

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-138**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Linda Newton
Mr. Trevor Anderson

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

HEARING DATE: April 26, 2011

ISSUE(S): 1. Calculation of Income Replacement Indemnity benefits;
2. Reimbursement of various expenses.

RELEVANT SECTIONS: Sections 81(2), 136(1) and 163 of The Manitoba Public
Insurance Corporation Act ('MPIC Act') and Sections 3 and
10 of Manitoba Regulation 39/94.

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. ALL REFERENCES TO THE
APPELLANT'S INFORMATION AND OTHER PERSONAL, IDENTIFYING INFORMATION HAVE
BEEN REMOVED.**

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on July 14, 2007. As a result of that accident, the Appellant sustained a fractured rib with hemothorax, a left ankle fracture, lacerations and abrasions, as well as soft tissue injuries to various regions of his body. This Commission issued a decision on December 8, 2008 (AC-08-05), which established that, on the balance of probabilities, the Appellant was a resident of Manitoba at the time of the accident in question. Therefore, due to the bodily injuries which the Appellant sustained in the accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of

the MPIC Act. The Appellant is now appealing the Internal Review Decision dated August 20, 2009, with respect to the following issues:

1. calculation of income replacement indemnity (“IRI”) benefits; and
2. reimbursement of various expenses.

1. Calculation of Income Replacement Indemnity Benefits

At the time of the motor vehicle accident, the Appellant was a full-time self-employed project management consultant. Due to the injuries which the Appellant sustained in the accident, he was unable to continue his employment and thus became entitled to IRI benefits pursuant to Section 81(1) of the MPIC Act.

Section 3(2) of Manitoba Regulation 39/94 provides that the Gross Yearly Employment Income (“GYEI”) of a self-employed earner is the greatest of the following:

GYEI from self-employment

3(2) Subject to Section 5, a victim’s gross yearly employment income derived from self-employment that was carried on at the time of the accident is the greatest amount of business income that the victim received or to which the victim was entitled within the following periods of time:

- (a) for the 52 weeks before the date of the accident;
- (b) for the 52 weeks before the fiscal year end immediately preceding the date of the accident;
- (c) where the victim has operated the business for not less than two fiscal years before the date of the accident, for the 104 weeks before the fiscal year end immediately preceding the date of the accident divided by two;
- (d) where the victim has operated the business for not less than three fiscal years before the date of the accident, for the 156 weeks before the fiscal year end immediately preceding the date of the accident divided by three;

or according to Schedule C.

Under Schedule C, the Appellant was classified as a Level 3 [text deleted] Manager with a salary of \$111,679.00. Therefore, the calculation of his Gross Yearly Employment Income was based upon the Schedule C salary, which was greater than his business income of \$36,746.46. The Appellant's IRI was subject to the 2007 maximum IRI indemnity of 71,000.00.

Section 10(1) of Manitoba Regulation 39/94 sets out the deductions applicable to the GYEI, 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).

At the appeal hearing, the Appellant indicated that he did not agree with the amount of deductions taken from his IRI entitlement. He also contended that the calculation of interest on the IRI benefits that were paid to him was improperly calculated. Lastly, the Appellant argued that his IRI benefits should have been extended until March 2, 2008 and should not have terminated effective February 10, 2008 as he was not able to fully return to work as of that date.

Counsel for MIPIC submits that the Appellant's IRI benefits were calculated in accordance with the MPIC Act and Regulations and took into account the applicable deductions. Counsel for MPIC also maintains that the amount of interest paid to the Appellant on his outstanding IRI benefits was properly calculated in accordance with the MPIC Act. Interest for each bi-weekly

IRI payment was calculated separately from the date the Appellant became entitled to the IRI payment and then added for a total. Further, counsel for MPIC maintains that interest was calculated in accordance with the Court of Queen's Bench quarterly interest rates. Lastly, counsel for MPIC argues that the Appellant's IRI benefits were correctly terminated effective February 10, 2008, as the Appellant was capable of substantially performing the essential duties of his employment on or before February 10, 2008. As a result, counsel for MPIC argues that the Appellant's appeals should be dismissed and the Internal Review Decision dated August 20, 2009 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant and a careful review of all of the documentary evidence filed in connection with this appeal, and after reviewing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. the Appellant's IRI benefits were calculated in accordance with the MPIC Act and Regulations;
2. the interest paid to the Appellant on his IRI benefits was calculated in accordance with the MPIC Act and the Court of Queen's Bench interest rates for the time period in question; and
3. on a balance of probabilities, the Appellant was substantially able to perform the essential duties of his employment on or before February 10, 2008, and therefore his IRI benefits were correctly terminated effective that date.

The Commission finds that the Appellant's net income was calculated in accordance with Section 10(1) of Manitoba Regulation 39/94 and we find that the appropriate deductions were

subtracted from the Appellant's GYEI for the purposes of computing his net income. With respect to the calculation of interest payable upon the Appellant's IRI benefits, the Commission accepts the written submission of MPIC, provided in its correspondence dated June 30, 2011. Therein, MPIC provided a breakdown of exactly how interest was calculated on each bi-weekly IRI instalment, computed from the day on which the Appellant became entitled to the IRI payment. We also find that the calculations were done in accordance with the prejudgment rate of interest determined under *The Court of Queen's Bench Act*. Lastly, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was entitled to IRI benefits beyond February 10, 2008. The Appellant did not provide any medical evidence to establish that he was incapable of holding employment beyond February 10, 2008. As a result, the Commission finds that the Appellant was able to perform the essential duties of his employment effective February 10, 2008.

2. Reimbursement of Expenses

The Appellant is seeking reimbursement of the following expenses:

- a) coffee purchased from August 12, 2007 to August 15, 2007, while the Appellant was a patient at [hospital].
- b) massage therapy treatment administered by a registered massage therapist;
- c) paper and photocopy expenses;
- d) expenses related to obtaining information from the Appellant's accountant; and
- e) telephone expenses for the period that the Appellant was a patient at [hospital].

At the appeal hearing, counsel for MPIC confirmed that MPIC would provide reimbursement in the total amount of \$50.00 for the Appellant's telephone expenses incurred while he was a patient at [hospital].

Decision:

Upon a careful review of all of the documentary evidence filed in connection with this appeal and after reviewing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of any of the other expenses claimed.

Specifically, the Commission finds that:

- a) There is no provision in the MPIC Act and Regulations for reimbursement of coffee expenses incurred while the Appellant was hospitalized at [hospital].
- b) Section 8 of Manitoba Regulation 40/94 provides that MPIC shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist, or athletic therapist. The massage therapy expenses incurred by the Appellant related to massage therapy administered by a registered massage therapist. Registered massage therapists do not fall into the category of approved care providers set out under Section 8 of Manitoba Regulation 40/94. As a result, the Appellant is not entitled to reimbursement of that expense.
- c) There is no provision in the MPIC Act or Regulation for reimbursement of the cost of paper and photocopies obtained by the Appellant.
- d) The Commission finds that the Appellant was required to establish his residency in order to establish his claim for PIPP benefits. As a result of that obligation, the expenses relating to obtaining information from the Appellant's accountant was incurred. We find that it was the Appellant's obligation to provide the information requested by MPIC and the resulting expenses are the Appellant's responsibility. There is no provision in the MPIC Act or Regulations for reimbursement of those expenses.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of any of the foregoing expenses, other than reimbursement of the \$50.00 for the Appellant's telephone expenses, as consented to by counsel for MPIC at the appeal hearing.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated August 20, 2009 is confirmed.

Dated at Winnipeg this 31st day of August, 2011.

YVONNE TAVARES

LINDA NEWTON

TREVOR ANDERSON