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Indexed as:
M.H. (Re)

IN THE MATTER OF an appeal by M.H.
AICAC File No.: AC-99-16

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[1999] M.A.I.C.A.C.D. No. 16

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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 3, 1999.
Decision: May 10, 1999.
(9 paras.)

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Issue(s):
Claim for reimbursement of expenses for care of another
person.

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Relevant Sections:
Manitoba Public Insurance Corporation Act, S.M. 1993,
c. 36, ss. 81(1), 81(2), 114(1), 114(2), 114(3),
134(1), 134(2) and 134(3).
[Ed. note: Please see paper copy for six page
appendix containing the relevant sections of the Manitoba
Public Insurance Commission Act.]

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Appearances:
Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.
The appellant, M.H., appeared on his own behalf.

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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] The principal occupation of the Appellant, M.H.,
is that of a [text deleted], in which capacity he works at the
[text deleted] where his income for the year immediately
preceding his motor vehicle accident of March 27th, 1998 was
\$[text deleted], gross. From his application for

compensation, and from his testimony before this Commission, it is clear that M.H. had a secondary form of gainful employment: he was hired by [text deleted] to be a foster parent for a severely, mentally ill young woman ('V. '), for which services he was paid \$[text deleted] per day.

[para2] As a result of his accident, M.H. was unable to perform the duties of either of those occupations for a period of some twelve weeks. It is a matter of common accord between the Appellant and the insurer that, during the twelve weeks in question, M.H. incurred expenses of \$[text deleted] by way of wages to two persons whom he had to hire to substitute for himself in the care of V. Each of those substitutes was approved by [text deleted], which continued to pay M.H. at his agreed rate of \$[text deleted] per day.

[para3] If we understand M.H.'s appeal correctly, he seeks reimbursement from MPIC of the expense that he incurred in hiring those substitute caregivers - that is to say, the \$[text deleted] referred to above. Reimbursement to that extent is not possible under the provisions of the MPIC Act. The section of that statute that provides reimbursement for the cost of substitute caregivers is Section 134 which, after updating the original, statutory figures, provides an allowance of \$80.00 per week for the victim of a motor vehicle accident who, like M.H., is rendered by that accident unable to continue caring for a child or someone similarly dependent upon that victim for care. However, and although M.H. seems to have been paid some monies under Section 134 in error (an error later corrected), Subsection 3 of Section 134 renders that section inapplicable to the present Appellant. It reads as follows:

Entitlement where victim has spouse

134(3) Notwithstanding subsections (1) and (2), a victim residing with his or her spouse is entitled to reimbursement of expenses under this section only for such time as the spouse is also unable to care for the person referred to in subsection (1) because of the spouse's illness or disability, or the spouse's work or studies outside the residence.

[para4] M.H. is married; Mrs. H. was not, at any material time, ill nor disabled nor studying or working outside their home. What M.H. is entitled to, of course, is income replacement indemnity ('IRI') pursuant to Section 81(1) of the Act. A copy of that section, and of each other relevant section of the Act is attached to and intended to form part of these Reasons.

[para5] Income replacement indemnity is calculated as 90% of net income, and net income is gross yearly employment

income (up to the maximum insurable earnings under Section 114) after deducting income tax, employment insurance premiums and Canada Pension Plan contributions. (See Sections 111(1), 112(1) and 114.) The maximum yearly insurable earnings, after adjustment pursuant to Subsections (2), (3) and (4) of Section 114, are \$58,500.00. Since M.H.'s gross yearly employment income from his work as a [text deleted] and from his earnings from foster care aggregate \$[text deleted], his gross earnings exceed the maximum insurable earnings by a substantial sum.

[para6] Given maximum insurable earnings of \$[text deleted], and given M.H.'s gross yearly income from his principal employment, being \$[text deleted], the only portion of his other earned income that is insurable is, therefore, \$[text deleted].

[para7] The \$[text deleted] is taxable income, whereas the remaining \$[text deleted] is non-taxable. We calculate the bi-weekly income to which M.H. was entitled as follows:

Gross yearly income from principal employment	\$[text deleted]
Less deductions for I.T., E.I. and C.P.P.	[text deleted]

Net	[text deleted]
90% of net	[text deleted]
Gross insurable income from foster care work	[text deleted]
(no deductions required) 90%	[text deleted]

	[text deleted]

Bi-weekly IRI = [text deleted] / 26 = \$[text deleted]	

[para8] MPIC's last calculation treated the Appellant's total insurable income as taxable, resulting in a bi-weekly IRI of \$[text deleted]. That is \$[text deleted] less than the amount to which, in our view, he was entitled every two weeks.

[para9] M.H. was disabled for twelve weeks. After deducting the statutory waiting period of seven days, his full entitlement was 5.5 x \$[text deleted], or a total of \$[text deleted]. He is therefore entitled to the amount by which that sum exceeds the aggregate actually paid to him by MPIC as benefits under Sections 81 and 134 of the Act. He is also entitled to interest on that excess, calculated at the statutory rate from June 19th, 1998.

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