

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-125**

PANEL: **Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. F. Les Cox**

APPEARANCES: **The Appellant, [text deleted], was represented by
[Appellant's representative];
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Terry Kumka.**

HEARING DATE: **July 16, 2002**

ISSUE: **Denial of the payment of landscaping costs relating to the
construction of a residence.**

RELEVANT SECTIONS: **Section 138 of The Manitoba Public Insurance Corporation
Act (the 'MPIC' Act) and Section 10(1) of Manitoba
Regulation 40/94.**

**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

On or about September 25, 1998, the Appellant, [the Appellant], was involved in a motor vehicle accident, as a result of which he was rendered a quadriplegic. The Appellant remains permanently disabled and is confined to a wheelchair. At the time of the accident, the Appellant was [text deleted] years of age, was married, and had [text deleted] small children. The Appellant and his family lived in an eight-year-old, 1400-sq.-ft., three-bedroom bungalow situated on a corner lot in [text deleted]. After the construction of this home, the Appellant

proceeded to do all of the landscaping on the property, including installing a lawn, a large number of trees, and flowers on the premises.

At the time of the accident, the Appellant's home was not wheelchair accessible. Following an assessment in April 1999 by [text deleted] of [text deleted], it was recommended for cost efficiency purposes that the Appellant construct a new home, rather than renovate his existing home. A significant contribution to the cost of the construction of the Appellant's home was paid by MPIC on the basis of making the new home accessible for the Appellant and as extraordinary costs associated with the relocation of a victim. The new home contributed to the rehabilitation of the Appellant and facilitated his return to a normal life.

The Appellant requested that MPIC pay for the landscaping costs in the amount of \$6,271.34 in respect of the construction of his new home.

In a letter dated June 12, 2001, the case manager wrote to the Appellant and informed him that:

We will not consider any contribution to your landscaping cost. This item was considered to be of aesthetic value only. The proceeds from the sale of your former home, would have reflected the fact that it was landscaped, and those proceeds would be used to landscape your present house.

The Appellant made an Application for Review of the case manager's decision. In a letter to the Appellant, dated August 17, 2001, the Internal Review Officer rejected a request for compensation in respect of landscaping costs on the following grounds:

You also claimed the costs of landscaping around your new house. The basis on which your case manager disallowed this portion of your claim in the decision under Review is sound enough. There are, however, broader grounds for disallowing it. It is not possible to characterize the landscaping costs as "an extraordinary cost required...to relocate" you. The point might be expressed even more generally. This is not a rehabilitation expense within the meaning of

Section 138 of *The Manitoba Public Insurance Corporation Act* since that Section is subject to Section 10 of Regulation 40/94. A copy of Section 138 is attached.

The Appellant filed a Notice of Appeal and, in Schedule “A” attached to the Notice of Appeal, he made the following assertions:

.....

5. [The Appellant] says that the landscaping costs for which he has submitted a claim in the amount of \$6,271.34 (see Schedule “B” attached) are also extraordinary costs associated with his relocation and form an inescapable part of the construction of a new home.

6. [The Appellant] further says that these are costs that he would not have had to incur but for the Accident and the fact that he had to relocate to a home that was wheelchair accessible.

7. [The Appellant] also seeks an allowance for regular yard maintenance which would include an amount for the cost of spring and fall clean-up, grass-cutting, snow shovelling and other similar costs, as [the Appellant’s] disability prevents him from performing any of these duties himself.

8. [The Appellant] relies on Section 138 of *The Manitoba Public Insurance Act*, R.S.M. 1987, c. P215 and Section 10(1) of Regulation 40/94 thereto in support of his appeal.

In respect of Schedule “B”, the Appellant stated:

1.	13 07 2000	[text deleted].	\$	246.10
2.		[text deleted]	\$	3,220.35
3.	13 10 2000	[text deleted].	\$	1,657.58
4.	19 10 2000	[text deleted]	\$	205.71
5.	07 06 2001	[text deleted]	\$	781.10
6.	25 07 2001	[text deleted]	\$	<u>160.50</u>
	TOTAL		\$	6,271.34

The Appellant also provided copies of all the invoices he received from [text deleted].

The Appellant withdrew his appeal in respect of his request for an allowance for yard maintenance.

Discussion

Both the Appellant and MPIC rely on Section 138 of the Act and Section 10(1) of Manitoba Regulation 40/94 in support of their positions. Section 138 of the Act states:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Sections 10(1)(b)(i) and (iii) state that:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with anyone or more of the following:

(b) funds for an extraordinary cost required

(i) where the victim owns his or her principal residence, to alter the residence or, where alteration is not practical or feasible, to relocate the victim,

...

(iii) to alter the plans for or construction of a residence to be built for the victim;

The Commission agrees with the Internal Review Officer that a request for the reimbursement of landscaping costs does not come within any extraordinary cost required to relocate the victim. Relocating a victim would relate to such matters as moving expenses, etc. It has no application to the costs in respect to purchasing soil, grass seed, edging, nor to the labour involved in levelling and raking soil, seeding grass, installing edging, or bed preparation. In addition,

purchasing and planting trees and shrubs do not come within the scope of extraordinary costs relating to the relocation of the Appellant.

However, the Commission is of the view that in rejecting the Appellant's request, the case manager and the Internal Review Officer failed to consider Section 10(1)(b)(iii) which indicates that MPIC may provide the Appellant with funds for extraordinary costs required for construction of a residence to be built for the Appellant.

Legal counsel for MPIC submitted that under Section 10(1)(b)(iii), the construction of a residence relates only to the physical structure and does not relate to any other construction on the land on which the physical structure is located.

On the other hand, legal counsel for the Appellant argued that the landscaping costs for the land surrounding the physical structure on the Appellant's property were included in the construction of the residence.

To assist the Commission in determining this issue, reference is made to the following dictionary definitions:

The Dictionary of Canadian Law, Second Edition (Carswell):

residence: ... 2. The chief or habitual place of abode of a person. 3. Includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto. [*underlining added*]

The Concise Oxford Dictionary, Tenth Edition (Oxford University Press):

premises: a house or building, together with its land and outbuildings... [*underlining added*]

Webster's New World College Dictionary, Fourth Edition:

residence: ... 3 the place in which a person or thing resides. [*underlining added*]

place: ...7 A residence; dwelling; house and grounds. [*underlining added*]

The Concise Oxford Dictionary, Tenth Edition (Oxford University Press):

residence: 2 the place where a person resides;

The general thrust of all the above-mentioned dictionary definitions relating to residence, premises and place indicates that a person's residence includes not only the building in which the person would live but also the surrounding grounds upon which the building is located. It is the Commission's opinion that when one is referring to a residence which is located on a residential property lot in a town or city, one is referring not only to the physical structure itself but also to the land surrounding the physical structure which is located within the boundaries of the residential property lot.

The Commission determines that the word 'residence' in Section 10(1)(b)(iii) includes the land on the Appellant's property surrounding the building in which the Appellant lives. As a result, the construction of a residence to be built for the Appellant includes both the physical structure and all of the land surrounding the physical structure within the boundaries of the Appellant's residential property lot.

The Commission notes that in the decision of the Internal Review Officer, dated August 17, 2001, the Internal Review Officer amended the decision of the case manager and directed that MPIC pay the entire cost of the building permit, legal fees and survey certificate. The Internal Review Officer stated:

The decision I have for Review requires amendment. The rationale for PIPP covering the entire cost of the building permit is not expressed in the decision itself. Elsewhere in the file, however, it is stated that this cost should "be paid. Any renovation of this extent requires a permit." The rationale for paying this

cost, then, is that it is “an extraordinary cost required . . . to relocate the victim.” Therefore, it falls squarely within Section 10(1)(b)(i) of the regulation. Exactly the same rationale applies to the cost of the legal fees and the survey certificate. Both of these were extraordinary costs required for the relocation. Your case manager, therefore, will arrange to pay you the sum of \$598.25, together with the appropriate interest.

The Internal Review Officer correctly determined that without the existence of a building permit, a survey certificate, or the legal advice the Appellant required from a lawyer to purchase the land and construct the home, the Appellant would have been unable to have constructed the residence in question. The Commission determines that extraordinary costs were required not only in respect to the relocation of the Appellant under Section 10(1)(b)(i) of Manitoba Regulation 40/94, but there were also extraordinary costs required in respect of the construction of the residence under Section 10(1)(b)(iii).

The Commission is of the view that the Internal Review Officer’s rationale in respect of the reimbursement by MPIC for the costs of the building permit, survey certificate and legal advice applies as well to the reimbursement by MPIC in respect to the cost of purchasing the soil, grass seed and edging, and the labour involved in levelling and raking the soil, seeding the grass, and installing the edging. The Commission finds that all of these costs come within the scope of construction of a residence under Section 10(1)(b)(iii) of Manitoba Regulation 40/94 in that they were necessary costs incidental to the construction of a residence.

In addition, the Commission finds the cost of the installation of a grass lawn is a necessary cost incidental to the construction of a residence under Section 10(1)(b)(iii) of the above Regulation for the following reasons:

1. Prior to the accident, the Appellant lived in a physical structure which was surrounded by a grassed area. This permitted the Appellant's [text deleted] small children to have a safe space to play in the presence and under the supervision of the Appellant or his wife. As a result of the accident, the Appellant and his family were required to relocate their residence. It is not unreasonable for the Appellant to expect that the construction of a new residence would include sufficient land surrounding the physical structure to permit again a safe and convenient space for his children to have a play area under the supervision of one or both parents. A grassed area surrounding the physical structure would provide an appropriate space for this purpose.
2. As a result of the motor vehicle accident, the Appellant was rendered a quadriplegic and is confined to a wheelchair. In the enjoyment of his property, the Appellant is entitled to have access to the land surrounding the building in which he resides. This access would include the ability to travel in his wheelchair on said land. It is, therefore, not unreasonable that in order to provide wheelchair access, the land surrounding the building in which the Appellant lives should be grassed.

The Commission, therefore, determines that, for all of the above reasons, the cost of the installation of a grass lawn on the Appellant's property is a necessary cost incidental to the construction of a residence under Section 10(1)(b)(iii) of Manitoba Regulation 40/94.

The Commission also determines that the purchase and planting of trees, shrubs and flowers would not be included as necessary in the construction of a residence, pursuant to Section 10(1)(b)(iii) of the Act.

Conclusion

The Commission, therefore, determines that MPIC should reimburse the Appellant in respect of the following costs, together with interest calculated thereon, in accordance with Section 163 of the MPIC Act, to the date of payment:

1. [text deleted]: for the cost of soil in the amount of \$246.10;
2. [text deleted]: for the cost of soil \$798.87, grass seed \$197.16, and edging \$187.00; and
3. [text deleted]: labour costs including levelling and raking soil, seeding grass, installing edging, bed preparation, but excluding the purchase of trees, shrubs, and flowers, together with the appropriate portion of the GST cost; and that
4. The Commission retains jurisdiction in this matter and, if the parties are unable to determine the labour costs relating to the matter set out in paragraph 3 above, then either party may refer this dispute back to this Commission for final determination.

Dated at Winnipeg this 23rd day of August, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

F. LES COX