

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-49**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Mr. Paul Johnston

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

HEARING DATE: March 4, 2008

ISSUE(S): Calculation of Appellant's Income Replacement Indemnity
benefits

RELEVANT SECTIONS: Section 81 of The Manitoba Public Insurance Corporation
Act ('MPIC Act')

**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, [text deleted], was involved in a motor vehicle accident on November 17, 2005. 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.

At the time of the motor vehicle accident, the Appellant was employed as a teacher on a full-time basis with the [text deleted] School Division. The Appellant also worked in a self-employed capacity as an instructor/owner of [text deleted]. Due to the injuries which the Appellant

sustained in the motor vehicle accident, the Appellant missed intermittent days from teaching following the accident and then stopped working completely in April 2006, largely due to psychological effects of the accident. The Appellant was determined capable of performing fifty (50%) percent of his pre-accident duties as a [text deleted] instructor/owner. As a result, he became entitled to Income Replacement Indemnity ('IRI') benefits.

In a letter dated November 17, 2006, MPIC's case manager issued a decision respecting the Appellant's entitlement to IRI benefits. The case manager determined the following:

At the time of the accident, you were employed full-time as a Teacher with the [text deleted] School Division. You also worked in a self employed capacity as Instructor/Owner of [text deleted]. In accordance with Section 4 of Manitoba Regulations 37/94 you are classified as a Full-time earner.

Based on the Employer's Verification of Earnings form (EVE) completed by the [text deleted] School Division, your Gross Yearly Employment Income (GYEI) for your teaching job was determined as \$65,653.48.

The GYEI used for your self-employed position is the greater of your business income as per Section 3(1) and (2) of Manitoba Regulation 39/94 (attached), or the average gross income for the class of employment as determined by the Manitoba Regulation (Schedule C).

Schedule C is a table of classes of employment, wherein gross employment income by occupation is listed based on National Occupational Classifications (NOC). The level of experience an individual has in a class of employment determined establishes the GYEI.

As per Schedule C, your class of employment is defined as *Program Leaders and Instructors in Recreation and Sport as Instructor*. The information you provided to us supports that you have worked in this self employment for 22 years, which qualifies you for Level 3 of Schedule C.

Based on the information you have presented, the greatest of any calculation to determine your GYEI is based upon Schedule C, resulting in a GYEI of \$14,819.00.

On April 17, 2006, [Appellant's Occupational Therapist], completed a Job Demands Analysis of your [text deleted] employment. This assessment determined that you worked approximately 24 hours per week and that as a result your injuries, were capable of performing 50% of your pre-accident duties.

...

Based on the information provided, your combined GYEI has been calculated at \$81,472.48 (Teaching job \$65,653.48 + Self-employed position \$15,819), which exceeds the maximum insurable limit of the gross yearly employment income which is \$67,000, (indexed in March, 2005). This is governed by Section 114 of the Manitoba Public Insurance Corporation Act (copy attached).

Your bi-weekly IRI entitlement amount is therefore, based on \$67,000, which results in a bi-weekly entitlement of \$1,662.39. For your information, attached is a copy of the Income Replacement Indemnity Calculator sheet. This decision is based upon Section 111(1) of the Manitoba Public Insurance Corporation Act (copy attached).

As you are currently incapable of holding your job as a teacher and capable of 50% of your duties in your self employment, **your bi-weekly IRI entitlement is \$1501.00**. This amount is calculated as follows:

Bi-weekly IRI attributed to Job 1 = \$1339 ($\$65,653.48 / \$81,472.48 \times \1662.39)
Bi-weekly IRI attributed to Job 2 = \$322.78 ($\$15,819.00 / \$81,472.48 \times \1662.39) X 50%

The Appellant sought an internal review of the case manager's decision with respect to the calculation of his IRI benefits. In a decision dated March 2, 2007, MPIC's Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer determined that:

DISCUSSION & RATIONALE FOR DECISION

The information supports the fact that the [text deleted] was a business whose income was properly taken into account. You have filed tax returns for this revenue producing entity and while it has not generated vast sums, it should still be taken into account. Whether it is called a business or a hobby, it generates income which must be used.

There was no error in using Schedule C to attribute \$15,819.00 as income from the [text deleted] business because this is a greater amount than the actual income under any of the periods of time set out in Section 3(2)(a-e) of Regulation 39/94. Section 3(2) of Regulation 39/94 mandates that the higher figure must be used in calculating the gross yearly employment income derived from self-employment. You do not take issue with the actual Schedule C amount.

Once Schedule C has been properly found to be used for the [text deleted] income, the IRI calculation is relatively straightforward. I could not find any error in the actual calculation of your benefits.

The decision of the case manager of October 19, 2006 thus must be confirmed.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant's IRI benefits were properly calculated.

Sections 81(1) and 81(2) of the MPIC Act provide that:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

Determination of I.R.I. for full-time earner

81(2) The corporation shall determine the income replacement indemnity for a full-time earner on the following basis:

- (a) under clauses (1)(a) and (b), if at the time of the accident
 - (i) the full-time earner holds an employment as a salaried worker, on the basis of the gross income the full-time earner earned from the employment,
 - (ii) the full-time earner is self-employed, on the basis of the gross income determined in accordance with the regulations for an employment of the same class, or the gross income the full-time earner earned from his or her employment, whichever is the greater, and
 - (iii) the full-time earner holds more than one employment, on the basis of the gross income earned from all employment that he or she is unable to continue because of the accident;
- (b) under clause (1)(c), the benefit that would have been paid to the full-time earner.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant, [text deleted], and by counsel on behalf of the MPIC, the Commission finds that:

- ◆ The Appellant was unable to continue his full-time employment as a teacher from April 2006, due to injuries sustained in the motor vehicle accident of November 17, 2005.

- ◆ The Appellant was unable to continue with fifty (50%) percent of his self-employment duties as an instructor/owner of [text deleted], due to injuries sustained in the motor vehicle accident of November 17, 2005.
- ◆ The Appellant's combined gross income from his teaching job and his self-employed position exceeded the maximum yearly insurable earnings for 2005 of \$67,000.
- ◆ The Appellant's bi-weekly IRI entitlement in 2006 was therefore based upon \$67,000.
- ◆ As the Appellant was incapable of holding his job as a teacher, his IRI from that position should not have been reduced by virtue of the fact that he was capable of holding fifty (50%) percent of his duties in his self-employment. Rather, the Appellant is entitled to receive his full IRI benefits for his teaching position. The difference between the maximum yearly insurable earnings limit of \$67,000 and the GYEI attributable to his teaching job, being \$65,653.48, should be reduced by fifty (50%) percent to account for the Appellant's ability to do fifty (50%) percent of his self-employed duties.

Pursuant to ss. 81(2)(iii) of the MPIC Act, a full-time earner who holds more than one employment is entitled to IRI benefits on the basis of the gross income earned from all employment that he or she is unable to continue because of the accident. The methodology which reduced the Appellant's IRI benefits resulted in a fundamental unfairness to the Appellant. The reduction in his IRI to account for the fact that he could carry out fifty (50%) percent of his self-employed duties had the effect of reducing the IRI attributable to the Appellant's teaching position, even though he was not able to continue that employment. The administrative policy implemented by MPIC had the effect of reducing the Appellant's combined IRI for his two jobs, to an amount that was less than the IRI to which the Appellant would have been entitled if he only held the teaching position. As a result, the Appellant was

negatively impacted, which we find improper.

Accordingly, we find that the Appellant is entitled to receive his full IRI benefits for his teaching position so long as he was unable to hold that employment. The difference between the maximum yearly insurable earnings limit and the GYEI attributable to the Appellant's teaching position should be reduced by fifty (50%) percent to account for the fact that he can continue fifty (50%) percent of his self-employed duties. The Appellant's IRI benefits shall therefore be recalculated on that basis. The Appellant shall be entitled to interest on the sum awarded by virtue of this decision in accordance with Section 163 of the MPIC Act.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated March 2, 2007 is therefore rescinded.

Dated at Winnipeg this 8th day of May, 2008.

YVONNE TAVARES

DR. PATRICK DOYLE

PAUL JOHNSTON