Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No. AC-15-245

PANEL:	**Ms Karin Linnebach, Chairperson** **Ms Linda Newton** **Mr. Neil Margolis**
APPEARANCES:	**The Appellant, [text deleted], was represented by Mr. Sean Young of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Trevor Brown**
HEARING DATE:	**March 6, 2018**
ISSUE(S):	**Entitlement to Income Replacement Indemnity ("IRI") Benefits**
RELEVANT SECTIONS:	**Sections 70(1) and 101 of The Manitoba Public Insurance Corporation Act ("MPIC Act")**

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

Reasons for Decision

Background:

The Appellant, [text deleted], was injured in a motor vehicle accident ("MVA") on June 13, 2015. Following the MVA, the Appellant filed an Application for Compensation under the Personal Injury Protection Plan ("PIPP") and sought IRI benefits. On September 29, 2015, the Appellant's case manager advised the Appellant that he was not entitled to IRI benefits as he failed to provide

documentation to support that he was employed at the time of the accident. The case manager relied on s. 101 of the MPIC Act, which states that a victim who is 65 years of age or older and does not hold employment on the day of the MVA is not entitled to IRI benefits. The Appellant was [text deleted] years of age at the time of the MVA.

The Appellant filed an Application for Review of the case manager's decision to the Internal Review Office. In a decision dated December 17, 2015, the Internal Review Officer, citing s. 101 of the MPIC Act, concluded that the Appellant was not employed at the time of the accident and upheld the case manager's decision.

The Appellant filed a Notice of Appeal to the Commission on December 21, 2015. The issue on appeal was whether the Appellant was entitled to IRI benefits. The parties agreed at the commencement of the hearing that the Appellant was required to prove, on a balance of probabilities, that he held employment on the day of the accident to be eligible for IRI benefits.

Decision:

For the reasons set out below, the panel finds the Appellant has not met the onus of establishing, on a balance of probabilities, that he held employment on the day of the MVA and was therefore entitled to IRI benefits.

Evidence and Submissions for the Appellant:

The Appellant testified that, after many years of working, he started to do "handyman work" for apartment blocks in approximately 1980. He upgraded suites and did general repairs, including

fixing doors and countertops and some plumbing. He estimated that, at one time, he worked at 44 apartment blocks. The Appellant indicated that, in order to get paid for his work, invoices were completed and he was paid by cheque.

The Appellant was asked to identify what type of work he was doing in 2015 and for whom he performed this work. He initially stated that in 2015 he worked for [text deleted] and that he continues to do work for [text deleted]. He stated he did "some things" for a caretaker and that he worked 20-25 hours/week. He wasn't sure how much he got paid for his work but thought it was $15.00/hour.

He stated that he got his work through word of mouth. He did some work at an apartment in the Crestview area, but wasn't sure how they reached him. He remembered doing work for [text deleted] as well as a job trimming bushes in a parking lot. He worked for "another guy" on [text deleted]. He did some work for [text deleted] which he described as driving her around when she was sick as well as "helping out on a few jobs".

He was questioned as to what work he lost as a result of the MVA and indicated that he had to do a lot of running around as a result of the accident. He had to attend small claims court and deliver papers to the driver of the other vehicle in the accident. He stated that he ran into someone who wanted to hire him to do some repairs in an apartment block and that he had arranged to meet with this individual the next week. Because he was injured in the MVA a few days before their meeting, he was forced to tell this individual that he couldn't work.

He indicated that at the time of the accident he got paid by cash for the work that he did. In response to the question who paid him, he stated "the people I worked for" and that it "could have been the landlord".

On cross-examination, the Appellant confirmed that he was requesting lost wages from MPIC commencing from the time of the MVA until the end of August 2015. He also spent time "driving around" after the MVA and wanted to be compensated for his time. He spent time going to the home of the driver of the other vehicle, going to the rental car agency and looking for another vehicle. He indicated that this was time he could have been working.

While the Appellant did not remember completing and signing the Application for Compensation, he acknowledged that his signature is on the Application. It was pointed out that the Application for Compensation lists [text deleted] as his primary employer and shows "not applicable" under the category of secondary employer. In response, the Appellant stated that "people" would call him anytime and that sometimes he would only work for a few hours and sometimes it would be an entire day. He stated that he would be given work orders that would indicate whether he needed to do repairs or to replace.

He acknowledged on cross-examination that [text deleted] worked for [text deleted] and that he stopped working for [text deleted] in approximately 2010. He acknowledged that he was friends with [text deleted] and her husband and had known her for 10 years. It was pointed out to the Appellant that, when meeting with MPIC, he had not reported doing any handyman work for [text deleted] , but rather indicated that he was driving her around. He didn't remember what he had

told MPIC, but remembered having a conversation about this. The Appellant then acknowledged that he was helping out his friend, [text deleted], who paid him $5 to $10 when he had driven her around once or twice at the time of the accident.

It was again suggested to the Appellant on cross-examination that, at the time of the accident, his only activities were with [text deleted] and [text deleted]. In response he said that he thought he had repaired some sliding or bifold doors, but that he wasn't sure when he did that.

Counsel for the Appellant submitted that the Appellant has a long history of working at a lot of different jobs helping people who needed him. Counsel submitted that, at the time of the MVA, the Appellant was self-employed, but acknowledged that none of the Appellant's earnings at the time of the MVA were reported for income tax purposes. Counsel also acknowledged that it has been difficult to determine how much the Appellant was earning as no documents have been submitted in this regard. Counsel asked the Commission to accept the viva voce evidence of the Appellant as to what jobs he had performed, what he was earning at the time of the MVA and what income he had lost as a result of the MVA.

Submission for MPIC:

Counsel for MPIC submitted that the Appellant has the onus to prove, on a balance of probabilities, that he held employment at the time of the MVA to be entitled to IRI. Counsel submitted that the evidence does not support that the Appellant held employment at the time of the MVA.

Counsel referred to s. 101 of the MPIC Act which states that a victim who, on the day of the accident, is 65 years of age or older and does not hold employment is not entitled to IRI. S. 70(1)

of the MPIC Act states that employment means any remunerative occupation. Counsel referred to the Oxford Canadian Dictionary definition of remunerate which is pay for services rendered. Remuneration is the amount you are given for the work that was performed and is not compensation or payment for expenses. Counsel submitted that the only evidence in this case is that [text deleted], the Appellant's friend, indicated she had paid the Appellant for gas when he drove her around. This is not remuneration for services rendered, but rather is payment for expenses.

MPIC asked for detailed tax records and these were not provided. MPIC asked for statements of business activities and these were not provided. The Appellant was provided with an Employer Verification Form to be completed by [text deleted], who the Appellant identified as his employer at the time of the MVA. This document was never filled out. When MPIC contacted [text deleted], the person who was identified by the Appellant as the contact person for [text deleted], [text deleted] stated that the Appellant was not employed by her. She had simply given him some money for gas when she didn't have a vehicle and he drove her around.

The Appellant has never provided any documents substantiating that he was working at the time of the MVA. He has never provided copies of any invoices, work orders, receipts or cheques he received for the work he performed. There are inconsistencies regarding how much he was paid. While he testified at the hearing that he was paid $15 an hour for 4-5 hours per day, on the Application for Compensation he indicated that he was paid $40 per job. Counsel submitted that the more accurate assessment is found in [text deleted's] statement that she gave the Appellant $10 for gas when he drove her.

Counsel submitted that without any documents to support that he was working at the time of the MVA and the evidence that [text deleted] was a good friend of the Appellant who just gave him money for gas, the Appellant has not met his onus. Getting compensated for gas when driving a friend around is not an income. Because the Appellant was over 65 years of age and not employed at the time of the MVA, the Appellant was not entitled to IRI.

Discussion:

The issue before the Commission is whether the Appellant is entitled to IRI benefits. To be entitled to IRI benefits, the Appellant must demonstrate, on a balance of probabilities, that he held employment on the day of the MVA.

The relevant provisions of the MPIC Act are as follows:

> **Definitions**
> 70(1) In this Part,
>
> **"employment"** means any remunerative occupation
>
> **Events that end entitlement to I.R.I.**
>
> **No entitlement for unemployed victim 65 years or older**
>
> 101 Notwithstanding any other provision of this Part, a victim who, on the day of the accident, is 65 years of age or older and does not hold employment is not entitled to an income replacement indemnity or a retirement income.

The Appellant was [text deleted] old at the time of the MVA. In the Application for Compensation signed by the Appellant, he indicated that [text deleted] was his primary employer and that [text deleted] was the contact person for Sussex. [text deleted] did not complete the Employer's Verification of Earnings form and advised MPIC that the Appellant was not employed by her. Rather, she had given him $10 for gas when he drove her around. The Appellant acknowledged

that [text deleted] was a friend of his who had given him money for gas when she didn't have a vehicle, but asserted he had also done some repair work for her and others.

The Appellant provided no documents, such as work orders, receipts, invoices, copies of cheques, or bank deposit records, in support of his position that he was a self-employed handyman at the time of the MVA. Further, he provided no details in his viva voce evidence of what specific work he had done, when he performed this work, for whom he performed this work and how much he earned. With respect to the money [text deleted] had given him, the Commission finds that the Appellant was provided $10 for gas when he helped his friend by driving her around when she didn't have a vehicle. The panel agrees with counsel for MPIC that, in the circumstances of this case, this does not constitute payment for work that was performed. Therefore, this does meet the definition of employment under s. 70(1) of the MPIC Act.

S. 101 of the MPIC Act states that a victim who, on the day of the accident, is 65 years of age or older and does not hold employment is not entitled to IRI. The Appellant asserted he was a self-employed handyman at the time of the MVA. While the panel accepts that the Appellant has a long history of working and helping out those who needed him, the panel does not find that the Appellant held employment on the day of the accident. The panel finds that the Appellant was not able to provide clear and reliable testimony on the work he alleges he was performing at the time of the MVA and provided no documentary evidence that supports his assertion that he was working at the time of the MVA.

Considering the evidence as a whole, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that he held employment on the day of the accident. The Appellant has therefore failed to establish that he is entitled to IRI benefits.

Disposition:

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated December 17, 2015 is confirmed.

Dated at Winnipeg this 20th day of April, 2018.

KARIN LINNEBACH

LINDA NEWTON

NEIL MARGOLIS