



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E.P.
AICAC File No.: AC-03-150**

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnston
The Honourable Mr. Wilf De Graves

APPEARANCES: The Appellant, E.P., appeared on his own behalf via teleconference telephone call; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Kathy Kalinowsky.

HEARING DATE: June 16, 2005

ISSUE(S): Entitlement to reimbursement for moneys spent (approximately \$7,700) learning to fly.

RELEVANT SECTIONS: Sections 70(1), 87(1) and 136 of The Manitoba Public Insurance Corporation Act ('MPIC Act'), and Section 40.1(2) of Manitoba Regulation 40/94

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.P., was seriously injured in a motor vehicle accident on June 29, 2000. At the time of the accident he was employed on a full time basis as an Aviation Technician with the [text deleted]. He had also obtained a private pilot's license at his own expense, and was training to become a commercial pilot.

Although the Appellant suffered a serious condition and remained in hospital for a lengthy period following the accident, through great effort, he was rehabilitated to the extent that he could return to his employment with the [text deleted].

However, as a result of the head injuries sustained in the accident, his private pilot's license was revoked. The Appellant seeks reimbursement from MPIC for the funds he spent, prior to the accident, on learning to fly and obtaining his pilot's license.

The Appellant's case manager took the position that there was no provision within the MPIC Act or Regulations that would allow MPIC to reimburse the Appellant for his flight training costs.

Internal Review Decision

On September 8, 2003, the decision of the case manager was upheld by an Internal Review Officer. The Internal Review Officer found that because the flight training expenses were incurred before the accident and not "because of the accident", and did not fall into any of the categories of expenses which would attract reimbursement under the Act or Regulations, the Appellant was not entitled to reimbursement.

It is from this decision of the Internal Review Officer which the Appellant has now appealed.

Submissions

The Appellant submitted that his goal has always been to be a commercial pilot and that he viewed his job in the [text deleted] as a means to fund flight training. He submitted that, although the training expenses were incurred before the accident, the direct result of the accident was that he could no longer realize his dream of becoming a commercial pilot, and the funds he

had spent on that training were now lost or wasted. The Appellant submitted that although MPIC had classified him as a full time earner, he was only a full time earner because he needed the funds to continue his flight training. He believes an exception should be made because the flight training costs were lost as a direct result of the accident.

Counsel for MPIC submitted that the Internal Review Officer was correct in his review of the Act and Regulations and their impact upon the Appellant's claim.

She submitted that Section 136 of the Act only allowed for reimbursement where expenses were incurred "because of the accident". Because this expense had arisen prior to the accident, it could not fall within that section. Further, this expense did not fall within any of the expenses listed under Section 136 of the Act or under Regulation 40/94. Although Regulation 40.1(2) covers expenses incurred for tuition fees paid for a course that is part of the current studies of a victim who is a student, the Appellant's claim did not fall within the definition of "current studies" in Section 87, and the Appellant himself fell within the definition of "full time earner" rather than "student" under Section 70(1) of the Act. Accordingly, no entitlement to reimbursement for the flight training costs arises under the Act or the Regulations.

Discussion

Section 136(1) of the MPIC Act provides:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;

- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Regulation 40/94, Section 40.1(2) provides:

Reimbursement of tuition fees

40.1(2) The corporation shall pay an expense incurred for tuition fees paid for a course

- (a) that is part of the current studies of a victim who is a student; and
- (b) for which the victim is unable to obtain credit as a result of the accident.

Section 87(1) defines “current studies” as:

Interpretation of sections 87 to 92

87(1) For the purpose of sections 87 to 92 (students),

"current studies" means studies that are part of a program of studies at the secondary level or post-secondary level that, at the time of the accident, the student has admission to begin or continue at an educational institution;

Section 70(1) provides a definition for the terms “full time earner” and “student”:

Definitions

70(1) In this Part,

"full-time earner" means a victim who, at the time of the accident, holds a regular employment on a full-time basis, but does not include a minor or student;

"student" means a victim who is 16 years of age or older and attending a secondary or post-secondary educational institution on a full-time basis at the time of the accident;

The onus is on the Appellant to show that he is entitled to reimbursement under the Act and Regulations for the money he spent learning to fly.

While the panel has admiration for the progress and efforts the Appellant has made in his rehabilitation, following a review of the legislation, the Commission is unable to uphold his claim for reimbursement.

The Appellant has failed to establish, on the balance of probabilities, that the Internal Review Officer was in error in finding that these expenses, incurred as they were before the accident, were not incurred “because of the accident” under Section 136(1). Further, the Internal Review Officer was correct in finding that these expenses do not fall into the categories of expenses set out in Section 136(1) or in Regulation 40/94. This includes Section 40.1(2) of Regulation 40/94, dealing with reimbursement of tuition costs, as the Appellant has failed to establish that he fell under the definition of “student” under Section 70(1) of the Act. Rather, the Appellant was correctly classified as a “full time earner” under Section 70(1) of the Act, which specifically excludes students. Accordingly, Section 40.1 does not apply to the Appellant’s case and the Appellant has failed to establish, on a balance of probabilities, entitlement to reimbursement for flight training costs under the Act or Regulations.

As a result, for these reasons, the Commission dismisses the Appellant’s appeal and confirms the decision of MPIC’s Internal Review Officer bearing date September 8, 2003.

Dated at Winnipeg this 14th day of July, 2005.

LAURA DIAMOND

PAUL JOHNSTON

HONOURABLE WILF DE GRAVES