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Indexed as:
L.M. (Re)

IN THE MATTER OF an appeal by L.M.
AICAC File No.: AC-99-83

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[1999] M.A.I.C.A.C.D. No. 50

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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 19, 1999.
Decision: November 23, 1999.
(8 paras.)

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Issues(s) :

Deduction, from Income Replacement Indemnity ("IRI"), of
Social Assistance benefits - whether warranted;
whether appellant properly classified as 'non-earner';
whether IRI based on pre-accident level of \$7.00 per hour
appropriate; and
claim for permanent impairment award, 2 year
determination and retraining

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Relevant Sections:

Sections 70, 107, 109 of The MPIC Act.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by
Keith Addison.

L.M., the appellant, 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

THE FACTS:

[para1] The background facts related to L.M.'s appeal are
set out in the decision of MPIC's Internal Review Officer, Mr.
Dean Scaletta, dated March 16, 1999. A copy of Mr. Scaletta's
decision will, therefore, be attached to, and form part of,

these reasons.

[para2] Certain facets of L.M.'s appeal can be dealt with summarily.

Was the appellant a non-earner at any time between March 1st, 1995 and October 19th, 1999?

[para3] A 'non-earner' is defined under section 70 of the MPIC Act ("The Act") as

"a victim who, at the time of the accident is not employed but is able to work,".....

Although MPIC's adjuster had, indeed, denied L.M. certain benefits for a 180 day period on the basis that L.M. was a non-earner when he underwent surgery on his left hand on August 20th, 1998, the Internal Review Officer has, in effect, already dealt with this problem by reinstating L.M.'s Income Replacement Benefits from August 9th, 1996, to continue till your left hand has recovered to the point where you are able to do the work of a mechanic, or until you have been retrained (at MPIC's expense) for a suitable occupation which will provide you with a level of income similar to what you were earning at the time of the 1995 accident (\$5.00 to \$7.00/hr).

[para4] This facet of L.M.'s appeal has, therefore, already been dealt with in his favour but the Internal Review Process.

Repayment of Social Service Benefits.

[para5] Although the Internal Review Officer reinstated L.M.'s IRI, L.M. has received Social Service benefits of \$10,966.30 between February 1st, 1997 and April 14th, 1999. Therefore, from the total amount, including accrued interest, to which L.M. was found by the Internal Review Officer to have been entitled, namely \$29, 493.80, the insurer had a legal obligation to deduct, and remit to Manitoba Family Services, the Social Assistance monies that he had received. L.M. signed an assignment of Benefits on June 14th, 1995, directing MPIC to repay to the City any monies otherwise payable to him, up to the amount of municipal assistance he might receive. That assignment is binding and enforceable. L.M. complains, quite rightly, that he had to endure many privations while living on Social Assistance, including an inability to afford the cost of operating his automobile and lowering his general standards of living. His evidence on the point is valid, but we are dealing with a form of statutory insurance and have no mandate to extend the coverage beyond the borders of the statute itself and the regulations adopted pursuant to that statute.

Calculation of IRI

[para6] L.M. complains that, while his IRI was originally calculated on the basis of the hourly rate of his earnings immediately before his 1995 accident, had he not had his 2 accidents he would by now be earning much more. He feels it is unfair for his IRI to continue at the original rate. This question does not appear to have been dealt with by, nor raised before, the Internal Review Officer, and it is at least doubtful whether this commission has the power to deal with that question. Nonetheless, it is an important one and we intend to deal with it in the following way: Without embodying this as part of any formal order of the commission, we draw to the attention of the Insurer the need to make a 2 year determination under the provisions of Sections 107 and 109 of the MPIC Act. For the benefit of the appellant, we note that those sections read as follows:

New determination after second anniversary of accident

107 From the second anniversary date of an accident, the corporation may determine an employment for a victim of the accident who is able to work but who is unable because of the accident to hold the employment referred to in section 81 (full time or additional employment) or section 82 (more remunerative employment), or determined under section 106.

Considerations under 107 or 108

109(1) In determining an employment under 107 or 108, the corporation shall consider the following:

- (a) the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination;
- (b) any knowledge or skill acquired by the victim in a rehabilitation program approved under this Part;
- (c) the regulations.

Type of employment

109(2) An employment determined by the corporation must be:

- (a) normally available in the region in which the victim resides; and
- (b) employment that the victim is able to hold on a regular and full-time basis or, where that is not possible, on a part-time basis.

In the context of that 2 year determination, we refer again to the bottom of page 4 of the Internal Review Officer's decision, where he speaks of retraining, at insurer's expense, for a suitable occupation.

Claim for permanent impairment

[para7] This facet of L.M.'s appeal, also, does not appear to have been part of the Internal Review and, therefore, we have no power to deal with it. We must content ourselves by commenting that, since it may well be that L.M. has, in fact, sustained a permanent impairment to his left hand, he should pursue that portion of his claim with his adjuster, who may wish to refer him for an independent medical assessment to determine the nature and extent of any such impairment. If he is dissatisfied with the outcome, he will have the right to a further Internal Review and, if necessary, a further appeal to this commission.

DISPOSITION:

[para8] As will be apparent from the forgoing reasons, there are certain aspects of L.M.'s appeal which, while they may well have validity, are not properly before us since they did not form part of the Internal Review Officer's decision. His complaint that he was improperly classified as a non-earner has already been dealt with in his favour by the Internal Review Officer, and we have confirmed the decision of MPIC to repay his Social Assistance monies out of the total amount to which he was otherwise entitled. It follows, then, that L.M.'s appeal must be formally dismissed but we again draw to the insurer's attention the need for a 2 year determination and, at least, consideration of a possible permanent impairment.

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