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Indexed as:
B.J.D. (Re)

IN THE MATTER OF an appeal by B.J.D.
AICAC File No.: AC-99-119

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[2000] M.A.I.C.A.C.D. No. 9

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C. Settle, and
F.L. Cox
Heard: March 2, 2000.
Decision: March 6, 2000.
(13 paras.)

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Issues(s) :

- (i) installation of water pump for cottage - whether Appellant entitled to related labour costs;
- (ii) home assistance care - whether yard care included.

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Relevant Sections:

Sections 131 and 138 of the MPIC Act, and Sections 2,
10(1)(d)(vi) and Schedule A of Manitoba Regulation
40/94.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.
The appellant, B.J.D., appeared on his own behalf, accompanied
by M.D.

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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] B.J.D. was involved in a serious motor vehicle
accident on December 13th, 1998. The details of that accident
and B.J.D.'s subsequent medical history need not be recited
for the purposes of this decision, which only relates to the
two issues noted below:

Yard Care

[para2] During the period of his disability, MPIC has been reimbursing B.J.D. for the cost of clearing snow from the pathways at his residence. The insurer has, however, refused payment for other yard care expenses such as grass cutting, and for the cost of maintaining the exterior of his home. This aspect of B.J.D.'s claim is governed by Section 131 of the MPIC Act, which reads as follows:

Reimbursement of personal assistance expenses

131. Subject to the regulations, the Corporation shall reimburse a victim for expenses of not more than \$3,000.00 per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or perform the essential activities of everyday life without assistance.

[para3] Manitoba Regulation 40/94 is the one that governs reimbursement of expenses, and Section 2 of that regulation reads as follows:

Reimbursement of personal home assistance under Schedule A

2. Subject to the maximum amount set under Section 131 of the act, where a victim incurs an expense for personal home assistance that is not covered under the Health Services Insurance Act or any other act, the Corporation shall reimburse the victim for the expense in accordance with Schedule A.

[para4] Schedule A referred to above consists of two grids, each of which is intended to evaluate the victim's need for personal care assistance. Grid A addresses personal care and hygiene, such as the victim's ability to get into and out of bed without assistance, wash, dress, eat, use bathroom facilities, and so on; Grid B addresses domestic activities such as meal preparation, housekeeping duties, laundry, and the purchase of food and supplies. Each task is assigned a number, depending upon whether the victim is completely dependent on the assistance of others, only partially dependent, or not dependent at all. In order to qualify for home care assistance, the victim must be able to score a minimum of five points when the results of both grids are added together.

[para5] As we have noted in earlier decisions and in dialogue with counsel for the insurer, it is an unfortunate fact that, in addition to other anomalies to be found in some of the numbers assigned to different domestic needs and chores, yard care is completely omitted from the grid system

altogether. We are obliged, by the normal rules of statutory interpretation, to infer that this exclusion was purposeful on the part of the Legislature, upon the basis of the argument known as *expressio unius est exclusio alterius*. The rationale is, simply, that if the Legislature had intended to include all possible domestic tasks, it would either have mentioned them specifically or described them using more general terms; it would not have mentioned some while saying nothing of the others, since that would be irrational and disorderly. It thus follows from sound drafting practice that a partial enumeration of like things is meant to be exhaustive and anything left off the list is, by implication, meant to be included (see Sullivan on Statutory Interpretation, first edition, 1997, at page 73).

[para6] The insurer justifies payment for the snow removal (in our opinion, quite properly) by reference to Section 138 of the act which reads as follows:

Corporation to Assist in Rehabilitation

138. Subject to the regulations, the Corporation shall take any measures necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

[para7] Patently, the removal of snow from residential pathways is essential to enable the victim to enter or exit from his or her residence. In B.J.D.'s case, this became the more important since both M.D. and their young daughter were also injured in the accident.

[para8] It follows from the foregoing that lawn and garden care, no matter how high the grass or the weeds, do not fall within the kinds of home care assistance for which B.J.D. qualified. We have no evidence that would bring the maintenance of the exterior of his home within the intent of Section 138. This facet of his appeal must, therefore, fail.

Installation of Water Pump for Cottage

[para9] The Appellant seeks reimbursement for the labour costs related to the installation of a water pump at this cottage. He acknowledges that, even had his motor vehicle accident not occurred, he would at some future date have felt obliged to install a water pump at the cottage which is only accessible by water, is fairly isolated, and for which, prior to his accident, the supply of water for all purposes had to be carried by hand from the lake. He argues that, absent his accident, he would have undertaken the installation himself, being mechanically adept. He further argues that, although

the cottage does not qualify as his principle residence, it constituted a place of solace, of both physical and emotional restoration, of the use and benefit of which he would have been deprived had he not installed the pump, since neither he nor any member of his immediate family was physically capable of carrying water.

[para10] In order to determine whether the cost of that particular installation is a benefit to which B.J.D. is entitled, we look first to Section 138 of the act, cited above, and then to Section 10(1)(d)(vi) of Regulation 40/94. The relevant portions of that section read as follows:

Rehabilitation Expenses

10(1) Where the Corporation considers it necessary to advisable for the rehabilitation of a victim, the Corporation may provide the victim with any one or more of the following:

(d) reimbursement of the victim at the sole discretion of the Corporation for

(vi) specialized bath and hygiene equipment

[para11] The foregoing language of the regulation has to be read in light of the language of Section 138. This is a discretionary decision and this commission is, by virtue of Section 184(1) of the act, empowered to "make any decision that the Corporation could have made."

[para12] Certain portions of Section 10(1) of the regulation refer specifically to the "principle residence" of the victim, but subsection (d) does not contain that limitation.

[para13] In the absence of some special, statutory definition, words used in legislation are to be given their ordinary, everyday meaning. 'Specialized' means 'made special' and one of the accepted meanings of 'special' is 'serving a particular purpose.' The piping and the entire mechanism used for supplying water to the standard, urban residence can hardly be called 'specialized,' since it is common to the entire community and serves a normal purpose. However, B.J.D.'s cottage was not equipped with running water of any kind prior to his accident; the norm was manual transportation of water for all purposes. The installation of the pump served a purpose that was particular to the circumstances of B.J.D. and his family--that is, to render habitable a cottage that, without the pump, would have been unusable by the family. In the particular circumstances of this case, while recognizing that this decision is on the outer edge of an acceptable interpretation of the statute and

regulation, we are prepared to find that the labour cost of installing that pump falls within the category of 'specialized bath and hygiene equipment,' and is a measure that we consider advisable to facilitate B.J.D.'s return to a normal life. He is, therefore, entitled to be reimbursed for it, upon providing MPIC with suitable evidence of his expenditure.

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