

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E. R.
AICAC File No.: AC-02-03**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Deborah Stewart
Dr. Patrick Doyle

APPEARANCES: The Appellant, E. R., was represented by Ms. Stacey Belding and Mr. Ken Carroll; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: October 28, 2002

ISSUE(S): Method of calculating income replacement indemnity benefits.

RELEVANT SECTIONS: Sections 112(1) and 115 of the Manitoba Public Insurance Corporation Act (the "MPIC Act") and Sections 1 through 10 of Manitoba Regulation 39/94.

Reasons For Decision

The Appellant, E. R., was involved in a motor vehicle accident ("MVA") on August 16, 1994. At the time of the MVA, the Appellant was self-employed as a farmer. As a result of the injuries he sustained in the MVA, the Appellant was unable to physically participate in the family farm operation and became entitled to receive income replacement indemnity ("IRI") benefits in accordance with subsection 81(1) of the MPIC Act. Section 81(1) provides that:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;

On September 1, 1997, the Appellant commenced employment with the [text deleted] as a [text

deleted] on a part-time basis. On September 18, 1997, in accordance with Section 107 of the MPIC Act, MPIC determined the Appellant as a [text deleted]. Section 107 of the MPIC Act provides 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.

The only job available in the geographical area near the Appellant's residence was on a part-time basis. The part-time employment was 42% of full time. Full time employment as a [text deleted] according to Schedule C of Manitoba Regulation 39/94 provided an average salary of \$28,000. 42% of the \$28,000 is equivalent to \$11,832.66 per year. Accordingly, the Appellant was deemed to be capable of earning \$11,832.66 per year.

Section 116 of the MPIC Act was then applied to reduce the Appellant's IRI from September 1997 to September 1998. Section 116 of the MPIC Act provides as follows:

I.R.I. reduction if victim earns reduced income

116(1) Where a victim who is entitled to an income replacement indemnity holds employment from which the victim earns a gross income that is less than the gross income used by the corporation to compute his or her income replacement indemnity, the income replacement indemnity shall be reduced by 75% of the net income that the victim earns from the employment.

As of September 1998, Section 115 of the MPIC Act has been applied to reduce the Appellant's IRI. Section 115 of the MPIC Act provides that:

I.R.I. for reduced income from determined employment

115 If a victim becomes able to hold employment determined for him or her under section 107 or 108 but, because of bodily injury caused by the accident, earns from the employment a gross income that is less than the gross income used by the corporation to compute the income replacement indemnity that the victim was receiving before the employment was determined, the victim is entitled, after the end of the year referred to in clause 110(1)(d), to an income replacement indemnity equal to the difference between the

income replacement indemnity the victim was receiving at the time the employment was determined and the net income the victim earns or could earn from the employment.

The effect of this section is to reduce the Appellant's IRI entitlement by the full amount of his net earnings from his determined employment as a part-time [text deleted].

Since the date of his MVA, Mr. R. has also been able to continue to run the family farm operation, with the assistance of his wife, his children and hired help. The Appellant reported earnings from his farming operation to the Canada Customs and Revenue Agency ("CCRA") for the years 1995 and 1996 as follows:

1995 - net income from farming = \$3,815.00
1996 - net income from farming = \$733.20

From 1997 to 2000, he reported losses from his farming operations to CCRA as follows:

1997 - net loss from farming = \$4,955.20
1998 - net loss from farming = \$13,678.38
1999 - net loss from farming = \$14,680.00
2000 - net loss from farming = \$56,183.00

In April 2001, MPIC completed a financial reconciliation for the time period from the MVA to June 1, 2000, taking into account the income that the Appellant earned from farming, and determined that the Appellant had been overpaid benefits in the total amount of \$28,204.96. MPIC did not allow the farming losses incurred by the Appellant in the years 1997-2000 to offset his income from part-time [text deleted] and farming income. Since his farming operation is not incorporated, and he is in effect a self-employed sole proprietor, his adjusted net farming losses are deducted from his employment income, when determining his net income for income tax purposes. The Appellant submits that MPIC should deduct his farming losses from his employment income earned as a part-time [text deleted] for the purposes of determining his net income pursuant to Section 115 of the MPIC Act.

In a decision dated December 4, 2001, the Internal Review Officer dismissed Mr. R.'s Application for Review on the basis that the MPIC Act did not provide that farm losses should be netted with employment income in determining income for MPIC purposes.

The Appellant has now appealed the decision of the Internal Review Officer, dated December 4, 2001, to this Commission, regarding the method of calculating his income for the purposes of Section 115 of the MPIC Act.

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

I.R.I. for reduced income from determined employment

115 If a victim becomes able to hold employment determined for him or her under section 107 or 108 but, because of bodily injury caused by the accident, earns from the employment a gross income that is less than the gross income used by the corporation to compute the income replacement indemnity that the victim was receiving before the employment was determined, the victim is entitled, after the end of the year referred to in clause 110(1)(d), to an income replacement indemnity equal to the difference between the income replacement indemnity the victim was receiving at the time the employment was determined and the net income the victim earns or could earn from the employment.

Determination of net income

112(1) A victim's net income is his or her gross yearly employment income, to a maximum of the maximum yearly insurable earnings established under section 114, less an amount determined, in accordance with the regulations, for income tax under *The Income Tax Act* and the *Income Tax Act* (Canada), premiums under the *Unemployment Insurance Act* (Canada) and contributions under the Canada Pension Plan.

Counsel for the Appellant in their written submission contend that:

On the first issue, it is the Appellant's position that MPIC was in error when it determined that he had been overpaid benefits due to employment and business income, as he also incurred significant business losses during the years in question which should have been applied against his total income from all sources to reduce same accordingly. While the *Manitoba Public Insurance Corporation Act* (the "Act") does not contain a definition of income, section 3(1) of Manitoba Reg. P215-39/94 and section 112(1) of the Act refer to the *Income Tax Acts* of Manitoba and Canada regarding the determination of business

income and the determination of net income, respectively, and therefore a claimant's total income from all sources, (i.e. business and employment) should be determined in accordance with the *Income Tax Acts*, unless expressly stated otherwise in the Act. The foregoing is the only fair and logical method of determining income, in light of MPIC's apparent reliance on section 3(1), the rules of statutory interpretation, and the rules of policy interpretation.

Counsel for MPIC submits that there is no provision in the MPIC Act to allow for the deduction of business losses from employment income in order to arrive at income for IRI purposes. He maintains that entitlement to IRI is based upon the ability to earn income and accordingly, any income which is earned by the Appellant is taken into consideration when determining benefits.

DISPOSITION:

The argument advanced by counsel for the Appellant is premised on the basis that the MPIC Act does not contain a definition of income, and therefore a claimant's total income from all sources (i.e. business and employment) should be determined in accordance with the Income Tax Acts of Canada and Manitoba. We are unable to come to the same conclusion.

Section 115 of the MPIC Act provides that a victim is entitled to an income replacement indemnity equal to the difference between the income replacement indemnity the victim was receiving at the time the employment was determined and the net income the victim earned or could earn from the determined employment.

Section 112(1) of the MPIC Act clearly establishes the basis for the determination of net income. It provides that a victim's net income is his or her gross yearly employment income less certain enumerated deductions and subject to the maximum yearly insurable earnings established under Section 114 of the MPIC Act. Sections 1 through 9 of Manitoba Regulation 39/94 provide the various methods for the determination of gross yearly employment income depending upon

whether a victim is classified as employed or self-employed and as a full time, part-time or temporary earner. Section 10 of Regulation 39/94 provides for the computation of net income.

In the case at hand, Section 115 of the MPIC Act operates to decrease the amount of IRI that the Appellant received based on his pre-MVA occupation as a farmer, by the amount he earns or could earn from his determined employment as a part-time [text deleted]. The purpose of this section is to recognize a victim's residual earning capacity after a motor vehicle accident and to compensate him for any shortfall in his earning capacity as compared to his pre-MVA occupation. We are unable to read into this section any suggestion that the Appellant's net income from the determined employment should be offset by his business or farming losses. Accordingly, we are obliged to dismiss the Appellant's appeal and confirm the decision of the Internal Review Officer dated December 4, 2001.

[The note [text deleted] indicates the removal of information which may identify individuals.]

Dated at Winnipeg this 28th day of November, 2002.

YVONNE TAVARES

DEBORAH STEWART

DR. PATRICK DOYLE