

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-08**

PANEL: Ms Laura Diamond, Chairperson

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

HEARING DATE: June 12, 2008

ISSUE(S): Entitlement to personal care assistance

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 1 & 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 February 17, 1998. The Appellant suffered soft tissue injuries affecting his cervical spine, a contusion to his right knee and injury to his right shoulder. A previous decision of the Commission, dated January 3, 2000, found that the Appellant, although suffering from a pre-existing bilateral carpal tunnel syndrome, suffered shoulder injury in the motor vehicle accident. However, the Commission found that he was able to return to work on February 1, 1999.

The Appellant sought reimbursement from MPIC for the cost of purchasing firewood to heat his home. The Appellant took the position that, due to his shoulder injury, he was unable to cut the wood himself and was required to purchase it in order to heat his home.

The Appellant's case manager wrote to him on June 1, 2001, indicating that since the Appellant did not qualify for personal care or home assistance expenses, he did not qualify for coverage for the cost of firewood under the Personal Injury Protection Plan ("PIPP"). He indicated that in order to assist the Appellant with his "rehabilitation and recovery" from injury a one time payment was made under "extraordinary circumstance" for firewood. It was the case manager's view that the Appellant had been purchasing wood for approximately ten (10) years and that he was not entitled to further reimbursement for the cost of purchasing firewood.

The Appellant disputed the case manager's assertion that he had regularly purchased wood prior to the motor vehicle accident and maintained that as a result of shoulder injuries arising out of the motor vehicle accident, he was not able to cut his own wood and provide for his heating needs.

On November 7, 2002, an Internal Review Officer for MPIC reviewed the Appellant's claim and upheld his case manager's decision. The Internal Review Officer found that the initial payment to the Appellant for wood cutting for one (1) year, was not an entitlement under the MPIC Act and Regulations, but rather, a one (1) time payment for one (1) year to assist him in his rehabilitation. The Appellant did not qualify under the grid utilized by MPIC to measure entitlement to personal care assistance or home care assistance. As well, the Internal Review Officer found that he was physically capable of cutting wood with a chain saw and that he did not qualify for any personal care or home assistance. She also found that wood cutting was not

an expense found in the MPIC Act and Regulations and he was not entitled to be reimbursed for the wood that was cut and delivered to him in 2001.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant testified at the hearing into his appeal. He described the difficulties he had arising out of his shoulder injury, including a lengthy process of therapy and surgery.

He testified that he had used wood to heat his home for twenty-three (23) years. Aside from a period following a 1987 injury to his ankle when he purchased wood he, for the most part, cut the wood himself and stored it to dry for later use. He described this as a heavy and difficult job which was severely hampered by the injury to his shoulder.

In 1999, he testified, MPIC paid for him to purchase the wood. He was still undergoing therapy at the time and was already behind in cutting wood for the next year.

The Appellant testified that he did not have the ability to cut wood or operate a chain saw due to his motor vehicle injuries.

He denied that he had been purchasing wood on a regular basis for over ten (10) years. He had only had to purchase wood due to his earlier ankle injury and most recently, due to the motor vehicle injuries.

The Appellant submitted that the wood was a necessity for him and that he needed help in obtaining it. He submitted that PIPP benefits were supposed to minimize the effects upon him of the motor vehicle accident and assist him to avoid economic hardship. The wood chopping was a task of daily living that he had been doing for himself prior to the motor vehicle accident and with which he required assistance following the motor vehicle accident. The Appellant submitted that until his medical situation changes, MPIC should make another exception and provide him with reimbursement for wood cutting for 2001.

Submission for MPIC

Counsel for MPIC submitted that there was no coverage under the applicable MPIC Act and Regulations for the reimbursement the Appellant is seeking. Further, he submitted that the medical evidence does not establish that the Appellant could not use a chainsaw to cut his own wood.

He reviewed the medical evidence on file and in particular, the evidence of [MPIC's Doctor], the Medical Director of MPIC's Health Care Services, who provided an opinion dated October 9, 2002 stating that, after reviewing the material in the Appellant's file, the Appellant would be able to operate a chainsaw.

Counsel for MPIC noted that the Internal Review Officer had made a full review of both the evidence surrounding the Appellant's past purchases of wood, and of the medical evidence, concluding that the Appellant was physically capable of cutting wood with a chainsaw.

Under the Personal Care Assistance Regulations in effect at the time of the Appellant's motor vehicle accident, no coverage was provided for wood cutting, and the Appellant would have to

qualify under the Personal Care Assistance Grid to receive assistance. He did not qualify with the minimum number of points required. The fact that one payment had been made, on a one time basis only, was not binding upon the Corporation. It had been established that the Appellant had the medical ability to prepare the wood himself. As well, the Appellant had not established any basis upon which reimbursement for the cost of firewood should be allowed, on the evidence, under the Act, or under the Regulations.

Discussion

The Sections of the MPIC Act and Regulations which apply to the Appellant's claim 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 is subject to Schedules

1 An expense that the corporation is required under this regulation to reimburse is subject to a determination by the corporation of the amount payable in accordance with the Act, regulations under the Act, and the Schedules to this regulation.

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.

Although the Regulation has since been amended, the Appellant's claim is governed by Regulations which set out reimbursement for personal home assistance under Schedule A, for claims arising prior to November 8, 2004.

The Commission has reviewed the evidence and submissions submitted by the Appellant and by counsel for MPIC.

The onus is on the Appellant to establish, on a balance of probabilities, that he is entitled to reimbursement for the cost of purchasing firewood under the PIPP.

The medical evidence fails to establish that, on a balance of probabilities, the Appellant's injuries during the period in question in 2001, prevented him from obtaining firewood with the use of a chainsaw.

The Commission also finds that the Appellant has failed to establish that he qualifies for personal care or home care assistance under the grid found in the MPIC Act and Regulations. As noted by the Internal Review Officer, wood cutting is not an entitlement under the MPIC Act and Regulations which apply to the Appellant's claim. The evidence establishes that the Appellant did not qualify for personal home assistance under the grid (Schedule A) by which the claimant's needs for assistance were scored. Since the Appellant did not meet the minimum levels necessary to qualify for personal care or home assistance expenses, he has failed to establish a basis for his claim that he is entitled to reimbursement for the cost of purchasing firewood.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated November 17, 2002 is hereby confirmed.

Dated at Winnipeg this 23rd day of July, 2008.

LAURA DIAMOND