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Indexed as:
G.C. (Re)

IN THE MATTER OF an appeal by G.C.
AICAC File No.: AC-95-5

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[1995] M.A.I.C.A.C.D. No. 3

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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: May 29, 1995.
Decision: June 16, 1995.
(11 pp.)

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Issues:

- (a) Propriety of seven-day waiting period;
- (b) Entitlement to reimbursement for cost of massage therapy;
- (c) Reimbursement for sick leave benefits used as a result of automobile accident;
- (d) Entitlement to legal expenses; and
- (e) Entitlement to additional compensation at time and one-half for holidays that Appellant would have worked had he not been disabled by the accident; and
- (f) Compensation to spouse for time taken from her work in order to provide home care for Appellant.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, ss. 114(1), 131 and 152(2).
Regulation 40/94, s. 8 and Schedule A.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Ted Letkemann, an Insurance Adjuster.
G.C., the appellant, appeared in person but accompanied
by K.S., an observer representing G.C.'s [text
deleted].

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

THE FACTS

[para1] G.C., the Appellant, is a forty-nine year old [text deleted] employed at the [text deleted]. He was involved in an automobile accident on June 12th, 1994, with resultant injuries that required him to be away from his workplace for 126 days. He suffered some lacerations and contusions to his left arm, which required medical treatment from his physician, Dr. Drexler, and other muscular and skeletal injuries that were given chiropractic treatment by Dr. Chalaturnyk.

[para2] G.C.'s basic annual pay at the time of the accident was \$42,369.00. In addition, he had averaged overtime pay of \$1,647.56 per month and this, when added to his evening and shift differentials of \$853.13 per month, gave him a gross, average, yearly income from his employment of \$62,987.55. Thus, he qualified for the maximum yearly insurable earnings of \$55,000.00. Upon that basis, M.P.I.C. calculated the Income Replacement Indemnity to which G.C. was entitled as follows:

Maximum gross yearly employment income	\$55,000.00
Less deductions for Income Tax, Canada Pension and Unemployment Insurance premiums	17,578.34

Net yearly employment income	\$37,421.66
90% of net income	\$33,679.49

1/26th of the foregoing figure, representing 90% of G.C.'s average net earnings from employment, gave him a bi-weekly Income Replacement Indemnity of \$1,295.37; G.C. received that amount, commencing with the 8th day following his accident up to and including December 26th, 1994. He returned to work on December 27th, 1994.

THE LAW

[para3] Where a right sought to be enforced is based upon a statute, that right, and its corresponding remedy, must be found within the four corners of the statute. Part 2 of the Manitoba Public Insurance Corporation Act is, in effect, an insurance policy covering almost all persons injured in motor vehicle accidents in Manitoba. Like all insurance policies,

it does not purport to insure against every possible kind of loss, but only against those losses, and to the extent, described in the statute itself or in the regulations.

[para4] Turning, now, to the specific decisions of M.P.I.C. from which G.C. appeals:

(a) Seven-Day Waiting Period

[para5] G.C. says that he is well aware of the fact that the M.P.I.C. Act precludes the payment of Income Replacement Indemnity for the first seven days after the date of an accident, complains bitterly that this is most unfair and asks this Commission to say so. It is not the task of this Commission to pass comment upon the fairness or unfairness of legislation; our clear mandate is to administer the law as we find it in the limited context of the compensation to which a claimant may be entitled as a result of injury sustained in an automobile accident. We content ourselves with noting that many insurance policies covering personal injury exclude a given number of days immediately following the commencement of disability, but the simple fact is that this Commission has no jurisdiction to override the statute and regulations in this or any other facet of a claim. We are governed, in this instance, by Section 152(2) of the Act which, to G.C.'s knowledge, reads as follows:

"152(2) No income replacement indemnity shall be paid in respect of the first seven days after the day of the accident, except an income replacement indemnity payable under Subsection 117(3) (relapse after more than two years)."

We therefore confirm the decision of the internal review officer in this regard.

(b) Payment for Massage Therapy

[para6] Section 8 of Manitoba Regulation No. 40/94 reads as follows:

"8. The Corporation shall not pay an expense incurred by a victim for massage therapy unless the massage therapy is dispensed by a physician, chiropractor, physiotherapist or athletic therapist."

[para7] G.C. testified that Dr. Chalaturnyk (his chiropractor) recommended massage therapy and that, upon checking with his insurance adjuster, Mr. Gurr, G.C. was advised that the only thing required was a letter from Dr. Chalaturnyk to that effect. He produced the letter and was given the go-ahead by Mr. Gurr. What Mr. Gurr did not know was that the massage therapy was not to be given by the chiropractor himself but, rather, by a masseuse to whom the

chiropractor had recommended G.C. Correspondence on file indicated clearly that Mr. Gurr understood that it was the chiropractor himself who would be administering the massage. This misunderstanding was discovered as the result of a telephone call from the office of the masseuse to M.P.I.C. in the middle of the first massage therapy treatment. As a result, M.P.I.C. paid for that first treatment, but advised G.C. that no further treatments would be paid for by M.P.I.C. unless the massage was to be performed by a physician, chiropractor, physiotherapist or athletic therapist

[para8] G.C. complains that he was thereby deprived of the massage therapy which, he says, had been recommended by his chiropractor and appears to have hastened the rate of his recovery. The fact is, however, that G.C. was not denied the benefit of massage therapy by M.P.I.C.; he was denied the right to obtain treatment from a masseuse of his own choosing, outside the authorized group, at the expense of M.P.I.C.; had he elected to obtain such massage from a physician, chiropractor, physiotherapist or athletic therapist, M.P.I.C. would have paid the costs. G.C. elected to continue receiving treatments from the same masseuse despite M.P.I.C.'s advice and, in the view of this Commission, must also be taken to have voluntarily assumed the costs of so doing.

[para9] Here, too, therefore, the internal review officer's decision is confirmed.

(c) Appellant's Claim to be Reimbursed for Sick Leave Taken

[para10] G.C.'s evidence was that, under the Collective Agreement [text deleted], he is entitled to fifteen days of paid sick leave per annum, during which he receives full pay and other benefits. The alternative, being leave without pay, would cause his Superannuation, Supplementary Retirement Benefit, Disability Insurance and Death Benefit premiums to 'dry up' for the period of that leave without pay, putting them into arrears, and the arrears would have to be recovered from his salary upon his return to duty. The sick leave is not something that he can 'buy back' by reimbursing his employer; once taken, it is lost.

[para11] G.C. argues that, since he is obliged to work for a full year in order to earn fifteen days of sick leave and, since he testifies that he used ninety-four sick days, (i.e. 6.266 years' accumulation), he calculates that he is entitled to be paid \$254,214.00 gross. G.C. also says that he used thirty-five days of annual leave for which, he says, M.P.I.C. should reimburse him in the sum of \$63,554.00.

[para12] We refrain from commenting upon the mathematics of G.C.'s claim and content ourselves with noting that, since he is already receiving the maximum Income Replacement Indemnity to which he is entitled under Section 114(1) of the

M.P.I.C. Act, it is not open to this Commission to increase that indemnity at all, let alone to the rather bizarre extent of the Appellant's claim. We note, also, that during the period of paid sick leave to which the Appellant was entitled he was in receipt of two incomes - the one pursuant to his employment and the other, tax-free, from M.P.I.C.; it was, thus, open to him to set aside the income that he was receiving from his employer, to be used in the unhappy event that he were again to become disabled before having earned some further paid sick leave. In any event, neither the statute nor the regulations make any provision for payment of a claim for future, potential sick leave benefits; this portion of G.C.'s claim must, therefore, also fail and the decision of the internal review officer is confirmed.

(d) Legal Expenses

[para13] G.C., while acknowledging that he has not retained counsel at any stage of the processing of his claim, up to and including the hearing of his appeal to this Commission, nevertheless claims that M.P.I.C. has deprived him of the right to counsel of his choice and he purports to seek reimbursement or compensation in an undisclosed amount. Upon being advised by this Commission, at the time of the hearing of his appeal, that neither the statute nor the regulations make any provision for the payment of the legal expenses of an appellant, he insisted that this Commission tell him so in writing. This paragraph should suffice for that purpose. The internal review officer's decision in this context is, therefore, also confirmed.

[para14] It may be helpful to note here, in parenthesis, that despite several attempts by this Commission to explain its role and mandate to G.C., and the fact that we were an autonomous, objective body, separate and apart from M.P.I.C., the Appellant seemed determined to believe that the dice were somehow loaded against him, since the fact that two members of the panel are lawyers persuades him that the Commission has the benefit of legal counsel - a benefit of which the Commission had in some fashion deprived him. The Appellant has been aware, throughout, that he has a perfect right to retain counsel, but insists that this Commission must require M.P.I.C. to pay his legal costs. We revert to the comment made at the beginning of these Reasons, and we point out that, since there is no provision in the statute or regulations for the payment of a claimant's legal expenses, we would be powerless to make such an Order even under circumstances where we might feel it appropriate. This is not, in any event, one of those circumstances.

(e) Claim for Additional Compensation Due to Missed Pay at Time and One-Half

[para15] In G.C.'s Notice of Appeal, he included a claim

for additional compensation because, he alleges, had he been able to work instead of being disabled by his accident, he would have earned salary at time and one-half for certain holidays. However, G.C. Produced no evidence in support of this claim - indeed, he did not mention it in any submissions made to us at the hearing of his appeal. It is to be noted that, in calculating the amount of his gross earnings from employment, M.P.I.C. appears to have taken into account overtime and shift differential but, in any event, since the Income Replacement Indemnity paid him by M.P.I.C. was the maximum payable under the Act, it is clear that no additional compensation would be payable to the Appellant even had appropriate evidence been forthcoming.

(f) Claim for Compensation for Home Care Provided by Spouse Taking Time Off Work

[para16] G.C.'s Notice of Appeal says, in part: "My wife took a week off work to help me with and taking care of me at home. I would like her costs to be returned. Time off work et cetera ...". At the hearing of his appeal, G.C. testified under oath that Mrs. C. had, indeed, taken a week away from her normal employment at [text deleted] in order to care for him, immediately following his accident. He was asked whether, in the ordinary course, Mrs. C. would have worked for the full seven days and, since his answer appeared ambivalent, he was advised that the Commission would, itself, pursue that question directly with [text deleted]. Copies of the Commission's letter to the [text deleted] and of the [text deleted] reply are annexed to and form part of these Reasons. While the letter from Mr. W. does not say so, it is safe to assume that, since June 13th of 1994 was a Monday, the two following days were days when Mrs. C. was not scheduled to work, in which event she suffered no loss of income by staying home. In the alternative, if she did report for work on those two days the same result would obtain - that is, no loss of income or other expense. The same comments apply to June 18th and 19th, the Saturday and Sunday immediately prior to Mrs. C.'s return to work on Monday, June 20th.

[para17] M.P.I.C.'s internal review officer denied G.C.'s claim for reimbursement of personal assistance expenses upon the ground that there was no information on file to support the contention that G.C. was incapable of performing the essential activities of everyday life to the extent that he would qualify for personal home assistance. In confirming the decision of the internal review officer, we prefer to do so upon the ground that no expense appears to have been incurred, nor any other financial loss suffered, by Mrs. C. nor by her husband, the Appellant, whose testimony in this regard is tainted with that same gift for hyperbole that pervades much of his submission to this tribunal.

(g) Sundry Other Claims

[para18] This Appellant raised a number of other issues which, in our respectful view, are either beyond the jurisdiction of this Commission or completely irrelevant to all aspects of G.C.'s claim. We note them below, solely for the purpose of assuring G.C. that none of the matters to which he alluded were ignored by this Commission. They are, in no particular order of importance:

1. G.C. alleges that the other driver was solely responsible for the accident and that this fact should, in some fashion, "change the criteria". He does not explain what changes nor what criteria he has in mind but, in any event, this Commission has assured him at the hearing that the presence or absence of responsibility for the accident has no bearing whatsoever upon his entitlement to compensation for personal injury.

2. G.C.'s Notice of Appeal seeks a definition of 'real economic loss'. He demands that such a definition be given in full, with examples. This Commission has pointed out to G.C. that neither the statute nor the regulations use the phrase 'real economic loss' and that we have no intention of proffering hypothetical definitions.

3. G.C.'s Notice of Appeal makes reference to a claim for travelling expenses. However, no such claim has ever been the subject of a decision by M.P.I.C. nor, so far as we can tell, has such a claim ever been filed by the Appellant with M.P.I.C. By the same token, no evidence of travelling expenses was placed before us by G.C.. It therefore follows that we are without jurisdiction to deal with it. He also appears to be claiming interest on those unclaimed, and therefore unpaid, travelling expenses - a claim that requires no comment.

4. G.C.'s Notice of Appeal also seeks the imposition of some form of penalty against M.P.I.C.'s adjuster, Mr. Gurr who, he alleges, misled him. The Appellant purports to believe that this Commission has some power to impose penalties against M.P.I.C.'s personnel; he has been assured that we have no such power, nor would we wish it. Had we such a power, we would not exercise it against Mr. Gurr.

5. G.C.'s Notice of Appeal alleges an impaired vision on the part of the driver of the other vehicle who, he says, was responsible for the accident in question. While it is difficult to determine just what remedy the Appellant seeks in this context, so far as could be determined from his oral submission at the hearing of his appeal G.C. wishes this Commission

to find out for him whether the other driver's doctor had advised the Motor Vehicles Branch that his patient was unfit to have care and control of a motor vehicle. The object of that inquiry, so far as we could tell, was to enable G.C. then to sue the physician in question, upon the grounds that the physician was in breach of a statutory obligation to notify the Motor Vehicles Branch that the gentleman in question should not be given a licence. We respond to that portion of G.C.'s appeals as gently as we can, by noting that the matter that he raises is far beyond the mandate of this Commission.

[para19] For the foregoing reasons, G.C.'s appeal is dismissed and the decisions of the internal review officer are confirmed.

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