

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-99-16

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

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: May 3rd, 1999

ISSUE(S): Claim for reimbursement of expenses for care of another person.

RELEVANT SECTIONS: Sections 81(1), 81(2), 114(1), 114(2), 114(3), 134(1), 134(2) and 134(3).

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 principal occupation of the Appellant, [text deleted], is that of a pharmacist, in which capacity he works at the [text deleted] where his income for the year immediately preceding his motor vehicle accident of March 27th, 1998 was \$53,738.06, gross. From his application for compensation, and from his testimony before this Commission, it is clear that [the Appellant] had a secondary form of gainful employment: he was hired by [text deleted] [text deleted] to be a

foster parent for a severely, mentally ill young woman [text deleted], for which services he was paid \$100.00 per day.

As a result of his accident, [the Appellant] was unable to perform the duties of either of those occupations for a period of some twelve weeks. It is a matter of common accord between the Appellant and the insurer that, during the twelve weeks in question, [the Appellant] incurred expenses of \$2,809.70 by way of wages to two persons whom he had to hire to substitute for himself in the care of [text deleted]. Each of those substitutes was approved by [text deleted], which continued to pay [the Appellant] at his agreed rate of \$100.00 per day.

If we understand [the Appellant's] appeal correctly, he seeks reimbursement from MPIC of the expense that he incurred in hiring those substitute caregivers - that is to say, the \$2,809.70 referred to above. Reimbursement to that extent is not possible under the provisions of the MPIC Act. The section of that statute that provides reimbursement for the cost of substitute caregivers is Section 134 which, after updating the original, statutory figures, provides an allowance of \$80.00 per week for the victim of a motor vehicle accident who, like [the Appellant], is rendered by that accident unable to continue caring for a child or someone similarly dependent upon that victim for care. However, and although [the Appellant] seems to have been paid some monies under Section 134 in error (an error later corrected), Subsection 3 of Section 134 renders that section inapplicable to the present Appellant. It reads as follows:

Entitlement where victim has spouse

134(3) Notwithstanding subsections (1) and (2), a victim residing with his or her spouse is entitled to reimbursement of expenses under this section only for such time as the

spouse is also unable to care for the person referred to in subsection (1) because of the spouse's illness or disability, or the spouse's work or studies outside the residence.

[The Appellant] is married; [Appellant's wife] was not, at any material time, ill nor disabled nor studying or working outside their home. What [the Appellant] is entitled to, of course, is income replacement indemnity ('IRI') pursuant to Section 81(1) of the Act. A copy of that section, and of each other relevant section of the Act is attached to and intended to form part of these Reasons.

Income replacement indemnity is calculated as 90% of net income, and net income is gross yearly employment income (up to the maximum insurable earnings under Section 114) after deducting income tax, employment insurance premiums and Canada Pension Plan contributions. (See Sections 111(1), 112(1) and 114.) The maximum yearly insurable earnings, after adjustment pursuant to Subsections (2), (3) and (4) of Section 114, are \$58,500.00. Since [the Appellant's] gross yearly employment income from his work as a pharmacist and from his earnings from foster care aggregate \$88,238.06, his gross earnings exceed the maximum insurable earnings by a substantial sum.

Given maximum insurable earnings of \$58,500.00, and given [the Appellant's] gross yearly income from his principal employment, being \$51,738.06, the only portion of his other earned income that is insurable is, therefore, \$6,761.94.

The \$51,738.06 is taxable income, whereas the remaining \$6,761.94 is non-taxable. We calculate

the bi-weekly income to which [the Appellant] was entitled as follows:

Gross yearly income from principal employment	\$51,738.06	
Less deductions for I.T., E.I. and C.P.P.	<u>15,276.46</u>	
Net	36,461.60	
90% of net		32,815.44
Gross insurable income from foster care work	6,761.94	
(no deductions required) 90%		<u>6,085.75</u>
		<u>38,901.19</u>

$$\text{Bi-weekly IRI} = \frac{38,901.19}{26} = \$1,496.20$$

MPIC's last calculation treated the Appellant's total insurable income as taxable, resulting in a bi-weekly IRI of \$1,387.83. That is \$108.37 less than the amount to which, in our view, he was entitled every two weeks.

[The Appellant] was disabled for twelve weeks. After deducting the statutory waiting period of seven days, his full entitlement was 5.5 x \$1,496.20, or a total of \$8,229.10. He is therefore entitled to the amount by which that sum exceeds the aggregate actually paid to him by MPIC as benefits under Sections 81 and 134 of the Act. He is also entitled to interest on that excess, calculated at the statutory rate from June 19th, 1998.

Dated at Winnipeg this 10th day of May, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED