



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by M.S.
AICAC File No.: AC-04-62**

PANEL: Mr. Mel Myers, Q.C., Chairperson

APPEARANCES: The Appellant, M.S., did not appear on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: May 25, 2006

ISSUE(S):

1. Entitlement to further Income Replacement Indemnity benefits;
2. Entitlement to alternative vocational training.

RELEVANT SECTIONS: Sections 110(1)&(2) and 116 of The Manitoba Public Insurance Corporation Act (the '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

On April 5, 2004, MPIC's Internal Review Officer issued a decision dismissing the Appellant's Application for Review of a case manager's decision which had terminated the Appellant's entitlement to Income Replacement Indemnity ('IRI') benefits based on the medical opinion of Dr. Craton.

The Appellant filed a Notice of Appeal dated April 19, 2004 wherein he requested reinstatement of IRI benefits and for MPIC to fund a retraining program for the Appellant for a less physically demanding occupation.

The Commission's Appeals Officer advised the Commission that the Appellant was not responding to numerous telephone messages and letters to set a date for the appeal hearing. As a result, the Commission directed that a Pre-Hearing Meeting take place on May 12, 2005. On May 10, 2005 MPIC's legal counsel, Mr. Morley Hoffman, requested an adjournment in order to file further documentation and the Commission agreed to the adjournment.

By letter dated October 24, 2005 Mr. Hoffman advised the Commission that MPIC would be withdrawing its letter terminating the Appellant's IRI. The Commission's Appeals Officer, after several attempts to reach the Appellant unsuccessfully, wrote to the Appellant on November 25, 2005 requesting the Appellant to withdraw his appeal.

The Commission was informed by the Appeals Officer that she was finally able to contact the Appellant's wife on January 3, 2006 who advised that the Appellant would not be withdrawing his appeal because MPIC had not addressed the issue of alternative vocational training. As a result of this information the Appeals Officer contacted Mr. Morley Hoffman on January 3, 2006 and advised him that the issue of retraining was still outstanding.

Mr. Hoffman, later that day, forwarded an e-mail to the Appeals Officer advising her that the case manager had contacted the Appellant who advised him that the Appellant did not want to pursue the issue of IRI as he had obtained another job shortly after the motor vehicle accident which paid him more than he had been earning at the time of the motor vehicle accident and that

the case manager had apparently confirmed this in a letter to the Appellant dated November 28, 2005.

On February 6, 2006 Mr. Hoffman wrote to the Commission to advise that the Appellant was no longer interested in pursuing his claim for IRI and enclosed a copy of the case manager's letter to the Appellant dated November 28, 2005 and informed the Commission that MPIC would be closing their file. However, the Appeals Officer informed Mr. Hoffman that the issue of retraining was still outstanding.

On February 9, 2006 the Appeals Officer spoke to the Appellant who advised her that he had not yet approached the case manager about the retraining issue but would be in touch with the case manager in the following weeks.

On February 13, 2006 the Appeals Officer spoke to Mr. Hoffman and he advised her that the case manager had informed him that there was no evidence to support retraining and that in order to be retrained the Appellant was to be unemployed and would have to provide new medical evidence to the case manager to support his claim for retraining.

On February 14, 2006 the Appeals Officer provided this information to the Appellant's wife, E.S., who advised the Appeals Officer that she had discussed the issue of retraining with the Appellant and the Appellant informed her that he was not interested in returning to school. E.S. further advised the Appeals Officer that she would request the Appellant to provide the Commission with a letter withdrawing his appeal on both the IRI and retraining issues within the next few weeks.

The Appellant did not provide a letter of withdrawal and the Appeals Officer informed the Commission that on numerous occasions she attempted by telephone to contact him but without success.

On March 13, 2006 the Appeals Officer wrote to the Appellant requesting that he advise her no later than March 22, 2006 if he was withdrawing his appeal or wished to pursue it as it would be necessary to reschedule the hearing. The Appeals Officer did not receive a response from the Appellant.

The Commission, after reviewing this information, decided to formally set the appeal down for hearing on May 25, 2006. On April 28, 2006 the Secretary to the Chief Commissioner, Ms Heidi Plenert, placed the Notice of Hearing dated April 28, 2006 in an envelope marked "NOH dated April 28, 2006" addressed to the Appellant and instructed Mr. Gary P. Stelter, an Investigator employed by World Investigation Inc., on April 28, 2006 to personally serve the Appellant with the envelope marked "NOH dated April 28, 2006".

On May 2, 2006 Mr. Stelter provided the Commission with an Affidavit of Service confirming that on May 1, 2006 he had personally served the Appellant with an envelope marked "NOH dated April 28, 2006", by leaving the envelope with the Appellant at [text deleted], in the City of Winnipeg, in the Province of Manitoba. He further indicated in this Affidavit that he was able to identify the person so served by means of the Appellant's admission that he was M.S..

On May 25, 2006 the appeal hearing in this matter commenced at 9:30 a.m. Mr. Morley Hoffman, legal counsel for MPIC, attended at the hearing but the Appellant did not appear at that time. The Commission waited until 9:45 a.m. prior to commencing the hearing.

At the commencement of the hearing the Commission called Ms Heidi Plenert, the Secretary to the Chief Commissioner, to testify. Ms Plenert identified an Affidavit she had prepared on May 10, 2006 wherein she confirmed that on April 28, 2006 she had placed in an envelope marked “NOH dated April 28, 2006”, a Notice of Hearing addressed to the Appellant, a copy of which was attached to her Affidavit and marked as Exhibit A. Ms Plenert further identified a letter of instruction to World Investigation Inc. directing personal service upon the Appellant of the above mentioned envelope. The Affidavit of Service of Gary P. Stelter confirming that he had personally served the Appellant on May 1, 2006 with the envelope marked “NOH dated April 28, 2006” was attached as Exhibit B. Ms Plenert also identified the Notice of Hearing, which was enclosed in the envelope which was personally served upon the Appellant. The Commission entered these documents as Exhibit 1 in the proceedings (attached hereto and marked as ‘Exhibits A & B’).

The Commission noted that the last paragraph of the Notice of Hearing served upon the Appellant stated:

Should either party fail to appear or to be represented at the above time and place, the Commission may proceed with the hearing and render its decision. Alternatively, it may dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

MPIC’s legal counsel submitted that the onus was upon the Appellant to establish the merits of his appeal, and he failed to do so. MPIC’s legal counsel further submitted that the Appellant had discontinued his appeal in respect of his entitlement to IRI and that this was no longer an appeal issue before the Commission. MPIC’s legal counsel further submitted in respect of the issue of retraining that the Appellant could, at any time if he was no longer capable of being employed as

a result of the injuries sustained in the motor vehicle accident, make an application to a case manager at MPIC for reinstatement of IRI and for retraining. MPIC's legal counsel therefore stated that the issue of retraining was no longer an issue for consideration by the Commission.

The Commission, after considering the submission by MPIC's legal counsel, and the material filed in evidence in this appeal, determined that the Appellant had withdrawn his appeal in respect of IRI.

In respect of the issue of retraining, the Commission finds that the Appellant indicated that he did not wish to be retrained for any employment at this time and, as a result, the Commission finds that the Appellant has withdrawn his appeal in respect of the issue of retraining.

The Commission also finds that if the Appellant in the future, as a result of injuries he sustained in the motor vehicle accident, finds that he is unable to work, he would be entitled to make a new application to MPIC for IRI and for retraining.

The Commission therefore concludes that for the reasons outlined herein it dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated April 5, 2004.

Dated at Winnipeg this 7th day of June, 2006.

MEL MYERS, Q.C.