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Indexed as:
D.N.O. (Re)

IN THE MATTER OF an appeal by D.N.O.
AICAC File No. AC-96-31

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[1996] M.A.I.C.A.C.D. No. 27

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and L. Goodspeed
Heard: October 24, 1996.
Decision: December 2, 1996.
(6 pp.)

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Issue(s):

1. Whether Appellant entitled to one, additional month's I.R.I.;

2. Whether Appellant entitled to lump sum indemnity for loss of one term's studies;

3. Jurisdiction of Commission to award costs of medication not raised at internal review.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c. 36, ss. 110(1), 87 and 88.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.') represented by Keith Addison.

D.N.O., the appellant, appeared in person by way of telephone conference call.

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MAIC 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

[para1] At the time of D.N.O.'s injury in an automobile accident on September 21st, 1995, he held seasonal employment with {text deleted] and, on a casual basis, with {text

deleted]. Having already attained a degree of Master of Science at the {text deleted], he had enrolled in a course of Computer Engineering at the University of Manitoba.

[para2] D.N.O. had given his notice to {text deleted], voluntarily terminating his employment as of September 21st but, due to the accident, his last actual day of work was September 20th. The Appellant says that the termination of his employment was subject to his ability to obtain a full student loan, but the employer disclaimed any knowledge of that condition.

[para3] D.N.O. withdrew from all University courses on October 5th, 1995, partly because he had already missed four weeks of studies and partly because he was still suffering some pain from his motor vehicle accident. The troubles directly caused by that accident appear largely to have been healed, perhaps as early as mid-October but, almost certainly, by mid-December of 1995.

[para4] D.N.O. was paid income replacement indemnity of {text deleted] bi-weekly, based upon his income from {text deleted], and was also paid a lump sum student indemnity of {text deleted] for the loss of the first term of the 1995/96 academic year, pursuant to Section 88(2) of the M.P.I.C. Act.

[para5] His income replacement indemnity was discontinued by M.P.I.C. as of January 31st, 1996, upon the basis that he was no longer disabled from returning to his studies by mid-December of 1995, according to the medical report from D.N.O.'s own, attending physician.

[para6] D.N.O. appealed from that decision, claiming:

(a) payment of a further lump sum benefit of {text deleted] for the second term of the academic year in question;

(b) payment of one more month of income replacement indemnity, to cover the month of February 1996 because, he says, having moved from Winnipeg to {text deleted] he was advised by his {text deleted] physician not to return to work until March 1st of 1996.

[para7] With respect to D.N.O.'s claim for income replacement for the month of February, although his physician in Winnipeg, Dr. Bergal, does indicate in his last report of February 16th that D.N.O.'s disability ended on January 31st, the fact is that Dr. Bergal did not see his patient at any time after January 16th, so that his 'end-of-problem' date can only be an estimate. Meanwhile, the Appellant says that he was unable to return to work until March 1st, citing what can only be described as a somewhat skimpy certificate issued by

Dr. P. A. Mitha of {text deleted] on February 13th, 1996. Dr. Mitha's certificate merely says:

> "Return to Work Certificate
>
> D.N.O. has been under my care from February 13th, 1996 to ... (date left blank) and is able to return to work on March 1st, 1996."

[para8] However, the fact is that D.N.O. had quit his employment with {text deleted] back in September of 1996 and presumably, having moved to {text deleted], had also voluntarily terminated his employment with {text deleted]. It therefore follows that there was no employment from which he was prevented during the month of February 1996, and his claim on this count must, therefore, fail.

[para9] D.N.O. bases his claim for a further {text deleted], being the lump sum payment that would be due to him if he was obliged to miss a second academic term as a result of the accident, upon two points: first, he says, he was still suffering sufficiently from the injuries he sustained in the accident that it was too physically painful for him to continue his studies until well into the second academic term; secondly, and more importantly, he says that, even had he been well enough, he would not have been able to complete that second term because a major portion of his studies in that second term were subject to the completion of certain other, prerequisite studies in the first term that he had been obliged to miss.

[para10] We are not satisfied, on the evidence, that D.N.O. could not have returned to school for the second term, beginning in January of 1996. It is possible (although even this is doubtful) that he was still suffering some discomfort from the injuries sustained in his accident, of a nature that would have precluded his return to any gainful employment involving much physical labour, but we are not convinced, on a balance of probabilities, that the degree of his discomfort would have been sufficient to prevent his attending classes and completing his studies.

[para11] We wrote to the University of Manitoba to inquire whether, having missed the first term of the studies for which he was enrolled, D.N.O. would necessarily have been precluded from carrying on with his second term - would he, in other words, have been put back an entire academic year by reason of his accident. The reply that we have received from Dr. Robert Menzies, head of the Department in which D.N.O. was registered, is sufficiently succinct to merit reiterating here. He says:

> "[D.N.O., student number {text deleted] has given me written permission to reply to your letter of 29 October

1996.

> I have reviewed D.N.O.'s program and find that he requires 36 courses to complete the requirements for the degree. He could have completed the program requirements in 6 terms with no pre-requisite conflicts by taking the normal load of 6 courses per term starting in January of 1996. He would not have been able to take all of the courses which he missed in the fall term of 1995 in the spring term of 96 but could have taken others that met the pre-requisite requirements and taken the remaining courses from the Fall 95 term in the Fall '96 term. He was precluded from taking one course that he selected for his second term (24.366) because of the lack of prerequisite course (24.210) but could have taken others.
>
> I have developed programs based on D.N.O.'s original registration and based on a program starting in January 1996 and find that, barring failures and summer session courses, he would have completed the degree requirements at the same time, i.e. December 1998."

From that response, it seems quite clear that D.N.O. was not denied the benefit of a second term and could, had he wished and had he remained in Winnipeg, have still completed his courses by the end of 1998. This facet of his appeal must, therefore, also fail.

[para12] At the hearing of his appeal, D.N.O. also raised a claim for reimbursement of certain medications apparently prescribed by his {text deleted] physician. His claim, in that context, was for approximately $36.00. The only evidence that we have is a copy of a prescription receipt from {text deleted] in {text deleted], dated February 14th, 1996 (the day after D.N.O. first saw Dr. Mitha) for $14.07, covering 30 tablets of Apotex Naproxen; the prescription was marked "no repeats". Since this facet of D.N.O.'s claim was not, apparently, raised with the Internal Review Officer, we have no jurisdiction to deal with it. Were this the subject of a valid appeal, we would have allowed D.N.O. the sum of $14.07. As matters stand, it is within the discretion of M.P.I.C. to make an ex gratia payment of that amount to D.N.O., but, as noted above, we have no jurisdiction to deal with it.

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