

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by S.J.F.
AICAC File No.: AC-02-66**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Antoine Frechette
Mr. Guy Joubert

APPEARANCES: The Appellant, S.J.F., was represented by Mr. Sidney Green, Q.C. and by Mr. J. Edward Crane; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka

HEARING DATE: September 5, 2002

ISSUE(S): Entitlement to reimbursement of additional attendant care expenses.

RELEVANT SECTIONS: Sections 131 and 138 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Subsection 10(1)(e) of Manitoba 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

On January 11, 1996, the Appellant, S J F was involved in a motor vehicle accident when his vehicle collided with a moose. As a result of that accident, the Appellant sustained a C4 spinal cord injury, leaving him completely paralyzed below the neck. He is able to move his head and shrug his shoulders slightly. He has no feeling below his neck except for occasional pain and "pins and needles" in his lower limbs. Needless to say, he requires attendant care on a 24-hour basis in order to assist him with the activities of daily living and for health concerns.

In November 2001, the Appellant became the [text deleted]. In his capacity as [text deleted], he is required to visit all of the [text deleted] throughout the Province of Manitoba. His position

also requires him to travel occasionally to other cities across Canada. The trips outside of Winnipeg, which necessitate overnight stays, result in the Appellant incurring additional attendant care expenses - including, additional transportation, accommodation, sustenance and overtime expenses. The Appellant is seeking reimbursement of those additional expenses from MPIC.

MPIC's case manager in a decision dated January 18, 2002, notified the Appellant that MPIC would not consider the additional attendant care expenses. Specifically, he stated that:

We have now completed our review of this issue, and have determined that attendant care costs can only be considered under Section 131 of the MPI Act - Reimbursement of Personal Assistance Expenses. As you are presently receiving the maximum entitlement under this section of the legislation, any additional attendant care costs cannot be considered. Other miscellaneous costs such as transportation, accommodations and expenses are also outside the scope of coverage provided for under the Personal Injury Protection Plan.

The Appellant sought an Internal Review of that decision. The Internal Review Officer's decision dated April 30, 2002, upheld the decision of the case manager and dismissed the Appellant's Application for Review. In his decision, the Internal Review Officer noted that:

In the circumstances, there is no statutory basis for the reimbursement now being sought by [S.J.F.] for additional attendant care costs. I am, therefore, confirming that aspect of the January 18, 2002 decision of the case manager.

The Appellant has now appealed the decision of the Internal Review Officer, dated April 30, 2002, to this Commission, regarding his entitlement to reimbursement of additional attendant care expenses.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 131 of the MPIC Act:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 138 of the MPIC Act:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers 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.

Subsection 10(1)(e) of Manitoba Regulation 40/94:

Rehabilitation Expenses

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

- (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improves his or her earning capacity and level of independence.

The Appellant testified at the hearing of this matter that his current occupational goal is to become [text deleted]. He maintains that his position as [text deleted] will assist in the realization of that goal. Therefore, he contends that the additional attendant care expenses, which he incurs in his capacity as [text deleted], should be covered by MPIC, since they are part of his occupational rehabilitation.

Counsel for the Appellant takes the position that the Appellant is entitled to the reimbursement of the additional attendant care expenses by virtue of the provisions of Section 138 of the MPIC Act and Subsection 10(1)(e) of M.R. 40/94. Counsel for the Appellant submits that in

accordance with Subsection 10(1)(e) of M.R. 40/94, the Appellant should be facilitated so that he could be returned as nearly as practicable to his condition before the accident or improve his earning capacity and level of independence.

In his written submission, counsel for the Appellant asserts that:

Section 10(1)(e) leaves no question but that the Corporation can provide for the expenses now claimed by [S.J.F.]. Specifically 10(1)(e) permits the Corporation to provide [S.J.F.] with

"(e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence."

It will be noted that 10(1)(e) takes note of rehabilitation consistent with

- (a) the victim's occupation before the accident;
- (b) his or her skills and abilities after the accident.

Under the section the victim is to be returned as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

[S.J.F.'s] skills and abilities before the accident are well documented. He was active socially and athletically and in public service. He now seeks to be active socially and athletically and in public service.

Being the [text deleted] with the ambition of becoming [text deleted] and a [text deleted] is entirely consistent with his skills and abilities before the accident.

The section goes further. In addition to assisting [S.J.F.] to return as nearly as possible to his condition before the accident, the section permits the Corporation to facilitate [S.J.F.] to improve his or her earning capacity.

It would be very difficult for [S.J.F.] to obtain employment in the regular labour market. His condition would make such employment unlikely and without the prospect of anything other than a very nominal wage. Indeed no such employment prospects have been identified by the Corporation.

The only prospect to which any consideration has been given is the prospect suggested by [S.J.F.] himself, namely that he become a [text deleted] and perhaps a [text deleted]. This is a legitimate, indeed an honorable employment prospect.

Section 10(1)(e) suggests taking into consideration his skills and abilities after the

accident. These are beyond question. He had the skill and ability to graduate with a degree in business administration. He became the [text deleted]. It was entirely consistent with both improving his earning capacity and level of independence that he pursue his objectives, an objective which we submit should also be the objective of the MPIC. It is an objective entirely consistent with the provisions of the legislation.

Lastly, counsel for the Appellant submits that, since MPIC has encouraged and facilitated the Appellant's endeavours to resume a normal life to date, they should be required to continue to fulfill that obligation. In particular, MPIC paid the additional attendant care expenses when the Appellant was travelling in his capacity as [text deleted]. Counsel for the Appellant submits that the Appellant's current circumstances are no different and accordingly MPIC should continue to be responsible for the payment of those expenses.

Counsel for MPIC takes the position that the expenses claimed by the Appellant fall outside the scope of the MPIC Act. In particular, in his written submission, counsel for MPIC maintains that:

It is the Corporation's position that [S.J.F.'s] claim for reimbursement for additional attendant care expenses (including additional transportation, accommodation, and sustenance expenses) incurred by him for travel outside of Winnipeg in his capacity as [text deleted] should not be paid under Section 10(1)(e) of M.R. 40/94 as:

- His serving in a voluntary capacity, as [text deleted] can not be considered as part of an occupational, educational or vocational training plan.
- [S.J.F.'s] decision to obtain a MBA, was part of a specific educational and occupational plan fully supported by MPI with a view to [S.J.F.] obtaining financially remunerative employment as he was not able to resume his pre-accident employment on account of his injuries. In funding the program chosen by [S.J.F.], MPI has met its obligations to this claimant under Section 10(1)(e) of M.R. 40/94.

Alternatively, the Corporation takes the position that:

- His serving as [text deleted] affords no assurance of success in any

attempt to secure elected office.

- Additional travel and attendant care expenses, on an open-ended basis, are not within the contemplation of the legislation and more particularly Section 10(1)(e) of the Regulation which states:

Rehabilitation Expenses

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

- e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

...

Having completed his MBA in the spring (with a June graduation), [S.J.F.] acknowledged that he has not pursued employment for which he would receive remuneration. Instead he had voluntarily opted to run for a voluntary position of [text deleted]. He receives no income from this position which he was successfully elected to. [S.J.F.'s] decision to run would have been with the knowledge that there was great potential for additional travel expenses being incurred if he won.

The Corporation takes the position that given the above circumstances, [S.J.F.] has effectively removed himself from the rehabilitation process. Given his accomplishments to date, it is evident that he would be able to obtain remunerative employment if he chose to do so. Although evidence was led that [S.J.F.] wishes to become an [text deleted] voluntary service as the [text deleted] is not a pre-requisite to doing so.

Having participated in [S.J.F.'s] successful rehabilitation, the corporation's ongoing obligation does not extend to providing him with a specific job as he suggested at the hearing. Similarly, Manitoba Public Insurance should not be extended to occur open-ended significant additional travel costs while he serves as [text deleted].

DISPOSITION:

Section 131 of the MPIC Act provides for reimbursement of personal care assistance expenses, up to a maximum of \$3,000.00 per month, which amount is indexed on a yearly basis in

accordance with Section 165(3) of the MPIC Act. As set out in the case manager's decision dated January 18, 2002, the Appellant currently receives the maximum entitlement for personal care expenses under this section of the legislation. As such, there is no discretion, either on the part of MPIC or this Commission, to award reimbursement of expenses exceeding the legislated maximum pursuant to Section 131 of the MPIC Act.

MPIC however, does have the discretion, pursuant to Section 138 of the MPIC Act to take such measures as it considers 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.

In carrying out its duties pursuant to Section 138, MPIC is subject to Subsection 10(1)(e) of Manitoba Regulation 40/94. Accordingly, MPIC may exercise its discretion where it considers it necessary or advisable for the rehabilitation of a victim, to provide the victim with funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence. Section 184(1) of the MPIC Act allows this Commission to substitute its own decision for that of the corporation.

In order to exercise that discretion, the Commission must be satisfied, on a balance of probabilities, that the funds to be expended are necessary or advisable for the Appellant's rehabilitation in the context of occupational, educational or vocational rehabilitation. The Appellant's current occupational goal is to become an [text deleted]. In furtherance of that goal, he has chosen to become the [text deleted]. While we are mindful that that position may assist

him in his eventual goal, we find that this volunteer position is not a prerequisite to obtaining an [text deleted]. As such, the additional expenses which the Appellant incurs in this volunteer capacity cannot be deemed necessary in order to fulfill his occupational rehabilitation. Additionally, the Appellant has not established, on a balance of probabilities, that this volunteer position is advisable or recommended as a means to secure an [text deleted]. Certainly, many elected members have successfully run for office without becoming [text deleted]. Unlike MPIC who may have exercised its discretion broadly in the past with respect to this Appellant, the Commission is strictly limited to the application of the relevant law. Having found that the Appellant's request does not meet the requirements set out in subsection 10(1)(e) of Manitoba Regulation 40/94, we are unable to find in favour of the Appellant. Accordingly, for the foregoing reasons we accept the position advanced on behalf of MPIC and must dismiss this appeal.

Dated at Winnipeg this 14th day of November, 2002.

YVONNE TAVARES

ANTOINE FRECHETTE

GUY JOUBERT