



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.E.  
AICAC File No.: AC-02-97**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Yvonne Tavares  
Ms. Laura Diamond

**APPEARANCES:** The Appellant, L.E., appeared on her own behalf, assisted by her husband, E.E.;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

**HEARING DATE:** May 13, 2003

**ISSUE(S):** Whether Appellant entitled to Personal Injury Protection Plan benefits.

**RELEVANT SECTIONS:** Section 70(1) (Definition of "accident", "bodily injury" and "victim") and Section 71(1) of The Manitoba Public Insurance Corporation Act (the "MPIC Act").

**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 Appellant, L.E., is appealing the decision of the Internal Review Officer dated May 7, 2002, which dismissed her Application for Review and confirmed the decision of the case manager dated March 7, 2002. At issue, is whether or not the Appellant is eligible for compensation under the Personal Injury Protection Plan ("PIPP") contained in Part 2 of the MPIC Act, as a result of the circumstances of the accident of November 14, 2001.

The facts of the accident of November 14, 2001 can be briefly stated as follows:

- At approximately 12:30 p.m. on November 14, 2001, the driver of a vehicle lost control of the vehicle and crashed through the outside wall of the E.'s apartment, into their living room.
- The Appellant was at work at the time of the accident. No other family members were present in the apartment at the time of the accident.
- The E.'s apartment was extensively damaged as a result of the accident. It required considerable clean-up and major repairs, which took several months to complete.
- The Appellant and her family were required to move out of the apartment for several weeks, while the extensive clean-up and repairs were undertaken.
- The accident caused a great deal of stress, anxiety and upheaval in the lives of the Appellant and her family.

As a result of the disruption caused by the accident, and the resultant stress and anxiety suffered by the Appellant, she suffered an exacerbation of her Multiple Sclerosis ("MS"). The Appellant testified that, due to this exacerbation, she has numbness, tingling and weakness in her legs and has difficulty walking. The exacerbation of her MS has also manifested itself in a lack of coordination and balance. She also advised that she has suffered a decline in concentration and is not able to verbalize her thoughts as well as before the accident. Most noticeably, she states that her endurance has decreased and she tires much more quickly. Due to her increased level of fatigue, she has permanently reduced her hours at work. She is therefore claiming income replacement indemnity ("IRI") benefits from MPIC, for the loss of time from work which she has incurred since the accident and which she will incur due to the permanent reduction of her hours at the workplace.

Counsel for MPIC submits that the Appellant is not entitled to benefits under PIPP because she does not meet the requirements of Section 71(1) of the MPIC Act, which states that "*This Part*

*applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.*”

Counsel for MPIC maintains that the Appellant was not "in an accident". He contends that she came upon an accident and suffered stress as a result of the accident. However, he submits that this does not entitle the Appellant to benefits under PIPP, since she did not suffer a bodily injury as a direct result of the motor vehicle accident.

Section 70(1) of the MPIC Act provides the following definitions:

**Definitions**

**70(1)** In this part,

“**accident**” means any event in which bodily injury is caused by an automobile;

“**bodily injury**” means any physical or mental injury, including permanent physical or mental impairment and death;

“**victim**” means a person who suffers bodily injury in an accident.

Section 71(1) of the MPIC Act provides that:

**Application of Part 2**

**71(1)** This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

In order to qualify for benefits pursuant to Part 2 of the MPIC Act, the Appellant must fall within the requirements of Section 71(1). In this case, the determination rests with the meaning of the phrase “*in an accident*”, since that phrase is found in both Section 71(1) and within the definition of a “*victim*”.

The meaning of the phrase “*in an accident*” was previously considered by this Commission in the appeal by *Jo-Anne and Robert Wood, AC-96-61*. In that decision, the Commission found that the phrase “*in an accident*” necessarily implied presence at the scene of the accident. We concur with their reasoning. The use of the term “*in an accident*” suggests inclusion or involvement in the event, which in our view, in the circumstances of this present case, implies physical presence at the scene of the accident, when the accident took place.

As a result, we find that the Appellant does not come within either the definition of “*victim*” set out in Section 70(1) of the MPIC Act, or within the terms of Section 71(1) of the MPIC Act. We are therefore obliged to dismiss the Appellant’s appeal and confirm the decision of the Internal Review Officer dated May 7, 2002.

Dated at Winnipeg this 15<sup>th</sup> day of July, 2003.

---

**MEL MYERS, Q.C.**

---

**YVONNE TAVARES**

---

**LAURA DIAMOND**