

The Appellant testified that during the first two months subsequent to the motor vehicle accident she suffered a great deal of pain, discomfort and disability while recuperating from the arm break and the two breaks in her left hand. During the first two months she required physical assistance on a day-to-day basis to assist her in preparing breakfast, lunch and dinner, light housekeeping and housecleaning, as well as laundry and purchase of supplies. In addition, she required day-to-day assistance to perform all personal hygienic care. She testified that due to the pain and inability to use the broken arm she was unable to close and zip up her jeans after going to the washroom and her parka before going outside.

MPIC arranged for a Personal Care Assistance Assessment to be done by [Appellant's PCA assessor], who performed same on April 16, 2003, two months after the accident. In that report [Appellant's PCA assessor] indicates that the Appellant scored 3.5 out of a possible 51 possible points.

Schedule A of Manitoba Regulation 40/94 provides that where a claimant scores between 0-4 points on a Personal Assistance Expenses Worksheet he/she is entitled to 0% of the index maximum amount as prescribed by Section 131 of the Act. In order to qualify for personal assistance expenses a score of 5/51 is required.

On April 17, 2003 a case manager wrote to the Appellant confirming a telephone conversation with the Appellant on the same date wherein the case manager informed the Appellant that she could not qualify for personal care assistance because she had not scored at least 5 out of 51 in respect to the assessment that was done on April 16, 2003. The Appellant made Application for Review of this decision and an Internal Review Hearing took place by telephone on July 8, 2003.

On July 25, 2003 the Internal Review Officer wrote to the Appellant confirming the decision of the case manager and rejecting the Application for Review on the same grounds as determined by the case manager.

The Appellant filed a Notice of Appeal.

Appeal

The relevant provisions of the Act and Regulations which apply to this appeal are:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Manitoba Regulation 40/94

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under *The Health Services Insurance Act* or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A.

Section A of this Regulation provides that where a claimant scores between 0 – 4% he/she is not entitled to any reimbursement of personal expenses as set out in Section 131 of the Act.

The appeal hearing took place on July 6, 2004 via teleconference. Mr. Mark O'Neill represented MPIC and [the Appellant] represented herself.

The Appellant testified in a very candid, straightforward, direct manner as to the injuries she sustained in the accident and the difficulties she had as a result of the motor vehicle accident injuries in feeding and dressing herself and doing a variety of household activities. The

Appellant was cross-examined by legal counsel for MPIC and the Commission is satisfied that the Appellant is a credible witness and accepts her testimony in all material issues in dispute between herself and MPIC. The Appellant testified that shortly after the accident she had an extremely difficult time looking after herself and doing her household chores. She further testified that she gradually improved over a period of time and after a period of two months she was in a much better position to care for herself and to do her household chores.

The Commission notes that the assessment conducted by [Appellant's PCA assessor] on behalf of MPIC was not done until April 16, 2003, approximately two months after the motor vehicle accident. The Commission further notes that the Internal Review Officer rejected the Application for Review on the grounds that the Appellant did not score 5/51 possible points as a result of the assessment made on April 16, 2003 and, therefore, confirmed the case manager's decision to deny the Appellant's request for reimbursement of certain expenses during the first two months following the accident. As a result, MPIC was not able to provide any direct evidence as to the physical capacity of the Appellant to care for her personal needs and to conduct her household chores during the first two months of the accident. Having regard to the testimony of the Appellant, the Commission finds that the Appellant has established, on a balance of probabilities, that she was completely dependent or partially in need of assistance during the first two months following her motor vehicle accident.

The Commission therefore determines that MPIC failed to comply with Section 131 of the Act by reimbursing the Appellant for expenses relating to home care assistance where she was unable because of the motor vehicle accident, to care for herself or to perform the essential activities of everyday life without assistance during the first two months following her motor vehicle accident.

The Commission notes that in respect of Grid A, [Appellant's PCA assessor's] assessment provided for a score of 1 for dressing, and in Grid B she provided a score of 2.5 for light housekeeping, housecleaning, laundry and purchase of supplies. The total score assessed by [Appellant's PCA assessor] was 3.5.

The Commission determines that under Grid A the Appellant not only required partial assistance for dressing but also required partial assistance in respect of washing for a score of 2, eating for a score of 2, undressing for a score of 1, for a total score of 5. As a result, the Commission substitutes the score of 6 instead of 1 in respect of Grid A.

In respect of Grid B, the Commission finds that the Appellant required partial assistance not only for light housekeeping, housecleaning, laundry, and purchase of supplies, for a total of 2.5, but as well the Appellant required partial assistance in respect of preparation of breakfast for a score of 2, preparation of lunch for a score of 4 and preparation of dinner for a score of 5.5, for a total score of 11.5. As a result, the Commission substitutes the score of 13.5 rather than 2.5 in respect to Grid B.

The Commission therefore determines that the total assessment score the Appellant should have obtained under Grid A and Grid B would amount to a total score of 19.5 for the period February 19, 2003 to April 16, 2003.

The Commission therefore determines that the Appellant was entitled to personal care assessment benefits based upon a score of 19.5/51 from the date of the accident on February 19, 2003 until April 16, 2003.

Dated at Winnipeg this 27th day of July, 2004.

MEL MYERS, Q.C.

DIANE BERESFORD

PAUL JOHNSTON