

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-72**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Les Marks
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Danielle Robinson.

HEARING DATE: March 13, 2007

ISSUE(S):

1. Whether the Appellant has provided a reasonable excuse for failing to file his Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act;
2. Overpayment of Income Replacement Indemnity ("IRI") benefits;
3. Compensation for loss of part time employment.

RELEVANT SECTIONS: Sections 110(2)(a), 172 and 189(1) of *The Manitoba Public Insurance Corporation Act* (the 'MPIC Act').

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 Appellant, [text deleted], was involved in a motor vehicle accident on September 8, 2004. Due to the bodily injuries which the Appellant sustained in that accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated March 10, 2006 with regard to the following issues:

1. Whether the Appellant has provided a reasonable excuse for failing to file his Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act;
2. Overpayment of Income Replacement Indemnity ('IRI') benefits;
3. Compensation for loss of part time employment.

1. Whether the Appellant has provided a reasonable excuse for failing to file his Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act.

On January 17, 2006, the Appellant filed an Application for Review of two (2) separate case manager's decisions, dated January 28, 2005 and April 7, 2005, respectively. The Internal Review decision dated March 10, 2006 rejected the Appellant's Application for Review for failure to comply with Section 172 of the MPIC Act. The Appellant's Application for Review was filed after the 60-day time limit set out in Subsection 172(1) had expired. The Internal Review Officer considered whether the Appellant had a reasonable excuse for failing to apply for a review of the case manager's decisions within the time period provided. She found that the Appellant had not provided a reasonable excuse for failing to apply for a review of the decisions within the time provided for filing and, accordingly, she rejected the Application for Review.

At the hearing of the appeal, the Appellant explained that he had specifically asked his case manager about the 60-day time limit for filing for a review and was told by his case manager not to worry about the 60-day time limit. The Appellant maintained that he would have filed his Application for Review in a timely manner had he not been misled by his case manager. At the hearing, the Appellant also testified that he did not actually receive the case manager's decisions, since they were sent to an old address and not forwarded to his attention.

The Commission, having considered the testimony of the Appellant and his reason for failing to file an Application for Review within the time period as set out in Subsection 172(1) of the MPIC Act, finds that an extension of time for filing the Application for Review should have been granted.

It is apparent that the Appellant, although he was aware of his right to seek a review, was under a mistaken impression as to when he was required to file for such a review. It appears that the fact that his claim was ongoing with respect to treatment benefits, lead to confusion on his part as to when he was required to challenge the case manager's decisions with regards to his IRI benefits. Additionally, due to the fact that [the Appellant] did not receive the actual written decision letters, he did not have the benefit of the standard clause set out in each letter clearly advising claimants of their right to file for a review within sixty days. As a result, we find that he may have misunderstood the case manager with respect to the requirement to file for a review of her decisions in a timely fashion. Accordingly, we find that he has provided a reasonable excuse for failing to apply in time for a review of the case manager's decisions and would extend the time for filing his Application for Review. As such, we have considered the merits of the Appellant's claim.

2. Overpayment of Income Replacement Indemnity ('IRI') benefits

The case manager's decision dated January 28, 2005, determined that:

Your employer from the [text deleted] informed me on December 2, 2004, that you returned to modified duties with pay from September 16, 2004 to November 18, 2004, as you remained on their payroll for this period, it appears that you received an overpayment of IRI in the amount of \$[text deleted]. We ask that you remit the overpayment amount of \$[text deleted] to our office or call me to discuss.

The Internal Review decision dated March 10, 2006 also dismissed the Appellant's Application for Review on the merits of the claim and concluded that an overpayment had been made to the Appellant and that MPIC was clearly entitled to recover the overpayment.

At the appeal hearing, the Appellant submitted that he was not aware that an overpayment of IRI had been made. He argues that MPIC should have known that he continued to receive income from his employer for working modified duties, since that was clearly reported to MPIC by his employer on the Employer's Verification of Earnings form. Since the overpayment of IRI was MPIC's mistake, the Appellant contends that he should not be punished for it now by having to repay the funds to MPIC.

The Appellant further submits that he did not realize that there was an overpayment of IRI benefits because, according to his calculations of lost income, his IRI benefits were in fact a little short of what he expected to receive. The Appellant maintains that he was not paid for his hours which he would have worked orientating new clients at the [text deleted] with respect to how to use fitness equipment. He therefore claims that his IRI was not properly calculated and did not properly take into account the lost wages from his position as a fitness instructor at [text deleted]. Accordingly, the Appellant maintains that there has been no overpayment of IRI benefits and, in fact, the Appellant maintains that there has been an underpayment of IRI benefits.

Section 189(1) of the MPIC Act provides that:

Corporation to be reimbursed for excess payment

189(1) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

The Commission is bound by the provisions of Section 189(1) of the MPIC Act. We find that an overpayment of IRI has occurred and that the Appellant has received a benefit to which he was not entitled. Accordingly, pursuant to the provisions of Section 189(1) of the MPIC Act, MPIC is entitled to reimbursement from the Appellant for the amount of the IRI overpayment.

The case manager's decision dated November 3, 2004 clearly set out how the Appellant's IRI benefits were calculated. This decision also included the Employer's Verification of Earnings form that was completed by [text deleted] and which only referenced the three (3) hours bi-weekly for the Appellant's position as a fitness instructor (which included his orientation position). The Appellant did not seek a review of the case manager's decision dated November 3, 2004, nor did he point out the error in the IRI calculations at that time. The Commission has no jurisdiction at this time to review the IRI calculations set out in the November 3, 2004 decision.

Pursuant to Section 171 of the MPIC Act the Appellant may present new information to MPIC at any time for reconsideration. Accordingly, the Appellant may wish to obtain further information from [text deleted] respecting his lost earnings from his orientation position and submit that information to MPIC for reconsideration of the calculation of his IRI benefits.

3. Compensation for loss of part time employment

The Appellant is claiming compensation for his lost contract with the [text deleted] which would have lasted until June 30, 2005, but which he was unable to complete because of the injuries sustained in the motor vehicle accident. He maintains that he did not receive compensation for that lost contract to the date of its termination. The Appellant further argues that he should have been advised by his case manager that he was required to be on IRI benefits for a minimum of

ninety (90) days in order to qualify for a continuation of IRI benefits pursuant to Section 110(2)(a).

Section 110(2)(a) of the MPIC Act provides that:

Temporary continuation of I.R.I. after victim regains capacity

110(2) Notwithstanding clauses (1)(a) to (c), a full-time earner or a part-time earner who lost his or her employment because of the accident is entitled to continue to receive the income replacement indemnity from the day the victim regains the ability to hold the employment, for the following period of time:

- (a) 30 days, if entitlement to an income replacement indemnity lasted for not less than 90 days and not more than 180 days;

In accordance with the provisions of Section 110(2)(a) an Appellant must have been entitled to IRI benefits for a minimum of ninety (90) days in order to qualify for a temporary continuation of IRI benefits pursuant to this section. The Commission does not have any jurisdiction or discretion to alter the provisions of the MPIC Act. Accordingly, the Commission finds that the Appellant does not qualify for a temporary extension of IRI benefits pursuant to Section 110(2)(a) of the MPIC Act and his appeal in this regard is therefore dismissed.

Dated at Winnipeg this 19th day of April, 2007.

YVONNE TAVARES

LES MARKS

SANDRA OAKLEY