



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by L.M.
AICAC File No.: AC-04-201**

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Mr. Robert Chernomas

APPEARANCES: The Appellant, L.M., was represented by Mr. Wayne Onchulenko;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: September 13, 2005

ISSUE(S): Was the Appellant resident in Manitoba at the relative time within the meaning of Section 74(1) of The Manitoba Public Insurance Corporation Act

RELEVANT SECTIONS: Section 74(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act'), Section 1 of Manitoba Regulation 37/94, Sections 2, 4, 5 and 8 of The Domicile and Habitual Residence 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.M., was involved in a motor vehicle accident on June 1, 2004. He was operating a semi tractor unit registered to his employer of almost four (4) years, a Manitoba trucking company. The truck bore Manitoba license plates and was insured by MPIC.

The accident occurred on a highway in Ohio.

As a result of the accident, the Appellant sustained physical injuries and experienced psychological difficulties. He remained off work until he returned to the same employer, in a different capacity, in 2005.

The Appellant was born and raised in Saskatchewan and held a Saskatchewan Driver's License and a Saskatchewan Health Card at the time of the accident. He did not apply for a Manitoba Driver's License or a Manitoba Health Card until after the accident.

The Appellant had been divorced for some time and his ex-wife and children were living in [text deleted], Saskatchewan. However, the Appellant testified that, beginning in January of 2004, he formed an intention to move to Winnipeg. He wished to be assigned to a dedicated driving route and determined that this would be best achieved by relocating to Winnipeg, which was the hub for the trucking company he was driving for. He also wanted to spend more time in Winnipeg with his girlfriend and other friends there.

The Appellant testified that he began moving his possessions to Winnipeg, on a gradual basis, in January of 2004 and storing them with his girlfriend (now his ex-girlfriend), and with friends. He moved more and more possessions, until he felt that he had officially moved to Winnipeg, in late March or early April of 2004.

The Appellant did not own a home in either province, nor did he lease premises in either place. However, he testified that, in order to help out his girlfriend, he paid rent to her. He indicated that when he was in Winnipeg he stayed with his girlfriend, taking meals there, using the facilities and contributing both to the rent and to groceries.

As a long distance truck driver, the Appellant spent the majority of his time on the road, “living out of his truck”. He also spent whatever time he could, on his days off, visiting with his children in [text deleted], Saskatchewan. He maintained a bank account in [text deleted], Saskatchewan, as this was the account upon which his maintenance cheques to his wife were drawn, and his wife had an account at the same bank.

The Appellant testified that his mailing address remained in Saskatchewan. However, he advised his employer, in January, that his new mailing address for the purposes of receiving his pay stubs and other work related mail, was his new address in Winnipeg. This was also the address his employer used for the Appellant’s Manitoba Worker’s Compensation Board contact information.

The Appellant filed his 2003 Income Tax Return in Saskatchewan and filed his 2004 Return in Manitoba.

The Appellant testified that when he had days off and was not visiting his children, he lived in Winnipeg with his girlfriend. He set up a Shaw Internet account there and obtained a cellular telephone account using the Winnipeg apartment as his address.

After the accident, the Appellant’s employer referred him to the Worker’s Compensation Board of Manitoba (‘WCB’) which provided him with some benefits, including several visits with a clinical psychologist.

The Appellant also applied to Saskatchewan Government Insurance ('SGI') for benefits, but was advised that he had lost his status as a Saskatchewan resident prior to the accident and that he was not entitled to benefits under that plan.

The Appellant's claim for Personal Injury Protection Plan ('PIPP') benefits was rejected by a case manager in a letter dated July 22, 2004. The case manager took the position that the available information demonstrated that at the time of the motor vehicle accident the Appellant was a Saskatchewan resident and not entitled to PIPP benefits under the MPIC Act.

The Appellant's Application for Review was considered by an Internal Review decision dated November 4, 2004. The Internal Review Officer reviewed the Appellant's claim and found that:

[L.M.] was clearly domiciled and habitually resident in Saskatchewan in late 2003. Section 6 of *The Domicile and Habitual Residence Act* stipulates that the jurisdiction of his domicile and habitual residence continues until new ones have been established.

The state of the evidence is most unsatisfactory. On the whole, it has failed to convince me that [L.M.] had established a new domicile and habitual residence prior to the accident of June 1, 2004.

The fact that he has remained in Winnipeg since that time (in large part due to the fact that he is no longer "on the road" on regular basis) does more to establish the acquisition of a new domicile and habitual residence after the accident than before.

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

Submissions

Counsel for the Appellant argued that, pursuant to the relevant sections of the MPIC Act and the *Domicile and Habitual Residence Act*, at the relevant time, it was the Appellant's intention to establish a new habitual residence in Manitoba and that this should be the driving force in an examination of his residency status.

Counsel for the Appellant argued that although some of the documents, residence questionnaire, evidence and statements provided by the Appellant in regard to the issue may be confusing, this is because they were honest answers given by him at the time, on an ongoing basis. The Appellant was potentially entitled to very similar sets of benefits from SGI, WCB or PIPP, and had no motive for falsifying his claim as to residency. It is clear from the evidence, he submitted, that the Appellant began to form his intent to move to Manitoba in January of 2004, and that this decision was fully implemented by the end of March or beginning of April 2004.

The Appellant relied on the following factors as indicative of his intention to establish a new residence, and of the establishment of a new domicile and habitual residence in Manitoba, by the date of accident.

- ◆ The Appellant began moving and storing his personal goods in Manitoba in January of 2004
- ◆ The Appellant moved the balance of his personal possessions to Manitoba by late March or early April 2004
- ◆ The Appellant arranged Internet access in Manitoba in January 2004
- ◆ The Appellant arranged for [text deleted] cell phone service in Manitoba
- ◆ The Appellant gave his employer his Manitoba address for the purpose of sending his pay stubs and work related mail
- ◆ The Appellant wished to have a home base in Manitoba, where his employer's operation was located, in order to enhance his eligibility to be assigned a dedicated regular route

- ◆ The Appellant's girlfriend lived in Manitoba
- ◆ The Appellant's completion of the formalities of his move was delayed due to his work schedule as a long haul trucker. He estimated that he was on the road for approximately nineteen (19) out of twenty-three (23) days, and accordingly, it took him some time to put things together and complete the details of the move
- ◆ The free time spent by the Appellant in Saskatchewan was spent visiting his children, but all his other important ties were in Manitoba

Counsel for MPIC submitted that, under the relevant legislation, a domicile continues until a new one is acquired. The evidence does not show that the Appellant acquired a new domicile in Manitoba by the time of the accident. Rather, his primary residence was still in Saskatchewan.

Counsel for MPIC relied upon the following points as evidence that the Appellant had not established a new domicile in Manitoba at the time of the accident.

- ◆ The Appellant was born and raised in Saskatchewan and was there until 2003
- ◆ The Appellant maintained a Saskatchewan Driver's License and Health Registration
- ◆ The Appellant's bank account remained in Saskatchewan
- ◆ The Appellant filed his 2003 tax return in Saskatchewan
- ◆ The Appellant spent his days off from his job as a long distance truck driver in Saskatchewan with his children, who remained there
- ◆ The Appellant's mailing address remained in Saskatchewan, except for his pay stubs and work related mail

- ◆ The Appellant's work was based out of [text deleted]
- ◆ Only a quarter of the Appellant's possessions were in Winnipeg in January of 2004
- ◆ The residence questionnaire which the Appellant filled out at MPIC's request contained several inconsistencies
- ◆ The decision of Saskatchewan Government Insurance denying benefits under that plan does not set out the facts upon which they relied, and is too brief to provide the panel with any guidance as to the Appellant's residency

Counsel for MPIC submitted that, under the legislation, an individual can only have one domicile at a time, and the Appellant did not have a principal home in Winnipeg in early 2004 or even in March or April of 2004. While evidence of intent is important, the Commission must also look at what the Appellant actually did about it. While counsel for MPIC recognized that the Appellant did not really have a principal home, due to the nature of his employment as a long distance trucker, when the Commission looks at all the facts, it should find that there was no change in principal residence in 2004 sufficient to determine that the Appellant's habitual residence and domicile had changed to the point where there had been a move.

In response, the Appellant noted that both the Appellant and his employer believed that he was a habitual resident of Manitoba. The mailing address the Appellant provided to his employer was in Manitoba and, after the accident, his employer referred him to the WCB of Manitoba. His employment was part of the reason the Appellant wanted to reside in Manitoba, where his employer operated. As well, the Appellant pointed out that at the time of a stressful situation, immediately following the accident in Ohio, the Appellant provided the Ohio authorities with his

Manitoba address. This, it was submitted, is evidence of the Appellant's belief and intention that his principal domicile was in Manitoba.

Discussion

The Manitoba Public Insurance Corporation Act Victim resident in Manitoba entitled to compensation

74(1) Subject to this Part, a victim who is resident in Manitoba at the time of the accident, and any dependant of the victim, is entitled to compensation under this Part if the accident occurs in Canada or the United States.

Manitoba Regulation 37/94

Definitions

1 in this regulation
 “**person resident in Manitoba**” means, subject to this regulation, a person whose domicile or habitual residence is in Manitoba, as determined under *The Domicile and Habitual Residence Act*;

The Domicile and Habitual Residence Act

Determination of domicile and habitual residence

2 For all purposes of the law of Manitoba, the domicile and habitual residence of every person shall be determined under this Act to the exclusion of the laws of any other state or subdivision of a state.

Requirement of domicile and habitual residence

4 Every person has a domicile and an habitual residence.

Only one domicile and habitual residence

5 No person has more than one domicile and one habitual residence at any time.

Continuance of domicile and habitual residence

6 The domicile and habitual residence of a person continue until a person acquires a new domicile and habitual residence.

Basis of domicile and habitual residence

8(1) The domicile and habitual residence of each person is in the state and a subdivision thereof in which that person's principal home is situated and in which that person intends to reside.

Presumption of intent to reside

8(2) For the purposes of subsection (1), unless a contrary intention is shown, a person is presumed to intend to reside indefinitely in the state and subdivision thereof in which that person's principal home is situated.

As counsel for the parties have pointed out, pursuant to the MPIC Act and Regulations and to *The Domicile and Habitual Residence Act*, a person cannot have more than one domicile and habitual residence at any time. The domicile and habitual residence of a person continues until a new one is acquired, and he is presumed to intend to reside indefinitely in the state of his principal home unless a contrary intention is shown.

A person's domicile and habitual residence is located in the province in which that person's "principal home is situated and in which that person intends to reside".

The onus is on the Appellant to show, on a balance of probabilities, that he intended to and did establish a new domicile and habitual residence in Manitoba.

The panel recognizes that, as noted by the Appellant and accepted by counsel for MPIC, the Appellant's lifestyle as a long distance truck driver makes it difficult to determine his habitual residence. However, insofar as someone with the Appellant's lifestyle, who spends a majority of his time on the road and lives a significant portion of the time out of his truck, can establish a habitual domicile, the panel finds that the Appellant had taken sufficient substantial steps to have established a domicile in Manitoba.

The panel finds the Appellant to be a credible witness in relation to his move to Manitoba. The Appellant's change of mailing address to Manitoba for employment purposes and his expressed desire to establish a home base in Manitoba in order to facilitate the assignment of dedicated routes from Manitoba by his employer are consistent with both his intent to establish a habitual residence in Manitoba and his having taken positive steps towards that end.

Furthermore, by April of 2004 he had moved his possessions to Manitoba, opened internet and phone accounts with his Manitoba address and, at the time of the accident, gave Ohio authorities, including the medical caregivers, his Manitoba address. These indicate that the Appellant considered himself to be a Manitoba resident by the time of the accident.

The panel finds, on the balance of probabilities, and having regard to all of the evidence, that the Appellant had acquired a new domicile and habitual residence in Manitoba at the time of the accident.

The decision of MPIC's Internal Review Officer, dated November 5, 2004, is therefore rescinded. The Appellant's entitlement to PIPP benefits shall be referred back to his case manager for a determination of benefits in accordance with his status as a Manitoba resident pursuant to Section 74(1) of the MPIC Act. Interest in accordance with Section 167 of the MPIC Act shall be added to the amount of these benefits.

Dated at Winnipeg this 26th day of September, 2005.

LAURA DIAMOND

MARY LYNN BROOKS

ROBERT CHERNOMAS