



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E.W.
AICAC File No.: AC-04-36**

PANEL: Ms. Laura Diamond, Chairperson
Ms. Barbara Miller
The Honourable Mr. Armand Dureault

APPEARANCES: The Appellant, E.W., was represented by her daughter, E.K.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms. Dianne Pemkowski.

HEARING DATE: October 25, 2004

ISSUE(S): Whether MPIC has the right to recover the retirement
income benefit overpayment

RELEVANT SECTIONS: Section 189 of The Manitoba Public Insurance Corporation
Act ('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, E.W., was involved in a motor vehicle accident on May 30, 1995. As a result of her injuries, she became entitled to Income Replacement Indemnity ('IRI') benefits until September 11, 2001. When she turned 65 years of age, on [text deleted], her entitlement to IRI ended and she became eligible for a Retirement Income Benefit ('RIB'), pursuant to Section 102 and 103(1) of the MPIC Act.

The Appellant also became entitled to Canada Pension Plan Disability Benefits, and as a result, a repayment of overpaid IRI benefits was arranged between the Appellant and MPIC, at that time.

Pursuant to Section 103(2) of the MPIC Act, retirement income is calculated by subtracting the Appellant's pension income from 70% of the net income used to calculate the IRI. In order to calculate the benefit, the Appellant's case manager requested that she provide a copy of her 2000 Income Tax Return. Calculations were completed and the Appellant began receiving a Retirement Income Benefit ('RIB'), effective [text deleted]. She was also advised that because income may fluctuate, MPIC would review her benefit annually, and therefore required that she provide certified Income Tax Returns each year.

On January 23, 2002, the Appellant was advised that the results of a review by the IRI department indicated that an overpayment of RIB of \$[text deleted] had been made, because her monthly CPP benefits had not been included in the original RIB calculation. As well, effective January 1, 2002, there was a 3% increase of her pension benefits. A revised calculation was done and the overpayment subtracted from the Appellant's RIB payment for the period of January 21st to February 3, 2002. The case manager also requested that the Appellant provide a copy of her 2001 income tax return when it became available.

A review of the Appellant's RIB was again conducted following receipt of her 2002 Tax Return. MPIC discovered that a calculation error had occurred when MPIC had failed to annualize the federal supplement portion of her pension for 2001. In 2002, the federal supplement was only increased by 3%, resulting in indexation of the wrong amount. This resulted in an overpayment of \$[text deleted] to the Appellant. The Appellant's RIB was once again recalculated and the Appellant advised that MPIC was seeking repayment of the overpaid amount.

INTERNAL REVIEW DECISION

The Appellant sought an Internal Review of the case manager's decision requiring repayment of the \$[text deleted]. In a decision dated December 18, 2003, the Internal Review Officer upheld the case manager's decision and dismissed the Application for Review, finding that an overpayment had been detected and that MPIC was clearly entitled to recover the overpayment. The Appellant has now appealed from that decision to this Commission. The issue which requires determination is whether MPIC is entitled to be reimbursed for the overpayment.

SUBMISSIONS

The Appellant agreed that a calculation error occurred and that this resulted in an overpayment to her.

However, the Appellant submits that MPIC has repeatedly made mistakes in calculating her benefits and has caused delays in finalizing calculation of her RIB amounts. The Appellant submits that MPIC should have been able to obtain a true picture of the Appellant's income much earlier than it has, so that no overpayment situation would result. The Appellant submits that she has acted with due diligence in providing information to MPIC whenever it was requested. She is not at fault in this matter, yet the repayment will create economic hardship for her.

Counsel for MPIC agreed that the calculation error occurred through no fault of the Appellant and confirmed, as did the Internal Review Officer, that there is no issue of any fraud or wrongdoing on the part of the Appellant, who cooperated with MPIC at all times.

Rather, counsel for MPIC submits that a calculation error occurred when determining the amount of the Appellant's benefits, through the failure to annualize the federal supplement in 2001. The

error was compounded in 2002 and was only discovered upon a review of the Appellant's 2002 Tax Return. As a result, an overpayment occurred during the period between September 11, 2001 and September 11, 2003.

Counsel for MPIC submits that the fact of the overpayment and the amount of it are not in dispute and as such, MPIC is entitled to reimbursement of the overpayment. MPIC takes the position that it has two options of collecting this overpayment. It can seek reimbursement under section 189(1), or it can seek to recover the funds under section 189(2).

Counsel for MPIC confirmed that no such recovery action has been instituted under section 189(2), and no such issue is before the Commission. Rather, under section 189(1), MPIC has sought to collect the overpayment through the non-payment of the Appellant's continuing RIB benefits.

Discussion

Section 189 of the MPIC Act provides:

Corporation to be reimbursed for excess payment

189(1) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

Time limitation for recovery of payment

189(2) The corporation may commence an action to recover an amount to which it is entitled to be reimbursed

(a) within two years after the day the amount is paid to the person; or

(b) where the amount is paid as a result of fraud, within two years after the day the fraud is first known or discovered by the corporation.

Cancellation or deduction of debt

189(3) Subject to the regulations, the corporation may, in respect of the amount to which it is entitled to be reimbursed,

(a) cancel it or any part of it, where the corporation considers it is not recoverable; or

(b) notwithstanding subsection (2), deduct it from any amount payable to the debtor by the corporation at any time.

Application for review or appeal does not affect deduction

189(4) The corporation may make a deduction under clause (3)(b) notwithstanding a debtor's application for review or appeal respecting the amount or the deduction of the amount.

Section 189(1) requires that a person who receives an indemnity payment which exceeds the amount to which she is entitled, shall reimburse the corporation for the amount to which she is not entitled.

Both MPIC and the Appellant agree that there was a calculation error which resulted in an overpayment and that the Appellant received \$[text deleted] which she was not entitled to receive. This amount is owed by the Appellant to MPIC. Accordingly, the Commission confirms the Internal Review Officer's decision that MPIC is entitled to be reimbursed by the Appellant for the amount of the excess payment or overpayment. Accordingly, we find that the Appellant has failed to show, on the balance of probabilities, that the Internal Review Officer erred in his decision and we hereby confirm the decision of MPIC's Internal Review Officer bearing date December 18, 2003.

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

LAURA DIAMOND

BARBARA MILLER

HONOURABLE ARMAND DUREAULT