Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-77

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Jeffrey Palamar**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf, accompanied by [text deleted];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison.**
HEARING DATE:	**November 15th, 2000**
ISSUE:	**Meaning of 'cash value' in context of Gross Yearly Employment Income ('GYEI') calculation.**
RELEVANT SECTIONS:	**Subsection 2(d)(vii) of Manitoba Regulation No. 39/94**

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 facts giving rise to this Appeal are not disputed and may be summarized this way:

(1) The Appellant, [text deleted], sustained internal chest injuries, bilateral foot fractures and other injuries resulting from the collision of the front of his [text deleted] car with the side of a van on [text deleted] on December 13th, 1998.

(2) As a result, he received Income Replacement Indemnity ('IRI') and various rehabilitative therapies that are not relevant to this Appeal.

(3) At the time of his accident, [the Appellant] was employed by [text deleted]. His employment benefits included group policies of dental and extended health benefits for [the Appellant] and members of his family, plus group life insurance. The premiums were paid by [Appellant's employer]. Although MPIC appears to have treated those benefits as non-taxable, the premiums paid by [Appellant's employer] were, in fact, included as taxable benefits in the T4 slips received by [Appellant's employer's] employees, including [the Appellant].

(4) A fact of which [the Appellant] was apparently unaware was that the group dental insurance contract between [Appellant's employer] and [Appellant's employer's insurance company] stipulated that an employee's dental coverage would cease automatically if he were absent and disabled from work, for any reason, for 12 consecutive weeks. As MPIC's Internal Review Officer puts it, in his decision,

> While there were provisions in the plan permitting you to pay a premium directly to [Appellant's employer's insurance company], and thereby continue certain coverages, this option was not available to you in connection with the dental coverage. In other words, even if you had known (or received notice) that the dental coverage was about to terminate, you would not have been able to pay a premium to keep it in place.

(5) The dental plan established by [Appellant's employer] for its employees provided for a maximum reimbursement to an employee of $1,125 per family member per year, with a $35 annual deductible per patient. The plan covered most basic types of dental work at 100% of cost, while certain procedures (mostly related to bridges and dentures) were only covered at 50% of cost, the other 50% being payable by the insured himself.

(6) On February 26th, 1999, after [Appellant's employer's insurance company] had been notified that [the Appellant] was off work due to his disabling accident but before the expiry of the 12-week period during which his dental coverage continued, [Appellant's employer's insurance company] issued an approval of coverage for dental work to be

provided to [the Appellant's] son, [text deleted]. In the course of the next few months, [Appellant's son] received the approved treatment, some of it during the 12-week period and some after. Other family members, also, received dental treatment both during and after that same 12-week period.

(7) On June 8th, 1999, [Appellant's employer's insurance company] denied coverage for any of the family's dental work that had not actually been performed before the expiry of the 12-week period. [The Appellant] testified that he had not been aware, until he received that June 8th notification, that his dental coverage had lapsed or that it was even likely to lapse.

(8) [The Appellant] then filed a claim with MPIC for that portion of his dental expenses that would have been covered by the [Appellant's employer's insurance company] policy but had lapsed because of his 12-week-plus absence from work.

(9) None of the dental work for which [the Appellant] now seeks reimbursement was made necessary by his motor vehicle accident. Indeed, none of it was actually performed on [the Appellant] himself; the patients were members of [the Appellant's] family who, as noted above, would have been covered by the [Appellant's employer's insurance company] policy had the coverage not lapsed.

(10) For those portions of his family's dental work that were completed after his dental insurance coverage had lapsed, [the Appellant] apparently had to pay out of his own pocket. It is this latter amount for which he now seeks compensation.

Discussion

Section 136(1) of the MPIC Act provides for the reimbursement of expenses incurred by the victim of an automobile accident for medical and paramedical care, but it is quite clear that the expenses contemplated by Section 136 and its accompanying regulation, being Manitoba

Regulation No. 40/94, relate (in the present context) to dental treatment received by the victim of a motor vehicle accident as a result of that accident. Section 136 and Regulation 40/94 are, therefore, not relevant to [the Appellant's] claim.

The legislative provisions that are relevant to his claim are, firstly, Section 81 of the MPIC Act and, secondly, subsection 2(d)(vii) of Manitoba Regulation No. 39/94.

Section 81 provides, in effect, that a full-time salaried worker who is rendered incapable of continuing his work by reason of a motor vehicle accident is entitled to an Income Replacement Indemnity ('IRI') while he remains disabled. The IRI to which he is entitled is to be calculated upon the basis of the gross income that he earned from his employment ('GYEI').

Regulation 39/94 sets out the method of calculating IRI for someone in [the Appellant's] position. Under that Regulation, the insurer is required, initially, to calculate the sum of the following amounts:

(a) the salary or wages [the Appellant] received, or was entitled to receive, for the pay period in which his accident occurred, divided by the number of weeks in that period and then multiplied by 52;

(b) the cash value of any other benefit that [the Appellant] received, or was entitled to receive, in the 52 weeks before the date of his accident.

(There are other items that, if relevant, would also be factored in to the calculation of a victim's gross yearly employment income, such as bonuses, tips, profit-sharing plan allocations, the value of personal use of a motor vehicle provided by an employer and the value of an employer's contribution to a victim's pension plan if lost because of the accident. From the evidence given to this Commission, none of these seems relevant to the present Appeal.)

[The Appellant] argues that the cash value of the benefit that he received, or was entitled to receive, in the 52 weeks before the date of his accident, could be as much as $4,500 (that is to say, the maximum annual dental coverage of $1,125 for each member of his household). As he puts it, "'cash value' means 'monetary worth' and monetary worth is the amount of my dental bills that would have been covered by [Appellant's employer's insurance company] if I had been at work, to a maximum of $1,125 per person per year including my spouse and dependents."

[The Appellant] clarified his position by adding that he was only seeking reimbursement for the actual expenses incurred that, but for his accident, would have been covered by the [Appellant's employer's insurance company] insurance plan.

As an alternative position, [the Appellant] submitted that, at the very least, the cash value of his insured benefits should be calculated as the figure that he, himself, would have had to pay for identical benefits had he not been covered by his employer.

It is common ground between the parties that the annual premium paid by [Appellant's employer] for [the Appellant's] dental insurance coverage was $600.48; for his extended health care benefits, the premium was $607.20; and for his group life insurance, the premium was $96.36—a total of $1,304.04 per annum.

When interpreting the meaning of "the cash value of any other benefit received or that the victim was entitled to receive in the 52 weeks before the date of the accident", we are mindful of the fact that the entire purpose of Regulation 39/94 is to establish a formula for calculating gross yearly employment income, which the Regulation equates with the words "gross income" in

Section 81 and elsewhere in the MPIC Act. The amount of benefits paid out under a dental insurance scheme cannot, in our respectful view, be considered part of an employee's gross yearly income from employment. His income from employment must obviously be found within the context of money disbursed and expenses incurred by the employer to or for the benefit of the employee during the 52 weeks immediately preceding the accident. The only specific addition to that is the value of an employer's contribution to a victim's pension plan, if lost because of the accident.

[The Appellant] obtained a letter from his employee service representative at [Appellant's employer], dated June 21st, 1999, which says in part: "The company provides the dental plan as a benefit to its employees. This benefit is not included in calculating your hourly wage." That sentence appears to have been misinterpreted by MPIC as meaning that this was a non-taxable benefit of some kind since, on September 1st, 1999, the Corporation wrote to [the Appellant] to tell him that:

> "Effective March 25, 1999, due to the lost employer contribution to the **dental plan**, your GYEI was increased $600.48.
>
> Effective July 1, 1999, due to the lost employer contribution to **extended health**, your GYEI increased $607.20.
>
> Effective July 1, 1999, due to the lost employer contribution to **life insurance**, your GYEI increased $96.30."

Since it is apparent that MPIC did not include from the beginning (as it should have done), as part of [the Appellant's] gross yearly income from employment, the full amount of $1,304.04 actually paid out by [Appellant's employer] as part of [the Appellant's] taxable benefits, [the Appellant's] claim for Income Replacement Indemnity must be referred back to his adjuster for a recalculation of his GYEI and, therefore, of his IRI.

Dated at Winnipeg this 21st day of November, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

JEFFREY PALAMAR