

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-02**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan McKelvey
[Text deleted], the Appellant, appeared on his own behalf

HEARING DATE: April 28th, 1998

ISSUE: Residence - whether Appellant entitled to medical expenses or
other benefits under the MPIC Act

RELEVANT SECTIONS: Sections 37(b), 58, 136(1)(d) and 74(1) of the MPIC Act,
Section 1 of Manitoba Regulation 37/94, Sections 5 and 38 of
Manitoba Regulation 40/94 and Section 8 of the Domicile and
Habitual Residence Act of Manitoba.

**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

We note, at the outset, that the delivery of this Decision and the Reasons for it have been purposefully delayed, in order to give the parties an opportunity to make any further representations to us that they might deem appropriate. [The Appellant], after receiving a copy of some material submitted by MPIC, asked that he be given time to submit that material to his

solicitor. Hence, the hiatus between the date of hearing and the delivery of this Decision.

[Text deleted], the Appellant, was involved in a single vehicle automobile accident near [text deleted], Ontario, on the 7th of March 1994. The Appellant, unemployed at the time, was operating a [text deleted] automobile, bearing Manitoba Licence Plate No. [text deleted] which was registered in the name of his wife, [text deleted]. She had registered the vehicle in Manitoba on November 1st, 1993, giving her place of residence as [text deleted], Manitoba.

[Appellant's wife's] [text deleted] vehicle had originally been registered in Ontario under Licence Plate [text deleted]. She had correctly given her address, when registering the vehicle there, as [text deleted], Ontario. The Ontario registration was due to expire on November 16th, 1993 and presumably [Appellant's wife], being unsure of the date when she would actually be returning to Ontario, had decided to register here. The address that she gave when doing so was, however, a misrepresentation - her actual residence at all material times was, in fact, in [text deleted], Ontario. She had merely to come into [Manitoba] for obstetrical services in late September of 1993; [the Appellant], who was on parole at the time, obtained permission from Correctional Services Canada to accompany her to [Manitoba] from September 22nd to October 22nd, 1993, a date subsequently extended to November 10th. He gave his parole officer the address of [text deleted], [Manitoba], as the place where he and his wife would be staying, although [Appellant's wife], as noted above, had given [text deleted], [Manitoba], as her place of residence.

MPIC's file reflects the result of certain investigations made with respect to the residence of [the Appellant]. and [Appellant's wife] at material times:

(a) the owner of [text deleted], which is the address given by [the Appellant] to his parole

officer and is also the address given by [the Appellant]. and [Appellant's wife] to the [text deleted] when they applied for benefits on September 29th, 1993, says that she had never heard of nor met anyone by the name of [the Appellant] and [Appellant's wife]. The owner lives on the second floor of the two-storey duplex at that address and stated that the lady who lived on the main floor at all material times was a close friend of hers, a [text deleted], who had lived there for a long time until her death in mid-1995. [Text deleted] had one daughter who did not live with her but would visit her occasionally. The owner stated that there had never been anyone else, of whom she might possibly have been aware, living with [text deleted]. [The Appellant] refutes that by testifying that [text deleted] was his aunt and that he had indeed stayed there with her, albeit briefly, in October of 1993;

- (b) the owner of [text deleted] agreed that she was a friend of [the Appellant] and [Appellant's wife] and that [Appellant's wife] had stayed with her "off and on in 1993 and 1994" when the [Appellant and his wife] dropped in to the City. She had given [Appellant's wife] permission to use her address when registering her vehicle;
- (c) the personnel manager for [text deleted] confirmed that [Appellant's wife] had been hired to work at a [text deleted] at [Ontario] in April of 1993, had left in August of 1993 after applying for maternity leave but had not initially returned after her 27 weeks of leave had expired. [Appellant's wife] had, however, reapplied for employment and had started again with [text deleted] at [Ontario] in May of 1994. Meanwhile, [Appellant's wife] received unemployment insurance benefits out of the [text deleted] office from August 29th, 1993 until March 5th of 1994. [The Appellant], for his part, received 37 consecutive weeks of unemployment insurance benefits, starting in September of 1993. [Appellant's wife's] income tax returns, and those of her husband, for the years 1993, 1994 and 1995 were all filed in the Province of Ontario, although the 1994 return indicates that

they were filing as separated spouses.

We have no hesitation, therefore, in finding that at all material times neither [the Appellant] nor [Appellant's wife] was a resident of Manitoba within the meaning of Sections 1 and 8 of Manitoba Regulation 37/94 and of Section 8 of the Domicile and Habitual Residence Act of Manitoba. (Copies of those Sections, and of all other legislative provisions referred to in these Reasons are attached to and intended to form part of these Reasons.)

Two forms of Application for Compensation were filed on [the Appellant's] behalf with MPIC. The short, one-page form, while it does show the address of [text deleted], [Manitoba], shows telephone numbers both in [Manitoba] and in [Ontario] and was never signed by [the Appellant]. The longer form, which he did sign, clearly shows his address as [text deleted], Ontario, and merely notes that he had assisted with paying the rent for [Appellant's wife] at [text deleted] and had stayed there a while; that form, indeed, clearly says "moved back to [Manitoba] in September, '93, for two months". At the time [the Appellant's] claim was first filed in that fashion, MPIC personnel had some doubts as to the Appellant's proper residence but apparently felt either that they did not then have sufficient evidence upon which to base a total denial of his claim or that such a denial might result in protracted legal complications of greater expense than the matter was worth. Matters were resolved on a basis that both parties, at the time, seemed to feel was reasonable: [the Appellant] agreed that he would not be making a claim for any income replacement and MPIC agreed that, upon that understanding, it would pay his medical expenses. Under that arrangement, MPIC paid for [the Appellant's] chiropractic treatments and his prescribed medications from October 1st of 1994 until July 4th of 1996, bought him a lumbosacral corset for \$111.83, paid for some \$385.00 worth of aids to assist his back, bought him a new truck

seat to ease his lower back discomfort in October of 1995 for \$2,250.00 plus GST, shipping and handling and, in May of 1996, paid him \$7,000.00 as compensation for permanent impairments he had sustained in the form of compression fractures at T12 and L1, including some minimal bone alteration following the compartmented fracture of the vertebral body at each location.

On July 4th, 1996 MPIC advised [the Appellant], by letter of that date, that the corporation would no longer pay for chiropractic treatment nor for medication. The reasons advanced were, firstly, that further chiropractic treatment would not produce any lasting relief from his symptoms and, secondly, that the risks of long term use of his pain medication were greater than the benefits. The corporation did say that "should any further active treatment be required as a result of exacerbation of low back pain, we would be prepared to consider limited physiotherapy and/or massage, if prescribed, at a rehabilitation physiotherapy centre in [Ontario].

[The Appellant] applied for a review of that decision and, as a part of that application, also raised the question of his entitlement to income replacement and retraining.

MPIC's Internal Review Officer, [text deleted], confirmed the decision of the Corporation's adjuster with respect to chiropractic treatment and medication but pointed out that she was without jurisdiction to deal with his claim for income replacement and retraining, since no decision had yet been made on those points for her to review. [The Appellant] then reapplied to his adjuster for income replacement, and this apparently triggered a decision by the Corporation to reinvestigate the whole question of the [Appellant's] family's residence.

For the purposes of this decision, it is not necessary for us to describe, in much detail, the medical

and chiropractic evidence that is well documented in the file. It is enough to say that:

- (a) in the context of [the Appellant's] claim for continued chiropractic or physiotherapy care, both his own medical advisers and [text deleted], the Medical Coordinator of MPIC's Claims Services Department, appear to have agreed that no further treatment was required. They were also agreed that if, from time to time, [the Appellant] did require physiotherapy or massage for acute exacerbation of low back pain, then the course of that treatment should be limited to two or three times per week for three or four weeks at the most, with little reliance upon the use of pain relieving modalities and a greater focus on mobilization of the patient. Even if [the Appellant] were found to be entitled to such additional physiotherapy, the need for it under the foregoing circumstances does not appear to have arisen;
- (b) with respect to medication, [the Appellant] testified that he had been taking Percocet, a drug prescribed by his family physician. We note, in passing, that [the Appellant] has a history of drug addiction although, commendably, he appears to have completed successfully a drug education rehabilitation program sponsored by the Federal Government, in November 1991, following that up by completing a three phase drug addiction program sponsored by the [text deleted] in [Manitoba]. He returned to [Ontario] and became a client of a drug addiction counselor in 1993; his counselor has provided a letter to the effect that he has seen no abuse nor any signs of relapse through close monitoring of [the Appellant] over a five month period. However, the principal ingredient of Percocet is Oxycodone, of which the principal actions of therapeutic value are analgesia and sedation. But Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential of being abused, even unintentionally. Oxycodone may also impair the mental and/or physical abilities required for the

performance of potentially hazardous tasks such as driving a motor vehicle or operating machinery. As well, psychic dependence, physical dependence and tolerance may develop upon repeated administration of Percocet. We therefore agree with MPIC's medical consultant that the risks involved in continued use of that medication by [the Appellant] outweigh the benefits.

- (c) as far as [the Appellant's] claim for retraining is concerned, he has bought himself a logging truck which, as noted above, has been outfitted with a specially designed seat for the relief of his back problems. There is no medical evidence to indicate an inability to work at his former employment, and that claim would also, therefore, have to be dismissed in any event.

Following [MPIC's internal review officer's] advice, [the Appellant] returned to his adjuster with a claim for income replacement, which was denied initially upon the basis that [the Appellant] had been available for work and was therefore not entitled to IRI. However, when the matter came before [MPIC's internal review officer] again, in order that she might deal with this additional aspect of [the Appellant's] claim, the Corporation had completed further investigations into the residential status of [the Appellant] and [Appellant's wife]. [MPIC's internal review officer] denied [the Appellant's] claim for IRI and retraining, upon the basis that he had not been a resident of Manitoba at the time of his accident and, therefore, was not entitled to benefits under the Personal Injury Protection Plan. She found that [the Appellant] had "attempted to defraud the Corporation by providing willfully false information stating that you were a resident of Manitoba at all relevant times".

We are not prepared to venture that far; [the Appellant] makes the point, which seems to be borne out by the documentation on file, that he had never represented himself as a resident of Manitoba. He had never signed the only document that seems to make that claim - the short form of application for compensation referred to above - and had given his true, [Ontario] address in the one form that he did sign. [The Appellant] says, further, that he had not initially asked for anything more than reimbursement of his medical expenses [sic]. He says "It was MPIC that offered me a lump sum - I never asked for it". He carried on submitting his claims for medication and chiropractic benefits because, he believed, he was entitled to those because the car that he was driving was registered and insured under the Manitoba Public Insurance Corporation Act. It is this latter fact that leads us to examine not only the residence of [the Appellant] but that of his wife, as well.

The basic entitlement of the victim of a motor vehicle accident is covered by Sections 74 to 76 of the MPIC Act. Sections 74 through 76 provide for benefits to a victim who is resident in Manitoba, includes the owner and driver of, and any passenger in, a vehicle registered in Manitoba where the accident takes place in this province, and also makes certain provision for a non-resident victim of an accident that occurs in Manitoba. There are also provisions that extend to a Manitoba resident involved in an accident outside this province. Nowhere in that portion of the MPIC Act is there any provision made for insurance coverage of a non-resident where the accident occurs outside Manitoba.

This brings us to the relevance of [Appellant's wife's] residence, both at the time she registered the vehicle in Manitoba and at the date of her husband's motor vehicle accident. At the date of her

Manitoba registration, her Ontario registration was still valid although it was only about two and a half weeks away from its expiry date. She misrepresented herself as being a Manitoba resident when, in fact, she was only in this province on a very temporary basis for medical reasons. So far as we can determine, she had returned to [Ontario] at some point during the last couple of months of 1993.

Section 37(b) of the MPIC Act makes it clear that when an applicant for an owner's certificate "knowingly misrepresents a fact required to be stated therein, any claim by or in respect of the applicant.....and the right of every other person claiming through, on behalf of, or as a dependent of the applicant or the insured to benefits and insurance monies shall be forfeited" unless that forfeiture would appear harsh or inequitable, in which latter case there is provision for a relief against that forfeiture. It is the position of MPIC that, by virtue of the misrepresentation of [Appellant's wife's] residence in the application for registration of her vehicle in Manitoba, the insurance that might otherwise have been in force was automatically rendered invalid.

The case of *Belay v. Saskatchewan Government Insurance*, a decision of Somers J. in the General Division of the Court in Ontario, reported in the 1995 Insurance Law Reports, dealt with a similar situation. Mr. Belay had purchased his vehicle in Ontario but, because he had moved between Saskatchewan and Ontario on a number of occasions, he had registered the vehicle in Saskatchewan.

Thereafter, the vehicle was involved in an accident in Ontario and Belay sued the Saskatchewan Government Insurance Office, seeking indemnity for his resultant loss. Mr. Justice Somers found, upon the evidence, that Mr. Belay was a resident in Ontario, that as a non-resident of

Saskatchewan he was not required to register his vehicle there, and that the insurance certificate issued in Saskatchewan was therefore void. Further, since Mr. Belay had failed to register his vehicle in Ontario within 30 days after commencing to operate it in that province, as required, his coverage would, in any event, be revoked under Section 14 of the Saskatchewan Automobile Accident Insurance Act. Mr. Belay's action was therefore dismissed.

From the evidence before us, it does not appear that [Appellant's wife] had re-registered her vehicle in Ontario within 30 days after it had been returned to that province and, therefore, the Manitoba owner's certificate is automatically deemed to have been revoked at the end of that 30-day period pursuant to Section 58 of the MPIC Act - this, in addition to the fact that her vehicle should not have been registered in Manitoba in the first place, rendering void the insurance coverage that would have applied had she been a resident of this province.

We have also considered the question of estoppel - that is to say, whether MPIC, having accepted an apparent obligation to pay certain medical and associated expenses of [the Appellant] is now precluded from denying the continuance of that obligation. We have concluded that, since the benefits of the Personal Injury Protection Plan contained in the MPIC Act are limited to victims described in Sections 74, 75 and 76 of the Act, and since Sections 37 and 58 provide, in effect, for automatic termination or invalidation of coverage, the principle of estoppel does not apply in this case for the benefit of [the Appellant]. As Professor David J. Mullan puts it, in the third edition of his text on Administrative Law:

As a general principle, a statutory authority which possesses jurisdiction over a particular matter or has a duty to do certain things cannot be estopped from exercising or performing it. Similarly, a representation that jurisdiction or a duty exists cannot estop a subsequent refusal to exercise that jurisdiction or perform a duty which does not exist in law or in fact.

That principle is emphasized in the case of *Lidder vs. Canada (Minister of Employment and Immigration)* [1992] 6 Admin. L.R. (2nd) 62 (Fed. C.A.). Similarly, it cannot be argued on behalf of [the Appellant] that he has any contractual right as a result of the arrangement that he made with MPIC when filing his claim. While MPIC had apparently agreed to look after certain medical expenses if he would forego his right to claim income replacement indemnity, the fact is that no such right on his part existed in the first place and, therefore, any such alleged contract would be voidable for failure of consideration.

In summary, then, we find that:

- (a) neither [the Appellant] nor [Appellant's wife] was a resident of Manitoba at the time of [the Appellant's] motor vehicle accident;
- (b) [Appellant's wife's] vehicle was not properly registered in Manitoba, by virtue of the misrepresentation as to residence contained in her application for registration and, therefore, any insurance coverage that might have resulted from the proper registration of the vehicle is, in any event, void from the beginning;
- (c) any arrangement made by [the Appellant] with MPIC at the time of filing his claim for compensation is not binding upon MPIC to the extent that it would require MPIC to continue paying for [the Appellant's] medical expenses and
- (d) even were there a continuing obligation upon MPIC to reimburse [the Appellant] for medical expenses, there is insufficient evidence to establish the need on [the Appellant's] part for further chiropractic care, physiotherapy and medication of the kind that he seeks.
- (e) [the Appellant] is not a person entitled to compensation under Part 2 of the MPIC Act;

For the foregoing reasons, we are obliged to dismiss [the Appellant's] appeal.

Dated at Winnipeg this 7th day of September 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED