay no part of [the Appellant's] claim for time lost from work, nor for expenses incurred, for therapeutic massage was 'not appealable'. With deference, and while it is true that his claim in that regard is destined to fail by virtue of Section 8 of Schedule D to the Regulations under the Act

> ('8. The Corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist.')

it is nevertheless the view of this Commission that any decision of the Corporation relating to a claimant's entitlement in the context of a personal injury claim is, indeed, appealable, even if the claimant is clearly wrong. A claimant is entitled to hear, from this Commission, that his doubts are ill-founded, to the same extent that, if he happens to be on the side of the angels, he is entitled to be given his remedy.

Dated at Winnipeg this 22nd day of December [1994].

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED