



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.W.
AICAC File No.: AC-02-120**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Barbara Miller
Mr. Wilson MacLennan

APPEARANCES: The Appellant, L.W., did not appear on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: June 2, 2004

ISSUE(S): 1. Entitlement to Permanent Impairment Benefit;
2. Entitlement to Physiotherapy Treatment Benefit.

**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 August 28, 2002 the MPIC's Internal Review Officer issued a decision dismissing the Appellant's Application for Review of a case manager's decision which had determined the Appellant had not suffered a permanent impairment as a result of injuries he sustained in a motor vehicle accident on December 17, 1999 and, as a result, the Appellant would not receive the permanent impairment award nor would MPIC continue to fund any further physiotherapy treatments.

The Appellant filed a Notice of Appeal with the Commission, dated November 4, 2002. The appeal hearing before the Appeal Commission was set for December 11, 2003.

On December 9, 2003 the Appellant advised the Commission that he would not attend the hearing and requested an adjournment. The Commission determined that the reasons that the Appellant gave for an adjournment were not of a compelling nature and on December 10, 2003 advised the Appellant that the hearing would continue as scheduled on December 11, 2003 whether the Appellant attended or not.

The Appellant did not attend the hearing on December 11, 2003. On review of the material filed in the appeal, the Commission determined that prior to proceeding any further with this appeal it desired to obtain an independent neurological assessment of the Appellant. An officer of the Commission communicated this request to the Appellant, who agreed to have a neurological assessment done and, as a result, the Commission adjourned the proceedings on December 11, 2003.

On January 20, 2004, Ms. Laura Gowerluk, Director of Appeals, wrote to the Appellant setting out the circumstances in respect of which the Appellant refused to sign a Medical Release Authorization form in order for a independent neurological assessment to take place. Attached hereto as Exhibit A is a true copy of a letter from Ms. Laura Gowerluk to the Appellant, dated January 20, 2004.

The Commission set a new date for the hearing for June 2, 2004. Attached hereto and marked Exhibit B is an Affidavit of Service of Milton B. Brown confirming that the Appellant was personally served with a notice of the hearing on March 15, 2004.

Attached hereto and marked as Exhibit C is an unsigned letter which requests, on behalf of L.W., that the hearing set for June 2, 2004 be postponed indefinitely.

Attached hereto and marked as Exhibit D is a letter from the Commission dated May 27, 2004 to the Appellant and MPIC's legal counsel rejecting the Appellant's request for a indefinite postponement of the appeal proceedings confirming that the appeal hearing would take place on June 2, 2004.

On June 2nd at 1:30 p.m. Mr. Mark O'Neill, legal counsel for MPIC, attended at the hearing but the Appellant did not appear. The Commission waited until 1:45 p.m. prior to commencing the appeal hearing.

At the commencement of the hearing the Commission filed as an Exhibit 1 in the proceedings the Commission's letter to the Appellant and MPIC's legal counsel, dated May 27, 2004 (attached hereto and marked as Exhibit D).

MPIC's legal counsel submitted that the onus was upon the Appellant to establish the merits of his appeal and he failed to do so. MPIC's legal counsel further submitted that having regard to the material filed in evidence in this appeal, the Commission should confirm the decision of the Internal Review Officer, dated August 28, 2002, and dismiss the Appellant's appeal.

The Commission, after considering the submission by MPIC's legal counsel and the material filed in evidence in this appeal, determines that the Appellant has not, on a balance of probabilities, suffered a permanent impairment as a result of the injuries sustained in the motor

vehicle accident on December 17, 1999. As a result, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was entitled to receive a permanent impairment award from MPIC nor that MPIC was required to continue to fund any further physiotherapy treatments. The Commission therefore concludes that for these reasons it is dismissing the Appellant's appeal and confirming the decision of the Internal Review Officer dated August 28, 2002.

Dated at Winnipeg this 16th day of June, 2004.

MEL MYERS, Q.C.

BARBARA MILLER

WILSON MACLENNAN