



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by G.B.W.
AICAC File No.: AC-01-110**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Wilson Maclennan
The Honourable Mr. Armand Dureault

APPEARANCES: The Appellant, G.B.W., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: July 14, 2004

ISSUE(S):

1. Calculation of Income Replacement Indemnity benefits;
2. Suspension of benefits pursuant to ss. 160(a) of The Manitoba Public Insurance Corporation Act; and
3. Entitlement to additional Personal Injury Protection Plan benefits beyond January 26, 2003.

RELEVANT SECTIONS: Subsections 83(1) and 160(a) 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 was involved in a motor vehicle accident on November 18, 1996. As a result of the injuries sustained in that accident, the Appellant became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing three separate Internal Review decisions dealing with the following issues:

1. Calculation of Income Replacement Indemnity benefits;
2. Suspension of benefits pursuant to ss. 160(a) of The Manitoba Public Insurance Corporation Act; and

3. Entitlement to additional Personal Injury Protection Plan benefits beyond January 26, 2003.

1. Calculation of Income Replacement Indemnity benefits

The Appellant is appealing the Internal Review decision dated August 24, 2001, which declined to take into account earnings he would have received as a hunting guide in the second half of November 1996, when calculating his Income Replacement Indemnity ('IRI') benefits.

The Appellant was classified as a temporary earner at the time of the motor vehicle accident, based upon his farming employment and his seasonal employment as a hunting guide. Entitlement to IRI benefits for a temporary earner is governed by ss. 83(1) of the MPIC Act, which provides as follows:

Entitlement to I.R.I. for first 180 days

83(1) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

- (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred;
- (b) he or she is deprived of a benefit under the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada) to which he or she was entitled at the time of the accident.

The Commission determined at the hearing of this matter that the Appellant's IRI benefits had been properly calculated. His entitlement to IRI benefits was based upon his employment as a livestock farmer and as a hunting guide. He received IRI benefits on the basis that he was unable to hold those employments as a result of the accident. Therefore, the Appellant was compensated in accordance with the provisions of the MPIC Act for the income that he lost due to his inability to carry out the functions of a hunting guide.

Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated August 24, 2001.

2. Suspension of benefits pursuant to ss. 160(a) of The Manitoba Public Insurance Corporation Act

The Appellant is appealing the Internal Review decision dated May 24, 2002, which upheld the case manager's decision to suspend the Appellant's IRI benefits for a nine month period, from April 1, 2001 to January 2, 2002, in accordance with ss. 160(a) of the MPIC Act.

Subsection 160(a) of the MPIC Act provides that:

Corporation may refuse or terminate compensation

160 The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

(a) knowingly provides false or inaccurate information to the corporation.

The Internal Review Officer found that the Appellant had provided false information to MPIC. In the circumstances, the Internal Review Officer determined that the case manager's decision to suspend the Appellant's IRI benefits for a period of nine months was reasonable.

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant knowingly provided false or inaccurate information to MPIC. In accordance with ss. 160(a) of the MPIC Act, MPIC was justified in suspending the Appellant's IRI benefits and we find that the suspension of IRI benefits for a period of nine months was reasonable in the circumstances of this case.

Accordingly, the Commission dismisses the Appellant's appeal and confirms the decision of

MPIC's Internal Review Officer dated May 24, 2002.

3. Entitlement to additional Personal Injury Protection Plan benefits beyond January 26, 2003

The Appellant is appealing the Internal Review decision dated August 1, 2003, which upheld the case manager's decision to terminate PIPP benefits as of January 26, 2003.

The Internal Review Officer found that the decision to terminate PIPP benefits was consistent with medical reports on the Appellant's file, and he found that the Appellant's ongoing functional impairments were no longer caused by the motor vehicle accident of November 18, 1996.

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, that his ongoing functional impairments beyond January 26, 2003, were as a result of injuries sustained in the motor vehicle accident of November 18, 1996. Rather, we prefer the analysis provided by Dr. Maryana Apel, a specialist in physical medicine and rehabilitation, who conducted an independent medical examination of the Appellant. The results of her examination and a detailed review of the Appellant's file were set out in a very thorough 23 page narrative report dated September 12, 2002.

It is apparent from Dr. Apel's report that she does not attribute any of the Appellant's ongoing symptoms and/or problems to injuries arising out of the motor vehicle accident of November 18, 1996. The Commission finds Dr. Apel's report to be comprehensive with respect to the

Appellant's medical status. In accordance with Dr. Apel's report and the conclusions arrived therein, and the conclusions of Dr. Shrom of MPIC's Health Care Services Team, the Commission finds that the most probable cause of the Appellant's ongoing presentation relates to his pre-existing condition of Ankylosis Spondylitis and no longer to the motor vehicle accident of November 18, 1996.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated August 1, 2003 is hereby confirmed.

Dated at Winnipeg this 5th day of November, 2004.

YVONNE TAVARES

WILSON MACLENNAN

HONOURABLE ARMAND DUREAULT