

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-12-007**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Janet Frohlich  
Ms Pat Heuchert

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

**HEARING DATE:** April 16, 2013

**ISSUE(S):** Calculation of Income Replacement Indemnity benefits.

**RELEVANT SECTIONS:** Section 81(1) of The Manitoba Public Insurance Corporation  
Act ('MPIC Act') and Section 3 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 December 24, 2008, while on vacation in [text deleted]. As a result of that accident, the Appellant injured her knee, chest and back and suffered pain as well as bruising. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated November 17, 2011, with respect to the calculation of her income replacement indemnity ("IRI") benefits for the period from January 12 to March 5, 2009.

At the time of the motor vehicle accident, the Appellant was employed as a full-time [text deleted] with [text deleted]. Following her vacation in [text deleted], she had planned to return to work with [text deleted] on a full-time basis starting January 12, 2009. As a result of the injuries which the Appellant sustained in the accident, she was unable to work from January 12 to January 22, 2009. From January 26 to March 5, 2009, the Appellant gradually increased her weekly hours until she was able to return to full-time work on March 6, 2009.

On May 3, 2011, MPIC's case manager issued a decision confirming the Appellant's IRI benefits. The case manager confirmed that the Appellant received full bi-weekly IRI for the period from January 12 to January 22, 2009. From January 22 to March 5, 2009, the Appellant received IRI top-up benefits based on the percentage of hours worked biweekly out of her normal pre-accident average of 96 hours biweekly. The Appellant's entitlement to IRI ceased as of March 5, 2011, as the Appellant was back at work full-time and did not miss any further work due to her injuries.

The Appellant disagreed with the calculation of her IRI benefits and sought an Internal Review of the case manager's decision of May 3, 2011. In a decision dated November 17, 2011, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision, subject to correcting the amount payable from \$3,837.58 to \$4,001.21. The Internal Review Officer found that the IRI benefits payable to the Appellant had been correctly calculated based on her personal income in accordance with the MPIC Act and Regulations.

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

**Decision:**

Upon a careful review of all of the medical, paramedical and other reports and 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 IRI benefits were properly calculated for the period from January 12 to March 5, 2009.

**Reasons for Decision:**

A review of the IRI calculation dated December 28, 2010 demonstrates that MPIC applied the Regulations correctly when calculating the Appellant's IRI benefits from January 12 to March 5, 2009. First, MPIC correctly calculated the Appellant's self-employed gross income from [text deleted] by calculating her income less the applicable expenses. As this amount was less than the amount outlined in Schedule C of the Regulations for Level 3 Family Marriage and Other Counsellors, MPIC used the amount of \$60,629 from Schedule C as the Appellant's gross income. The Appellant's net income was determined by deducting the applicable taxes from \$60,629 and taking 90% of the resulting number. The Appellant's IRI entitlement was then calculated for the period from January 12 to 22, 2009 on a full-time basis. MPIC also calculated the Appellant's IRI entitlement for the period that she gradually returned to full-time work from January 23 to March 5, 2009. The Commission finds that the IRI calculation of December 28, 2010, showing an entitlement of \$4,001.21 was done correctly.

Accordingly, the Commission finds that the IRI benefits payable in this situation have been correctly calculated in accordance with the MPIC Act and Regulations. As a result, the

Appellant's appeal is dismissed and the Internal Review decision dated November 17, 2011 is confirmed.

Dated at Winnipeg this 8<sup>th</sup> day of May, 2013.

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**YVONNE TAVARES**

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**JANET FROHLICH**

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**PAT HEUCHERT**