

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-76**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Dr. Patrick Doyle
Ms Wendy Sol

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: January 8, 2008

ISSUE(S): 1. Whether Income Replacement Indemnity ('IRI') benefits have been calculated correctly
2. Entitlement to IRI benefits for hours of work missed to attend for medical appointments

RELEVANT SECTIONS: Sections 111(1) and 152(2) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 8 of Manitoba Regulation 37/94

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 appeal hearing in this matter was scheduled to commence on January 8, 2008 at 9:30 a.m. at the Commission office. The Appellant, [text deleted], had telephoned the Commission's Appeals Officer on January 4, 2008 and left a voice mail message indicating that he was unable to attend the hearing on January 8, 2008 as he was unable to take time off from work and

requested an adjournment. MPIC's legal counsel advised the Commission they were objecting to the adjournment.

At the commencement of the hearing on January 8, 2008, the Commission considered the Appellant's request for an adjournment. The Commission's records indicate that on August 29, 2007 the Appellant confirmed with the Commission's Appeals Officer that he was in possession of the indexed material in respect of his appeal. The Appeals Officer wished to set a date for the appeal hearing but the Appellant indicated that he was not prepared to proceed with his appeal at that time. The Appeals Officer informed the Appellant that the Commission may wish to set a Pre-Hearing Meeting with the Appellant in order to consider his objections to setting a date for the hearing of the appeal.

On September 12, 2007 the Commission scheduled a Pre-Hearing Meeting for October 22, 2007 and both the Appellant and MPIC's legal counsel attended this meeting. At this Pre-Hearing Meeting the Commission scheduled that the appeal hearing would proceed on January 8, 2008 at 9:30 a.m. for one-half day.

On October 24, 2007 the Commission forwarded a Notice of Hearing by Canada Post Xpresspost to the Appellant and received a print out from Canada Post that the Appellant was served with a copy of the Notice of Hearing on October 27, 2007.

On January 4, 2008 the Appellant telephoned the Appeals Officer and left a voice mail message indicating to her that he would be unable to attend the hearing on January 8, 2008 as he was unable to take time off from work. In a Memorandum to the Commission the Commissioners' Secretary reported that in response to the Appellant's voice-mail message she had telephoned the

Appellant and reminded him that as a result of the Pre-Hearing Meeting, held on October 22, 2007, he had agreed to a date for a hearing on January 8, 2008 and therefore had sufficient time to book the morning of January 8, 2008 off from work. The Appellant informed the Commissioners' Secretary that he was busy at work and he cannot take time off and that neither MPIC nor the Commission will pay him to take off work to attend a hearing.

The Commissioners' Secretary, in order to assist the Appellant, advised him that he had three (3) options:

1. He may participate in the hearing by way of teleconference;
2. He may request a formal adjournment of the hearing until another date (in writing);
3. He can provide written confirmation that he wishes the hearing to proceed in his absence.

In response, the Appellant advised the Commissioners' Secretary that she could select either of the three (3) options on his behalf. In reply the Commissioners' Secretary again reviewed the three (3) options with the Appellant.

The Appellant advised the Commissioners' Secretary that he did not have the time to sit down and write a letter to the Commission indicating the manner in which he wished to proceed with the appeal hearing. He further advised the Commissioners' Secretary that he was requesting an adjournment but he could not guarantee that he would be available on any future date set for the hearing.

The Commissioners' Secretary advised the Appellant that she would inform the Commission of his position and in due course the Commission would inform the Appellant as to the status of the Appeal. The Commissioners' Secretary left a voice-mail message, and sent an e-mail, to MPIC's legal counsel in order to obtain her written response to the Appellant's request for an adjournment.

On January 7, 2008 MPIC's legal counsel sent an e-mail to the Commissioners' Secretary indicating:

Further to today's telephone message, MPI would object to any adjournment since this matter has been dragging on for some time. In addition, tomorrow's hearing was set some time ago with his input and therefore I wonder why he did not set the date aside. All in all, we object to any adjournment.

Upon receipt of MPIC's objection to the Appellant's adjournment, the Commission wrote to the Appellant on January 7, 2008 (a copy of which is attached hereto and marked as Exhibit A) advising him of MPIC's objection to this adjournment and the consequences that could flow if the Commission refused his request for an adjournment and proceeded with the appeal.

The appeal hearing commenced on January 8, 2008 at 9:30 a.m. and the Appellant was not present at the hearing, but MPIC's legal counsel was. The Commission waited until 9:45 a.m. before proceeding to commence the appeal hearing.

Request for Adjournment

The first issue for the Commission to determine is whether or not to grant the Appellant an adjournment in respect of his appeal or to proceed with the hearing. The Commission reviewed the Appellant's discussions with the Commission's Appeals Officer and Commissioners' Secretary, and the response the Commission received from MPIC objecting to an adjournment.

Discussion

The Appellant had attended a Pre-Hearing on October 22, 2007 and agreed to proceed with his appeal on January 8, 2008. However, on January 4, 2008, which is a period of approximately eleven (11) weeks after October 22, 2007, the Appellant informed the Appeals Officer, by voice mail message, he was unable to attend the appeal hearing four (4) days later. The Commissioners' Secretary contacted the Appellant on that date and attempted to assist him and, after some discussion, the Appellant indicated he wished to adjourn the proceedings.

Upon receipt of MPIC's objection to the Appellant's adjournment, the Commission wrote to the Appellant on January 7, 2008 (a copy of which is attached hereto and marked as Exhibit A) advising him of his objection to this adjournment and the consequences that could flow if the Commission refused his request for an adjournment and proceeded with the appeal.

Decision – Request for Adjournment

The Appellant had ample opportunity between October 22, 2007, the date of the Pre-Hearing Meeting, and January 8, 2008, the date of the Hearing, to make the appropriate arrangements with his employer to attend the hearing, but he failed to do so. The Appellant has not provided any valid reasons why he was unable to take time off from work to attend the hearing. The Appellant was invited by the Commissioners' Secretary to participate in the hearing by way of a teleconference and he refused the opportunity to participate in his appeal by teleconference. The Appellant gave no valid reason why he was unable to participate by teleconference if he was unable to physically attend the hearing because of his work. The Commission finds that since the Appellant agreed, on October 22, 2007, to attend the appeal hearing on January 8, 2008, he had ample opportunity to make the appropriate arrangements to be away from work and he has not provided any valid reason why he could not make these arrangements.

The date of the motor vehicle accident was April 29, 2004. The Appellant filed a Notice of Appeal on May 11, 2006. MPIC is entitled, within a reasonable period of time from the filing of the Notice of Appeal, to have the appeal heard on the merits. MPIC was ready to proceed with the appeal hearing on January 8, 2008 and was justified in opposing the Appellant's application for an adjournment.

The Commission, after carefully considering the submissions of both the Appellant and MPIC's legal counsel, found that the Appellant had not provided any valid reason why the Commission should grant an adjournment. The Commission therefore rejected the Appellant's request for an adjournment and proceeded to hear the appeal on its merits.

Decision – Additional IRI Compensation

MPIC's legal counsel reviewed the two (2) Internal Review Officer's decisions dated October 31, 2005 and February 15, 2005 which the Appellant appealed in respect of:

1. Whether his IRI benefits had been calculated correctly;
2. Whether he was entitled to IRI benefits for hours of work missed to attend for medical appointments.

MPIC's legal counsel submitted that the Internal Review Officer had correctly determined and applied the provisions of the MPIC Act and Regulations when rejecting the Appellant's request for additional compensation. MPIC's legal counsel therefore submitted that the Appellant's appeal should be dismissed and the Internal Review Officer's decision confirmed.

The Commission, upon a review of the documentary evidence filed in the appeal hearing, having regard to the submissions of MPIC's legal counsel, finds that the Appellant has not established, on a balance of probabilities:

1. That his IRI benefits were incorrectly calculated;
2. That he was entitled to IRI benefits for hours of work missed to attend medical appointments.

The Commission therefore confirms the decisions of the Internal Review Officer dated October 31, 2005 and February 15, 2005 and dismisses the Appellant's appeal.

Dated at Winnipeg this 17th day of January, 2008.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

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