

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-81**

PANEL: Ms Laura Diamond, Chairperson
Mr. Neil Cohen
Ms Carole Wylie

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

HEARING DATE: March 3, 2008

ISSUE(S): Entitlement to reimbursement for personal care assistance
expenses incurred between January 14, 2001 and March 12,
2003

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Section 2 of Manitoba Regulation
40/94

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.**

Reasons For Decision

The Appellant was injured in a motor vehicle accident on January 6, 2001. As a result of her injuries, she required personal care assistance.

The Appellant's case manager issued a decision letter on January 18, 2001. This letter found that the Appellant's entitlement to personal care assistance ended as of January 14, 2001.

On June 10, 2002, an Internal Review Officer for MPIC found that the case manager's decision was a correct decision as the Appellant was capable of caring for herself.

It was from this decision of the Internal Review Officer that the Appellant appealed.

However, following the Appellant's filing of her Notice of Appeal, MPIC determined that the Appellant was entitled to personal care assistance benefits for the period in question. The Appellant's case manager provided her with a decision letter dated May 31, 2004 which indicated that she was entitled to reimbursement for some of the personal care expenses she was claiming, but not others. The case manager's letter set out the Appellant's entitlement to reimbursement for invoices received from a commercial care service provider and for personal care services which had been delivered by family members.

However, the case manager found that services which the Appellant claimed had been provided by a private service provider named [private service provider] were not eligible for reimbursement.

. . . It is impossible to reconcile the services provided by family members and what, if any, services were provided by [private service provider] that matched the March 12, 2003 assessment requirements. Further, it is impossible, given the material provided by you, to determine which of the services provided by family members were for you, for other family members, or would have been provided regardless of the accident. We are giving you the benefit of the doubt, however, and will pay the amount noted.

If we are provided with further information regarding the [private service provider] invoices – specific services provided, on what days, number of hours provided for service, and evidence that [private service provider] was paid – we will consider whether any top-up should be made for that.

By letter dated May 31, 2004, counsel for MPIC agreed to waive the Internal Review process for this decision and proceed to a fresh appeal before the Commission should the Appellant not be satisfied with the decision.

Accordingly, a hearing into the Appellant's appeal was heard on March 3, 2008, to deal with the question of reimbursement for these personal care assistance payments made between January 14, 2001 and March 12, 2003.

Submission for the Appellant

The Appellant testified at the hearing into her appeal. She stated that [private service provider] provided her with personal care services such as laundry, light housekeeping, heavy housekeeping, dusting and vacuuming. She would come to help the Appellant for a few hours in the morning, and then come back later in the afternoon.

The Appellant testified that she paid [private service provider] over \$7.00 per hour for the work she had done, but did not have a record of the actual hours worked. She had [text deleted] small children and, due to her injuries, was not able to keep up with her household duties, or to care for herself properly.

The Appellant stated that she had provided invoices from the caregiver, [private service provider], which she had paid. She indicated that English was not [private service provider's] first language, and that sometimes it was difficult for them to understand each other. She indicated that she had attempted to find [private service provider] after the fact, to attempt to obtain receipts for the amount she had paid, but had not been successful. Therefore, she could not provide details of the hours worked, or receipts for those hours.

However, the Appellant submitted that MPIC had not made her aware of what specific invoices would be required in order to receive reimbursement. At the time, she was more concerned

about getting the help that she needed to live decently in a clean house with the proper assistance. MPIC recognized and paid for a portion of the invoices she submitted, and the Appellant believed that they had not paid the full amount, but only partial amounts of what she had paid to [private service provider]. Accordingly she submitted that she should be entitled to full reimbursement.

Submission for MPIC

Counsel for MPIC reviewed documentation on the file which included e-mails to the Appellant. In these communications, MPIC was attempting to collect documentation, including receipts and details of services provided, in order to establish the Appellant's claim for reimbursement. MPIC provided reimbursement for the amounts which the Appellant was able to substantiate, including payment for services rendered by family members.

Counsel submitted that the onus was on the Appellant to show that she is entitled to reimbursement for the amounts sought. However, the Appellant is not really sure how much she paid, and there is no indication or evidence before the Commission as to what amounts might be owing. Although invoices have been submitted, no receipts or cancelled cheques or bank documentation to establish that the payments were actually made have been submitted. Accordingly, it was submitted, the Appellant had failed to establish by documentary evidence, or by her testimony, that the claimed expenses had been incurred and were owing to the Appellant.

Discussion

Section 131 of the MPIC Act provides for reimbursement of personal care assistant expenses.

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.

Section 2 of Manitoba Regulation P215 R.M. 40/94 provided for the reimbursement of personal home assistance expenses in accordance with Schedule A of the Regulation.

Definition

2(1) In this section, “**personal care assistance**” means assistance with an activity where

- (a) the activity is described in Schedule C and, in accordance with that Schedule,
 - (i) it applies to the victim,
 - (ii) it is appropriate for the victim’s age, and
 - (iii) the victim had the capacity to perform it at the time of the accident; and
- (b) the assistance
 - (i) is provided directly to and solely for the benefit of a victim, and
 - (ii) has been evaluated in accordance with Schedule C.

The onus is on the Appellant to establish that she incurred expenses, in accordance with the Act and Regulations, for which she is entitled to reimbursement for MPIC.

Counsel for MPIC explained the payments which had been made by MPIC to reimburse personal care assistance payments made by the Appellant. Payments had been made, by the case manager’s letter of May 31, 2004 for assistance provided by family members between January and July 2001. However, MPIC had indicated that it required further information before it could provide any reimbursement for amounts claimed regarding the services of [private service provider].

The Appellant had a different understanding of what had been paid. It was her view that MPIC had reimbursed her for \$7.00 per hour for [private service provider] services and she claimed that

she was seeking “top up” of this amount, as she had paid [private service provider] more than \$7.00 per hour, although she could not say how much.

A review of the documentary evidence on file shows that MPIC paid the invoices of a commercial care company from March 2003 onward. They also paid for services provided by family members between January and June 30, 2001. However, nothing had been paid in respect of the services performed by [private service provider].

Since March of 2003, you have been submitting invoices from a commercial care service provider and those invoices, which total approximately \$1,400.00 per month, have been paid. A review of the material you provided to [text deleted] shows personal care services having been delivered by family members and, as such, we are prepared to pay \$7.00 per hour, up to the maximum of 29.5 hours per week. That amounts to 127.83 hours per month (29.5 times 52 divided by 12). 127.83 hours at \$7.00 per hour amounts to \$894.83 (rounded to \$895.00 per month). Twenty-six months at \$895.00 per month totals \$23,270.00.

We will be forwarding to you, with the original of this letter, two cheques, one in the amount of \$11,700.00 (as this amount has already been processed) and one in the amount of \$11,570.00 payable to you, on the understanding that you will be paying your various caregivers from this sum. It is impossible to reconcile the services provided by family members and what, if any, services were provided by [private service provider] that matched the March 12, 2003 assessment requirements. Further, it is impossible, given the material provided by you, to determine which of the services provided by family members were for you, for other family members, or would have been provided regardless of the accident. We are giving you the benefit of the doubt, however, and will pay the amount noted.

If we are provided with further information regarding the [private service provider] invoices – specific services provided, on what days, number of hours provided for service, and evidence that [private service provider] was paid – we will consider whether any top-up should be made for that.

Although the Appellant testified at the hearing, she was not able to provide any further information with regard to her claim for reimbursement of amounts paid to [private service provider]. Although invoices were submitted on the file, she could not explain who created the

invoices, when they were created, what hourly rate was paid and the number of hours for each period which was paid.

Although the Appellant testified that she paid in cash, no receipt was produced for these payments, and no bank records or other such records showing withdrawal of such cash payments was submitted.

While the panel understands the difficulty inherent in trying to produce documentary evidence of this sort, particularly after the fact and from a private service provider, the fact that the Appellant was unable to provide information or answers regarding these questions, even in her verbal testimony at the hearing, leaves the panel to conclude that she has failed to meet the onus upon her of showing that she is entitled to reimbursement for the claimed amounts.

The panel agrees with counsel for MPIC that the necessary information referenced by the case manager in her letter of May 31, 2004, regarding “specific services provided, on what days, number of hours provided for service, and evidence that [private service provider] was paid” was not before MPIC, and is not before the Commission at this time. We understand from counsel for MPIC that the Corporation remains prepared to consider such information should it be provided.

However, in the absence of this information, the Commission concludes that the Appellant has failed to satisfy the onus upon her of showing that she is entitled to the reimbursement which she claims. Accordingly, the decision of the Internal Review Officer in dealing with the specific issue of reimbursement for these particular expenses is upheld. The Appellant’s appeal is hereby dismissed.

Dated at Winnipeg this 28th day of April, 2008.

LAURA DIAMOND

NEIL COHEN

CAROLE WYLIE