



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.W.

AICAC File No.: AC-05-44

PANEL: Ms Laura Diamond, Chairperson
Ms Diane Beresford
Mr. Neil Cohen

APPEARANCES: The Appellant, J.W., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Kathy Kalinowsky.

HEARING DATE: October 18, 2005

ISSUE(S): Entitlement to a benefit for a failed course as a result of time
missed from classes to attend for chiropractic treatments

RELEVANT SECTIONS: Sections 88(1) and 88(2) 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, J.W., was injured in a motor vehicle accident on September 4, 2004. Following the accident, the Appellant suffered injuries and attended his chiropractor, Dr. Chenier, for treatment, which was funded by MPIC.

The Appellant was a student at (text deleted) and employed part-time at (text deleted). He testified that, from Monday to Friday, he attended classes from 8 or 9 a.m. until 3 p.m. daily, and then worked at (text deleted) from 3 to 10 p.m. As a result of the accident, he was attending for chiropractic treatment and missed classes in order to do so. The Appellant submitted that he

failed a required course as a result. He sought reimbursement from MPIC for the cost of the failed course.

The Appellant's case manager issued a decision on November 16, 2004. She stated:

As the medical evidence does not identify that you sustained accident related injuries resulting in a functional impairment to the extent you are prevented from continuing your current studies, you are not entitled to Lump Sum Indemnity.

The Appellant sought an Internal Review of this decision.

On February 15, 2005, an Internal Review Officer for MPIC reviewed the Appellant's claim and stated:

During your Internal Review Hearing, you told me that rather than lose money from missing time at work, you decided to miss classes to attend for chiropractic treatment.

As stated above, I have reviewed all the information, and, it is my decision that you could have made other arrangements to attend for chiropractic treatment besides missing two classes a week, such as attending for treatment on Saturdays and possibly re-arranging working schedules. But that possibility aside, there is no provision in the MPI Act and Regulations to refund an individual who has failed a course because they elected to not attend class to obtain chiropractic treatment. As a result, I am confirming your Case Manager's decision and dismissing your Application for Review.

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

Submissions

The Appellant submitted that he should be compensated for the class he failed, as a result of missing classes to attend treatment. He required treatment due to the neck pain he suffered as a result of the accident, but there was no way he could attend for treatment without missing work or school. There was really no way to avoid missing something, and, he submits, he should not have to lose out in order to get the treatment that he required because of the accident.

Counsel for MPIC submitted that, while she recognized that it was difficult for the Appellant to try to fit so many different things into a day, with his combined class and work schedule, he could have attended for chiropractic treatment in the early morning hours, prior to classes starting, when the clinic was open, and on Saturday mornings, without missing school.

She also noted that in this case there is no statutory provision creating an entitlement to the benefit which the Appellant was requesting. She noted that, as the case manager pointed out in her decision of November 16, 2004, Section 88(1) of the Act, which provides an indemnity for students unable to continue their studies, only creates an entitlement for students unable to continue. She noted that an examination of the relevant sections of the statute, from Section 87 to 92, which deal with student entitlements, did not produce any provision relevant to an entitlement in the Appellant's case. Nothing under the statute provided compensation for a student who had to miss classes for treatment and failed a course, but was otherwise able to continue with their studies.

Even using the Income Replacement Indemnity benefits as an analogy, she argued, the statute does not provide compensation for Appellants who continue work or studying, but who are required to miss some classes or work for medical treatment.

Discussion

Student entitled to fixed indemnity

88(1) A student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies, and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.

Amount of indemnity

88(2) The indemnity referred to in subsection (1) is
(a) \$6,300. for each school year not completed at the secondary level;

(b) \$6,300. for each term not completed at the post-secondary level, to a maximum of \$12,600. per year.

The onus is on the Appellant to establish, on a balance of probabilities, an entitlement to compensation under the Act.

The panel has considered all of the documentary evidence on the file, as well as the submissions of the Appellant and counsel for MPIC. While the panel appreciates that the Appellant faced challenges in trying to attend to his studies, work obligations and chiropractic treatment at the same time, as counsel for MPIC points out, the chiropractic clinic was open during other hours which did not conflict with his class or work schedule. In addition, the panel finds that the Appellant was able to continue with the rest of his studies. His failed course does not fall within the provision of Section 88 of the MPIC Act, and the Appellant has not established, on a balance of probabilities, an entitlement to further benefits under the Act. For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated February 15, 2005.

Dated at Winnipeg this 4th day of November, 2005.

LAURA DIAMOND

DIANE BERESFORD

NEIL COHEN