

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-103**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Wilf DeGraves
Ms Wendy Sol

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

HEARING DATE: May 27, 2009 and June 8, 2010

ISSUE(S): Appropriate deduction for Canada Pension Plan
contribution.

RELEVANT SECTIONS: Section 112(1) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Section 10 of Manitoba
Regulation 39/94

**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, [text deleted], was involved in a motor vehicle accident on April 18, 2008, wherein he sustained a dislocated left wrist and a fractured left arm. Due to the injuries which the Appellant sustained in the motor vehicle 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 self-employed as a consultant. Due to the injuries which the Appellant sustained in the motor vehicle accident, he was unable to continue his employment as a consultant and therefore he became entitled to income replacement indemnity (“IRI”) benefits in accordance with Section 81(1) of the MPIC Act.

The Appellant is appealing the Internal Review Decision dated September 19, 2008 with regards to the calculation of his IRI benefits. The appeal hearing commenced on May 27, 2009. During that hearing, the Appellant agreed to provide additional information to MPIC in order to allow MPIC to recalculate his IRI benefits. The parties have advised that the Appellant’s IRI benefits have been revised according to the additional information provided by [the Appellant]. [The Appellant’s] IRI entitlement is now based upon the maximum yearly insurable earnings for 2008 of \$73,500. The only issue which remains between the parties is the determination of the appropriate deduction for contributions under the Canada Pension Plan (“CPP”).

Section 112(1) of the MPIC Act provides as follows:

Determination of net income

112(1) A victim's net income is his or her gross yearly employment income, to a maximum of the maximum yearly insurable earnings established under section 114, less an amount determined, in accordance with the regulations, for income tax under *The Income Tax Act* and the *Income Tax Act* (Canada), premiums under the *Employment Insurance Act* (Canada) and contributions under the Canada Pension Plan.

Section 10(1) of Manitoba Regulation 39/94 provides as follows:

Net income is GYEI less certain deductions

10(1) For the purpose of this regulation, the net income of a victim is the gross yearly employment income of the victim determined under this regulation, less the following:

- (a) the income tax payable by the victim, as determined under subsection (3);
- (b) the premiums payable by the victim in respect of unemployment insurance, as determined under subsection (5);
- (c) the contributions payable by the victim in respect of the Canada Pension Plan, as determined under subsection (6);

except in the case of a victim who is claiming a loss of unemployment insurance benefits, where the only deduction shall be the income tax payable as determined under subsection (3).

Section 10(6) of Manitoba Regulation 39/94 provides as follows:

Contributions payable under Canada Pension Plan

10(6) For the purpose of this regulation, the contributions payable under the Canada Pension Plan are the amounts payable by the victim as an employee's contribution for the year under the Canada Pension Plan in respect of the victim's pensionable earnings, not exceeding the maximum amount by him or her for the year under the plan.

The Appellant and MPIC differ on the interpretation to be given to the phrase “the amounts payable by the victim as an employee’s contribution for the year under the Canada Pension Plan in respect of the victim’s pensionable earnings”.

The Appellant submits that MPIC improperly deducted both the employee and employer portion of the contribution for CPP. He contends that the wording of subsection 10(6) of Manitoba Regulation 39/94 is clear that only the “employee’s contribution” is to be deducted. As a result, the Appellant maintains that in computing his net income, MPIC should only deduct the employee’s contribution for CPP and therefore his appeal should be allowed.

Counsel for MPIC submits that MPIC properly deducted both the employer and employee portion of the contribution for CPP, since the Appellant is self-employed. Counsel for MPIC contends that as a self-employed individual, the Appellant is required to remit both the employer and employee contributions to CPP. Counsel for MPIC maintains that subsection 10(6) must be read with reference to an individual’s circumstances. He argues that when interpreting the

amounts payable by the victim, MPIC is required to take into account the fact that the Appellant is self-employed and that the amount payable by the victim would be both the employer and employee contributions for CPP. Accordingly, counsel for MPIC submits that MPIC has made the appropriate deductions for CPP in this case. Further he argues that the Appellant has not satisfied the onus to establish otherwise. Therefore, counsel for MPIC maintains that the Appellant's appeal should be dismissed and the Internal Review Decision dated September 19, 2008 should be confirmed.

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant's net income has been properly calculated by deducting the self-employed contribution rate of 9.9% of contributory self-employed earnings.

The Commission finds that in interpreting subsection 10(6) of Manitoba Regulation 39/94 consideration must be given to the fact that the victim is self-employed. Therefore the amounts payable by the victim as a contribution for the year under the Canada Pension Plan is the contribution rate established under the Canada Pension Plan. As noted by the Appellant, there are differing contribution rates for employees, for employers and for self-employed persons. Since the Appellant is self-employed, the applicable deduction is the contribution rate for self-employed persons as established under the Canada Pension Plan, being 9.9%.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 19, 2008 is confirmed.

Dated at Winnipeg this 29th day of June, 2010.

YVONNE TAVARES

WILF DEGRAVES

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