

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by Z.M.S.  
AICAC File No.: AC-96-14**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC') represented by  
Mr. Keith Addison  
the Appellant, Z.M.S., was represented by Mr. Rene J. Gantzert

**HEARING DATE:** April 16th, 1998

**ISSUE(S):** (a) Whether Appellant entitled to reimbursement for alleged  
cost of hiring replacement workers;  
(b) Whether Appellant entitled to reimbursement for travel,  
physiotherapy or other medical expenses.

**RELEVANT SECTIONS:** Sections 81(1) and 136(1) of the MPIC Act and Regulation 40/94

**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**

These reasons are, merely, supplementary to the reason of MPIC's Internal Review Officer.

### **COST OF REPLACEMENT WORKERS:**

While the statute and its regulations make no specific provision for the hiring of replacement workers, the insurer and this Commission have from time to time awarded a self-employed claimant

income replacement out of which he or she would then be able to pay all or part of the wages of a full or part-time replacement worker. This facet of Z.M.S.'s claim therefore falls, more accurately, under the head of a claim for income replacement indemnity and has properly been treated as such by MPIC's Internal Review Officer.

At the hearing of Z.M.S.'s appeal on April 16th, 1998, we were referred to certain affidavit evidence of the Appellant's son, R.S., and of the Appellant's daughter, M.S. Those Affidavits had been prepared by Z.M.S.'s counsel from information provided by Z.M.S. himself. Those Affidavits, once typed, had then been amended by Z.M.S. in longhand, presumably to correct them. The purpose of the Affidavits was to establish the dates during which each of the Appellant's children had been employed by him in the residential care home which he operated at [text deleted], Manitoba, and the amount of money that each of them had been paid, or claimed to be owed, for the performance of those services. Along with those two Affidavits we were also provided with forms of Certificate, written by someone else but purportedly signed by D.W., (described by the Appellant as M.S.'s boyfriend), purporting to set out the dates when D.W., also, had been employed by Z.M.S. and the amounts of money that D.W. had received for his services.

However, the oral testimony of the Appellant was seriously at odds with the two Affidavits and the two 'Certificates' referred to above, to such an extent that the Appellant himself advised us to disregard that written evidence in its entirety - a suggestion that we had no hesitation in adopting. The remainder of Z.M.S.'s evidence lacked any measure of real credibility, and we were therefore left

with nothing but a series of contradictory statements from which the Appellant asks us to calculate some hypothetical amount that he allegedly paid to his son, his daughter and his daughter's boyfriend between the date of his accident on March 16th, 1995 up to the end of July of that year. He says that he was obliged to hire those three young people to care for the three mentally retarded patients who had been placed in his care by the Province of Manitoba under contract, since the injuries he sustained from his motor vehicle accident rendered him incapable of doing the work himself.

We can only add to the decision of the Internal Review Officer the comment that the Appellant's testimony was so unreliable and so contradictory that we are quite unable to make the calculation that his counsel invites us to make. The onus is upon the Appellant to establish the amount of his claim and the underlying reasons for it; he did neither.

**CLAIM FOR PHYSIOTHERAPY AND ALLIED EXPENSES:**

As to whether MPIC was justified in finding that Z.M.S. refused to cooperate by attending at Winnipeg for a functional capacity assessment, the reasons advanced by Z.M.S. for that refusal appear to this Commission to be specious and to lack credibility. He told this Commission that his primary reason for refusing to attend was that he wanted to be assessed in Brandon rather than in Winnipeg, since he believed that the personnel of Northern Rehabilitation and Consulting Services Inc. in Winnipeg were corrupt and lackeys of the insurer. While that allegation is not worthy of comment, we note only that Z.M.S. had never requested that the assessment be done at Brandon until the time of his appearance before this Commission. He agreed that, had he been sent to Brandon for

the assessment, he would have had no excuse for his non-attendance. He also claimed that he could not afford to go to Winnipeg from Newdale, although MPIC had undertaken to pay for his mileage, hotel and other expenses. He added that, in any event, he was not well enough to drive into Winnipeg, although he could have travelled by bus. A plea of inability to pay from an Appellant who owns either four or six houses (depending upon which facet of his evidence one believes) and who claims to be paying between \$ [text deleted] and \$ [text deleted] US per annum for the costs of sending his two children to college in the United States of America, is laughable. He is paid \$ [text deleted] per annum for each of the three handicapped persons in his care, and is only required to expend \$ [text deleted] of that on food; the rest is gross profit. He is also given \$ [text deleted] per month for each of those persons; that money is the property of the persons in his care, but he administers it for each of them, for the purchase of personal items such as toiletries and the like.

**DISPOSITION:**

For the foregoing reasons and for those contained in the decision of MPIC's Internal Review Officer, of which a copy is attached, Z.M.S.'s appeal is dismissed.

We must add that we would not wish anything in these Reasons to be interpreted as a criticism of Z.M.S.'s counsel who, in our view, conducted himself admirably and was patently embarrassed by his client's inability to give truthful answers to straightforward questions.

Dated at Winnipeg this 17th day of April 1998.

**J. F. REEH TAYLOR, Q.C.**

**CHARLES T. BIRT, Q.C.**

**LILA GOODSPEED**