

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-058**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Trevor Anderson
Mr. Paul Johnston

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

HEARING DATE: May 7, 2012 in Brandon, Manitoba.

ISSUE(S): 1. Whether the Appellant's Income Replacement Indemnity
("IRI") was terminated properly.
2. Whether the Appellant is required to repay \$8,125.70 to
MPIC.

RELEVANT SECTIONS: Sections 110(1)(e), 112(1), 189(1) & (2), and 191 of The
Manitoba Public Insurance Corporation Act ('MPIC Act')
and Section 3(1) of Manitoba Regulation 39/94

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

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on February 22, 2001. As a result of the accident he suffered significant injuries which had an adverse effect on his ability to work a cow/calf farm located near [text deleted], Manitoba. As a result of the injuries suffered in the motor vehicle accident the Appellant was unable to resume his farm duties at that time.

Case Manager’s Decision – IRI Payment - October 4, 2001

On October 4, 2001, MPIC’s case manager wrote to the Appellant advising him that he was entitled to IRI benefits. In this letter the case manager set out the method of calculation of the Appellant’s bi-weekly payments. The case manager outlined four options by which the Appellant could receive the IRI benefits. The case manager indicated that the best option for the Appellant was under Schedule C of Manitoba Regulation 39/94. The case manager further stated:

“Based on the information you have supplied, the income indicated under Schedule C provides the greatest option. You indicated that you started self-employment as a cattle farmer in 1996 and as such, you fall into Level 2 for the income level. This provides a Gross Yearly Employment Income of \$13,929.00. Income Replacement is based on 90% of net income. As a result, you are entitled to a bi-weekly payment of \$453.99. Income Replacement starts on the eighth day following the date of the accident. You have been receiving income replacement since March 2, 2001.”

The case manager’s decision also indicated:

“If you are not satisfied with this decision, you can request a review under Section 172(1) of The Manitoba Public Insurance (MPI) Act. Application forms for review can be obtained from any MPI office, or you can contact me directly. The Review Office must receive your application within 60 days from the date you receive this letter.”
(underlining added)

The Appellant did not request a review of the case manager’s decision within 60 days of receipt of the letter dated October 4, 2001.

Case Manager’s Decision – Reduction of IRI – October 28, 2003:

On October 28, 2003 the case manager wrote to [the Appellant] and stated:

*“Income Replacement Indemnity “Top-Up”
Accident of February 22, 2001
Claim Number: [text deleted]”*

As we previously discussed, your Income Replacement Indemnity (IRI) is reduced based upon the percentage of the work duties that you are able to perform. I will outline the details below.

Appellant's occupational therapist] met with you to assess your farm duties and the hours you spend each month in performing these duties. She also determined the duties that you are able to perform and the monthly hours spent performing them.

The attached Schedule outlines the percentage of the farm duties you are able to perform each month and the net IRI payable to you for each month.

I have issued a payment to you in the amount of \$1,841.59, covering the Income Replacement owing to you from July 1 to October 31, 2003."

This letter also contained the same provision as set out in the letter from the case manager of October 4, 2001. The Appellant did not request a review of MPIC's decision within 60 days of receipt of this letter.

Case Manager's Decision – Rescission of IRI and Over-Payment – August 20, 2008:

On August 20, 2008 MPIC's case manager wrote to the Appellant regarding "**Decision on Income Replacement Indemnity (IRI) Entitlement and Over-Payment**". The case manager advised the Appellant:

"A review and reconciliation of your 2007 income tax information was completed and the results are outlined below.

The 2007 income tax return confirmed your gross farming income was \$133,637.00. This amount exceeds the Gross Yearly Employment Income of \$17,680.00 on which your Income Replacement Indemnity (IRI) was calculated. Section 110(1)(e), of The Manitoba Public Insurance Corporation Act, states:

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(e) the victim holds an employment from which the gross income is equal to or greater than the gross income on which victim's income replacement indemnity is determined;

Based on the above, you are no longer entitled to Income Replacement Indemnity (IRI) benefits effective Jan 1, 2007.

A reconciliation was completed based on your 2007 employment earnings, resulting in an over-payment of \$8,125.70. This is for the period of January 1, 2007 to June 30, 2008.

Please forward a cheque, payable to The Manitoba Insurance, for the above amount as soon as possible. Failure to receive payment by October 1, 2008 will result in this matter being forwarded to our Accounts Department.”

In this decision the Appellant was also advised that he was entitled to request a review of this decision within 60 days of receipt.

In response to the case manager’s decision terminating the IRI and requesting repayment of \$8,125.70, the Appellant attended with his wife the MPIC office on October 6, 2008 to meet with the case manager. In a note to file in respect of this meeting the case manager stated:

“On Oct. 6, 2008 [the Appellant] and his wife attended the office. As [text deleted] was away, I met with them. [The Appellant] was not happy with our decision to end his I.R.I. based on his 2007 income tax return. Furthermore, he is not prepared to reimburse M.P.I. for any overpayment. As far as his income for 2007, he advised he sold off a lot of his cattle as he can no longer look after them due to his left shoulder injury. He said he expects to have to do the same again this year or next. He also mentioned he received money through various government programs.

I advised [the Appellant] that when evaluating income tax returns, M.P.I. follows Revenue Canada rules. In order to end his entitlement, his income must have been substantial enough that it exceeded the GYEI being used in this claim.”

In a note to file dated December 1, 2008, the Internal Review Officer wrote the MPIC's PIPP Financial Support Services and stated:

"I am the Internal Review Officer assigned to [the Appellant's] review. He has told me that his 2007 income was high because he was selling a large part of his inventory (cattle) because he felt he needed to reduce his workload due to his injuries.

[The Appellant] provided me a document titled "Farm Income Analysis" showing a steady increase in herd size since 2005 and then a sharp drop in 2007. I have attached a copy of the document for your information.

Please advise if there is any exception made with regard to IRI that takes into account the reduction of assets because a claimant feels they need to reduce their workload."

MPIC's PIPP Financial Support Services replied:

"Internal Review submitted an analysis and inquired if it has any effect on the decision to end the claimant's IRI in 2007. The analysis indicates the claimant sold a large part of his inventory in 2007 as he felt he needed to reduce his workload due to the accident. The analysis shows a sharp drop in herd size in 2007. The decision to end IRI was based on the claimant's 2007 income, which was more than three times greater than the GYEI.

As the sale of cattle is part of the claimant's normal and core income producing activities, this has no effect on the decision to end IRI. The financial statements clearly show the majority of the income in 2007 was from "slaughter cattle". In addition, the amount that the claimant's net income exceeded the GYEI in 2007 was more than three times. Therefore any changes that were asked to be considered and were brought forward now or in the past would likely not decrease the claimant's net income substantially enough to allow the claimant to receive an entitlement (see CARS note dated June 24 and August 11, 2008)

Gross Farming income - \$133,637

Net Farming income = \$84,319 * 70% = \$59,023

CCA applicable to the claimant = \$3,694 * 70% = \$2,585.80

Adjusted net income = \$61,608.80

200 GYEI = \$16,640...

In calculating the claimant's income, we apply the same rules that Canada Revenue Applies, if it is taxable for CRA then it is deductible from the claimant's IRI. Therefore based on the tax information, and the additional farm income analysis submitted, there is no effect on the recommendation to end IRI entitlement in 2007."

Internal Review Officer`s Decision – February 10, 2009:

On February 10, 2009 the Internal Review Officer issued a decision confirming the case manager's decision that the Appellant's entitlement to IRI was properly terminated pursuant to Section 110(1)(e) of the MPIC Act. The Internal Review Officer also stated that based on the information provided in the Appellant's 2007 Income Tax Return, he received an overpayment of \$8,125.70 and that MPIC was entitled to be repaid this amount. In the Reasons for Decision, the Internal Review Officer stated:

"I specifically noted a CARS note dated June 24, 2008. This information showed that your GYEI at that point in time was \$17,680.00, after indexing. According to Section 110(1)(e) of the *Act*, your entitlement to IRI benefits ceases once your gross income exceeds the GYEI upon which those benefits are based.

The CARS note discussed above set out the details of your farming income. After taking into account the capital cost allowance of \$2,585.80, the adjusted net income came to \$61,608.80...

I have reviewed the numbers provided by you with respect to the number of cattle in your herd for years 2005 to 2007, and I do agree that your closing herd of 79 in 2007 was greatly reduced from even the opening herd numbers of 2005. Nevertheless, the sale of slaughter cattle is your main source of income and must still be taken into consideration in the calculation of your 2007 income. Even if you did sell an unusually large number of cattle in 2007 because you felt you were not capable of taking care of these animals, there is no valid reason for not including that income in your GYEI calculation.

Also of note is the fact that you had steadily increased your herds in 2005 and 2006, even though your motor vehicle accident occurred February 22, 2001 – more than four years earlier."

The Internal Review Officer concluded that she had difficulty accepting that the Appellant was required to sell a large number of cattle due to the injuries he sustained in the motor vehicle accident and even if she accepted that proposition it would still not operate to reduce his income for GYEI calculation purposes. The Internal Review Officer further stated that since the main source of the Appellant's income was the sale of slaughter cattle, this income was required to be declared on his Income Tax return. As a result, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision.

Appeal:

On June 24, 2009 the Appellant filed a Notice of Appeal.

The relevant provisions of the MPIC Act and Regulations are:

Events that end entitlement to I.R.I.

[110\(1\)](#) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(e) the victim holds an employment from which the gross income is equal to or greater than the gross income on which victim's income replacement indemnity is determined;

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.

Corporation to be reimbursed for excess payment

[189\(1\)](#) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

Time limitation for recovery of payment

[189\(2\)](#) The corporation may commence an action to recover an amount to which it is entitled to be reimbursed

(a) within two years after the day the amount is paid to the person; or

(b) where the amount is paid as a result of fraud, within two years after the day the fraud is first known or discovered by the corporation.

No reimbursement of amount paid before reconsideration

191 If a decision is reconsidered and changed by the corporation under subsection 171(1) or clause 171(2)(a), the corporation is not entitled to reimbursement of any amount paid to a person as a result of the decision unless the amount was obtained by fraud.

Manitoba Regulation 39/94

GYEI derived from self-employment or a Canadian-controlled private corporation
3(1) In this section, "business income" means the income derived from self-employment or a Canadian-controlled private corporation, by way of proprietorship, partnership interest, or significant influence shareholder interest, less any expense that relates to the income and is allowed under the Income Tax Act (Canada) and The Income Tax Act of Manitoba but not including the following:

- (a) any capital cost allowance or allowance on eligible capital property;
- (b) any capital gain or loss;
- (c) any loss deductible under section 111 (losses from other years) of the Income Tax Act (Canada).

The hearing took place in [text deleted], Manitoba at a meeting room in the [the Appellant] Suites. The Appellant attended on his own behalf and Ms Cynthia Lau appeared on behalf of MPIC.

The Appellant testified on his own behalf and submitted that:

1. It was unfair and unreasonable for MPIC to terminate his IRI benefits.
2. As a result of his motor vehicle accident injuries he was unable to carry out his farm duties and was therefore forced to sell a number of his calves and he suffered a significant loss of income.
3. He was entitled to be compensated for this loss of income.
4. It was unfair and unreasonable for MPIC to seek repayment from him in the amount of \$8,125.70.

MPIC did not call any witnesses.

Submissions:

MPIC's legal counsel, in her submission, reviewed the MPIC Act and Regulations in respect of the GYEI and discussed the manner in which MPIC had determined the Appellant's GYEI.

MPIC's legal counsel submitted that:

1. The decision of MPIC's Internal Review Officer that the Appellant's IRI was properly terminated was correct and should not be reversed by the Commission.
2. The Appellant has not demonstrated how his GYEI was incorrectly calculated and that MPIC was entitled to terminate his IRI pursuant to Section 110(1)(c) of the MPIC Act.
3. Even if the Appellant could prove loss of income due to the injuries sustained in the motor vehicle accident, this would still not operate to reduce his income for GYEI calculation purposes in order for him to continue to receive IRI.
4. The Commission should dismiss the Appellant's appeal in respect of the termination of his IRI.

In respect of MPIC's request to seek repayment of \$8,125.70 from the Appellant, the Commission raised the issue with MPIC's legal counsel about the relationship between Sections 189(1) and 191 of the MPIC Act. The Commission asked MPIC's legal counsel if the sum of \$8,125.70 was not obtained by the Appellant through fraud whether MPIC could require repayment of this amount from the Appellant.

The Commission adjourned the proceedings for a short period of time to permit MPIC's legal counsel to consider this issue. When the hearing was reconvened MPIC's legal counsel advised the Commission that MPIC was withdrawing its request for reimbursement of the sum of \$8,125.70 from the Appellant on a "without prejudice" basis and that MPIC would not be seeking reimbursement of this amount from the Appellant.

In his submission the Appellant repeated the arguments he made in his testimony and stated that it was unfair and unreasonable for MPIC to terminate his IRI benefits. In a discussion with the Commission, the Appellant acknowledged that:

1. He was advised in a letter from MPIC's case manager dated October 4, 2001 that his Gross Yearly Employment Income ("GYEI") would be \$13,929, based on 90% of his net income.
2. He was provided with the information upon which MPIC based this decision.
3. In this letter he was advised that if he was not satisfied with the decision he could seek a review within 60 days, which he did not do.
4. In a letter dated October 28, 2003 MPIC's case manager advised him of a reduction in IRI based on the work duties that he was then able to perform.
5. In this letter he was advised that he could apply for a review of this decision which he did not do.
6. In a letter dated August 20, 2008, the case manager wrote to him and advised him that his IRI was being terminated and he was required to repay MPIC the overpayment of \$8,125.70.
7. In this letter he was given notice that he could apply for a review of this decision which he did not do.

The Appellant submitted that:

1. He operated a cow/calf operation and he solely determined the best time to sell his calves to receive the best price.
2. MPIC should compensate him for the loss of income he suffered when he was forced to sell his calves because he was unable to continue to carry out his farm duties due to his injuries.

The Commission notes that the Appellant was unable to point to any provision in the MPIC Act or Regulations which would permit MPIC to compensate the Appellant for any future lost income from the sale of the calves.

After reviewing the documentary evidence filed in these proceedings and after hearing the submissions from the Appellant and MPIC's legal counsel, the Commission agrees with MPIC's legal counsel that the Appellant has failed to demonstrate that MPIC erred in calculating his GYEI for the purpose of determining his entitlement to IRI. The Commission also agrees with the submission of MPIC's legal counsel that there is no provision in the MPIC Act or Regulations that requires MPIC to compensate the Appellant for the loss of income from the sale of the calves. The Commission therefore finds that the Appellant has failed to establish on a balance of probabilities that MPIC erred in the GYEI calculation and in their decision to terminate his IRI. In respect of the this issue the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated February 10, 2009.

The Commission also notes that MPIC has withdrawn its request for reimbursement from the Appellant of the \$8,125.70 overpayment. The Commission therefore finds that the Appellant is not required to reimburse MPIC for this amount and in respect of the overpayment allows the Appellant's appeal and varies the decision of the Internal Review Officer dated February 10, 2009 in this respect.

Dated at Winnipeg this 30th day of May, 2012.

MEL MYERS, Q.C.

TREVOR ANDERSON

PAUL JOHNSTON