

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by E.D.
AICAC File No.: AC-05-113

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms Wendy Sol
Dr. Patrick Doyle

APPEARANCES: The Appellant, E.D., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Morley Hoffman.

HEARING DATE: April 3, 2006 & August 17, 2006

ISSUE(S): Entitlement to funding and/or reimbursement for:

1. a wheeled utility trailer
2. the cost of painting the hallway portions of the interior of the Appellant's home
3. plastic sled
4. two-way portable radios
5. coffee maker with auto-shut off
6. cost of purchasing residential melting products for the Appellant's walkway and/or driveway
7. cost of purchasing canvas pants
8. cost of snow blowing at the cottage
9. Insurance Coverage – C – Legs and Other Prosthetic Limb Equipment

RELEVANT SECTIONS: Sections 131 and 138 of The Manitoba Public Insurance Corporation Act (the 'Act') and Sections 2, 10(1), 34 and Schedule C of Manitoba Regulation P215-40/94

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

On January 3, 2003 E.D. (hereinafter referred to as the ‘Appellant’) was involved in a motor vehicle accident and, as a result, he suffered a bi-lateral open complex fracture of both femurs and underwent a bi-lateral above the knee amputation. In addition, the Appellant suffered a cognitive disorder resulting from a concussion.

The Appellant made a request to MPIC to provide funding for the following items:

- (a) a wheeled utility trailer;
- (b) two-way portable radios;
- (c) coffee maker with auto-shut off;
- (d) plastic sled;
- (e) the cost of residential melting products for the Appellant’s walkway and/or driveway;
and
- (f) reimbursement for the cost of painting the hallway portions of the interior of the Appellant’s home.

Case Manager’s Decision

The case manager denied reimbursement for these items on the grounds that, under Manitoba Regulation P215-MR 40/94 “rehabilitation expenses”, there were no provisions for the funding of the above mentioned equipment, nor for reimbursement of any residential melting products, nor the cost of painting the hallway portions of the Appellant’s home. As a result, the Appellant made application to have the case manager’s decision reviewed by an Internal Review Officer.

Internal Review Officer’s Decision

The Internal Review Officer, in a decision dated May 16, 2005, rejected the Appellant’s request for reimbursement of these items and confirmed the decision of the case manager. In arriving at his decision the Internal Review Officer stated:

As you are aware, Section 138 of the Act addresses the rehabilitation issue as follows:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to

lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.
(emphasis added)

The regulations governing rehabilitation expenses are provided for in Manitoba Regulation P215-RM 40/94. Section 10(1) of the Regulation provides that:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following.

During the course of your submission you did not make any specific reference to any of the particular expenses listed under Section 10(1) of the Regulation.

Your request for reimbursement of these items was denied as it was the Case Manager's determination:

“Please be advised, under Manitoba Regulation P215-MR 40/94 “Rehabilitation Expenses”, there are no provisions for the purchase of the aforementioned equipment.”

The Rehabilitation Expenses listed under the Regulations are specific in nature. They are not so broadly worded so as to include any and all expenses that may be linked to your injuries in some manner by you. The Case Manager was correct in her conclusion that the specific expenses being claimed are not covered by the Regulation. Therefore, I am upholding her decision and dismissing your Application for Review. I note that as a result of your injuries, you have been in receipt of Permanent Impairment benefits in accordance with the Schedule of Permanent Impairments. The payment of a permanent impairment inherently recognizes that a claimant's ability to do all of the things that they did before the accident may be comprised (sic) by their injuries.

As the remaining items do not fall within the wording of the Regulation, I am dismissing your Application for Review and upholding Ms. Melo's decision of February 11, 2005.

The Appellant filed a Notice of Appeal dated June 2, 2005 to this Commission.

Appeal

The relevant provision in respect of this appeal is Section 138 of the Act which states:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability

resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Discussion

At the commencement of the appeal hearing MPIC's legal counsel stated that:

1. the Internal Review Officer had erred in concluding that the Appellant's request for funding and reimbursement were governed solely by regulation P215-MR 40/94 and that Section 138 of the Act had no application to the Appellant's claims.
2. since this regulation did not specifically deal with any of the Appellant's claims, these claims had to be considered by MPIC pursuant to Section 138 of the Act.

However, MPIC's legal counsel further submitted that MPIC had correctly rejected the Appellant's Application for Review because, pursuant to Section 138 of the Act, it was not necessary or advisable for MPIC to provide funding or reimbursement in respect of the Appellant's requests.

Not surprisingly, the Appellant in his submission disagreed with MPIC's position. He submitted that MPIC should have complied with his requests because they were necessary and advisable, under Section 138 of the Act, for MPIC to contribute to his rehabilitation, and/or to lessen his disability resulting from bodily injuries he sustained in the motor vehicle accident, and/or to facilitate his return to a normal life or reintegration into society.

Central to the determination of this appeal is the application of the scope of Section 138 in respect of the Appellant's requests. The Manitoba Court of Appeal has considered the scope of

Section 138 in *Menzies v. Manitoba Public Insurance Corporation et al*, 2005 MBCA 97, and stated:

This case is essentially about the relationship of s. 138 and the expense regulation. Section 138 is intended to require MPIC, subject to the regulations under the Act, to take any measure which, in its discretion, it considers necessary or advisable, to achieve any one or more of the five objectives set out in the section. The measures are to be taken if, in MPIC's discretion, they are necessary or advisable (using the exact words in the section):

- (i) to contribute to the rehabilitation of a victim,
- (ii) to lessen a disability resulting from bodily injury, and
- (iii) to facilitate the victim's return to a normal life or
- (iv) [to facilitate the victim's] reintegration into society or
- (v) [to facilitate the victim's reintegration into] the labour market.

...

With or without the heading, it is clear that s. 138 is (but "[s]ubject to the regulations") intended to vest MPIC with a considerable discretion, not only in respect of matters that will contribute to rehabilitation, as set out in the objective I have identified as (i) in para. 31 above, but considerably beyond. The other objectives of s. 138 (ii through v) describe additional circumstances which may prompt action from MPIC. These further objectives are, of course, encompassed within the concept of "rehabilitation" in a broad sense. . .

...

Words in a statute are to be given "the meaning that best fits the object of the statute, provided that the words themselves can reasonably bear that construction" (*R. v. Z. (D.A.)*, 1992 CanLII 28 (S.C.C.), [1992] 2 S.C.R. 1025, at p. 1042). The Act is intended to provide compensation based on "real economic loss" (Bill 37, *The Manitoba Public Insurance Corporation Amendments and Consequential Amendments Act, Manitoba, 1993*), and see *McMillan v. Thompson (Rural Municipality) *reflex*, (1997), 115 Man.R. (2d) 2 (C.A.) where Helper J.A. said the legislature in the *Act*: created an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile" (at para. 54). (underlining added)

In *B.P. (AC-01-100)*, which was decided by the Commission prior to the decision of the Manitoba Court of Appeal in *Menzies*, the Commission concluded that the term 'rehabilitation' under Section 138 of the Act included:

1. to compensate a victim for real economic losses resulting from accidental injuries in automobile collisions,

2. to assist in the victim's recovery and to assist the victim by offsetting economic hardship, and
3. to provide compensation to the victim for a range of economic losses.

This interpretation is consistent with the Manitoba Court of Appeal decision in *Menzies*, and the earlier decision of the Commission in *D.K. (AC-95-06)* (September 8, 1995), where the Commission interpreted Section 10(1)(e) of Manitoba Regulation 40/94 as follows:

Further, Section 10(1)(e) of Regulation 40/94 reads as follows:

“10(1)(e) Where the Corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following: ...

(a) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.”

We take the view that, in the absence of bad faith on the part of an insured, the provisions of the Act and of the Regulations should be interpreted liberally for the benefit of the insured and in keeping with the declared intent of the Corporation's Personal Injury Protection Plan which is based, in part, upon 'compensation for real economic losses ... resulting from accidental injuries in automobile collisions ...'. (Vide the Corporation's own brochure of 1994.) [*underlining added*]

We are of the view that the \$95.00 disbursement necessarily paid by Mr. Kim for the privilege of deferring his examination was a direct result of the accident and falls within one or both of Section 138 of the Act or Section 10(1)(e) of the Regulation cited above, and we therefore find that he is entitled to be reimbursed by the Corporation to that extent. . . . (underlining added)

1 Wheeled Utility Trailer

The Appellant's first request from MPIC was entitlement to funding for a wheeled utility trailer.

The Appellant testified that the use of a wheeled utility trailer significantly increased his ability to carry out activities both at his home in Winnipeg and his cottage property and provided him with the independence that he did not have without the use of this trailer.

The Appellant further testified that:

1. in addition to his home in the [text deleted], the Appellant had a cottage.
2. during the course of a year, the Appellant and his wife would spend a great deal of their time during the spring, summer and fall months at the cottage and spent every weekend at the cottage during the winter months.
3. he would attach the wheeled utility trailer to either his all terrain vehicle or his manual wheelchair for the purpose of permitting him, at either of his two residences, to carry out a number of outdoor activities such as yard maintenance, maintaining and upgrading his home and cottage, and carrying tools and supplies to assist him in these endeavors.

The Appellant's testimony is corroborated by the report of Ms Kelly Carr, the occupational therapist, dated November 26, 2004, wherein she stated:

Equipment Needs

...

During the PCA reassessment, outdoor mobility was identified as a significant functional deficit and severely impaired [E.D.'s] ability to access the community and his immediate outdoor environment. The other significant functional deficit that stood out was his ability to carry items when using his manual wheelchair.

Based on [E.D.'s] desire to increase his independence in the area of community and home outdoor access and function, the following items are recommended to achieve this goal:

...

2. Wheeled Utility trailer – Although the request to fund this piece of equipment was earlier denied, further assessment of the need for this trailer was completed at the time of the PCA assessment. Based on the results of the functional review that takes place during the course of the PCA assessment, a wheeled trailer that attaches to the back of [E.D.'s] wheelchairs would significantly increase his ability to participate in activities related to outdoor home and yard maintenance, community access and purchase of supplies. [E.D.] has purchased a trailer and has designed a system to attach it to his manual wheelchair. He is requesting reimbursement for \$180.00, the cost of the trailer. (underlining added)

The Commission notes that MPIC did not challenge either the Appellant's testimony or Ms Carr's report in respect of this issue. The Commission accepts the testimony of the Appellant, and the report of Ms Carr, that the use of the wheeled utility trailer permits the Appellant to achieve his goal of greater independence, greater access to the community, and a greater ability to carry out a variety of outdoor activities. The Commission therefore finds that, pursuant to Section 138 of the Act, the use of the wheeled utility trailer by the Appellant contributes to his rehabilitation, and/or lessens his disability resulting from the motor vehicle accident, and/or facilitates his return to a normal life or reintegration into society.

Decision

For the reasons set out herein the Commission finds that the Appellant has established, on a balance of probabilities, that it was necessary and advisable for MPIC to reimburse the Appellant in respect of the cost of the wheeled utility trailer pursuant to Section 138 of the Act and directs MPIC to reimburse the Appellant in this respect. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

The Appellant's second request from MPIC was entitlement to reimbursement for the cost of painting the hallway portions of the interior of the Appellant's home.

The Appellant's request for reimbursement of the cost of painting the hallway portions of the interior of the Appellant's home was rejected by MPIC on the grounds that there was no coverage for activities of an aesthetic nature such as the painting of his property.

The Appellant, in his written submission to the Commission dated May 8, 2006, stated:

When I walk throughout the house, I use the walls, ledges and doorway trim edgings as supports or devices to walk and to turn with as I have no real twisting ankle of my own and my balance is often questionable. As a result, there is a very noticeable increase in the soiling and deterioration of these areas. Wheelchairs, no matter how careful one is with them, bang doors, trims and walls creating increased scuffs, marks and chips. Both of these modes of my function cause excessive wear and tear on the interior of this home.

These are extraordinary expenses as a result of my current configuration resulting from the accident. We never intended for MPIC to maintain our home for "aesthetic repairs". We do expect MPIC to maintain those areas that are excessively damaged directly as a result of me being what I am today. Additionally, I was the one who always maintained our home. This I can no longer do.

The Appellant testified that:

1. prior to the motor vehicle accident he personally maintained his home and did all of the painting that was required at no cost to himself except the cost of purchasing painting supplies.
2. but for the motor vehicle accident there would be no damage to the hallways in his home as a result of his use of his prosthetics and wheelchair except normal wear and tear.
3. as a result of the motor vehicle accident he is no longer able to personally do the hallway painting and must hire a painting contractor to do this work.

The Commission has consistently held that a victim is entitled to be compensated for real economic losses resulting from accidental injuries in automobile collisions.

In *B.P. (AC-01-100)* the Appellant suffered a serious motor vehicle accident and was unable to continue his employment as a cleaner/operator at a seed plant which was a few kilometers from his home. The Appellant was in receipt of Income Replacement Indemnity ('IRI') benefits from MPIC and was able to find employment in another Manitoba town which required him to travel approximately 102 kilometers each day to arrive at work. MPIC rejected the Appellant's claim for compensation for his traveling expenses. The Appellant appealed MPIC's decision to this Commission, who found that as a result of the motor vehicle accident the Appellant had suffered an economic loss and, pursuant to Section 138 of the Act, MPIC was obligated to reimburse the Appellant for this economic loss.

In an earlier decision by the Commission in *D.K.* (supra), the Commission was required to interpret both Section 138 of the Act and Section 10(1)(c) of Manitoba Regulation 40/94 and stated:

We take the view that, in the absence of bad faith on the part of an insured, the provisions of the Act and of the Regulations should be interpreted liberally for the benefit of the insured and in keeping with the declared intent of the Corporation's Personal Injury Protection Plan which is based, in part, upon 'compensation for real economic losses ... resulting from accidental injuries in automobile collisions ...'. (Vide the Corporation's own brochure of 1994.) [*underlining added*]

We are of the view that the \$95.00 disbursement necessarily paid by Mr. Kim for the privilege of deferring his examination was a direct result of the accident and falls within one or both of Section 138 of the Act or Section 10(1)(e) of the Regulation cited above, and we therefore find that he is entitled to be reimbursed by the Corporation to that extent. . . . (underlining added)

The Commission's interpretation of Section 138 was unanimously confirmed by the Manitoba Court of Appeal recently in *Menzies v. Manitoba Public Insurance Corporation et al* (supra) where the Manitoba Court of Appeal stated:

. . . The Act is intended to provide compensation based on "real economic loss" (Bill 37, *The Manitoba Public Insurance Corporation Amendments and Consequential Amendments Act*, Manitoba, 1993), and see *McMillan v. Thompson (Rural Municipality) *reflex*, (1997), 115 Man.R. (2d) 2 (C.A.) where Helper J.A. said the legislature in the Act: created an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile" (at para. 54).

Decision

The Commission is of the view that the requirement of the Appellant to pay a painting contractor to paint the interior walls of the Appellant's hallway as a result of the damage caused to this hallway by the Appellant's use of his wheelchair and prosthetics, constitutes a real economic loss to the Appellant resulting from the motor vehicle accident and falls within the scope of Section 138 of the Act. As a result, the Commission rejects MPIC's legal counsel's submission that it was not necessary or advisable, pursuant to Section 138 of the Act, for MPIC to pay this cost. The Commission finds that the Appellant has established, on a balance of probabilities, that it was necessary and advisable for MPIC to pay for the cost of the hallway painting and directs MPIC to make this payment to the Appellant. For these reasons the Commission rescinds the decision of the Internal Review Officer dated May 16, 2005 and allows the Appellant's appeal.

3 Plastic Sled

The Appellant's third request from MPIC was entitlement to funding for a plastic sled.

The Internal Review Officer, in his decision dated May 16, 2005, stated that:

. . . The plastic sled (at a cost of \$10.00) is used by you in order to move around your property in snow conditions. You utilize the plastic sled with modified ski poles you cut down. You emphasize that this is the only way you can get around in the snow. . .

The Appellant, in his testimony before the Commission, confirmed the comments of the Internal Review Officer in respect of his use of the plastic sled.

Ms Kelly Carr, the occupational therapist, in her report to the case manager dated November 26, 2004, stated:

Based on [E.D.'s] desire to increase his independence in the area of community and home outdoor access and function, the following items are recommended to achieve this goal:

1. Plastic Sled – [E.D.] has trialed a method of ground mobility using an old piece of plastic carpet toboggan and modified ski poles. With this set up, he is able to scoot over the ground outdoors to participate in activities related to mobility, garbage disposal, yard maintenance, and outdoor recreation that facilitates cardio-respiratory function and upper limb strength. The cost of a plastic sled is \$10 to \$20.

The Commission notes that MPIC's legal counsel did not challenge the testimony of the Appellant or Ms Carr's report in respect of the Appellant's use of the plastic sled.

The Commission agreed with the testimony of the Appellant and the comments of the occupational therapist, Kelly Carr, that the Appellant's use of the plastic sled does meet objectives set out in Section 138 of the Act. The sled does contribute to his rehabilitation, it lessens his disability resulting from his motor vehicle accident injuries, and does facilitate his return to a normal life or reintegration into society.

Decision

The Commission therefore finds, for these reasons, that the Appellant has established, on a balance of probabilities, that it was necessary and advisable for MPIC to reimburse the Appellant in respect of the cost of the plastic sled and, as a result, the Commission directs MPIC to reimburse the Appellant in this respect. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect, dated May 16, 2005, and allows the Appellant's appeal.

4 Two-Way Portable Radios

The Appellant's fourth request from MPIC was entitlement to funding for two-way portable radios.

The Appellant testified that when he carried out outdoor activities on his cottage property his cell phone did not work and his means of communication with his wife at the cottage was by way of a two way portable radio. The Appellant's testimony corroborated the report of Ms Kelly Carr to the case manager dated November 26, 2004 wherein she stated:

Based on [E.D.'s] desire to increase his independence in the area of community and home outdoor access and function, the following items are recommended to achieve this goal:

...

3. Two Way Portable radios – To ensure [E.D.'s] safety and access to emergency assistance when outdoors, the use of two way radios would allow [E.D.] to be in communication in his home within an 8 km radius. [E.D.] is often outdoors alone when attempting home and yard maintenance or when wheeling during a workout. The use of the radios would not only assist in an emergency away from the house but also outside around the home or if [D.D.] was outside and he required assistance inside.

The Commission notes that MPIC's legal counsel did not challenge the Appellant's testimony or Ms Kelly Carr's report in respect of the two-way radios. The Commission accepts the testimony of the Appellant and the report of the occupational therapist in respect of the Appellant's need relating to his use of the two-way portable radios at his cottage property.

The Commission finds that this request is quite reasonable having regard to the Appellant's motor vehicle accident injuries. The Appellant testified that he spends a great deal of time outdoors at or near his cottage property and for the purposes of his security and safety in respect of any emergency he would have the use of the two-way portable radio to contact his wife in order to obtain her assistance. As well, while he is outdoors at or near his cottage, there may be a need for either the Appellant or his wife to have contact with each other without requiring either of them to physically meet.

The Commission therefore finds that, pursuant to Section 138 of the Act, the two-way radios contribute to the Appellant's rehabilitation, lessen his disability resulting from his bodily injury, and facilitate his return to a normal life.

Decision

The Commission therefore finds, for these reasons, that the Appellant has established, on a balance of probabilities, that it was necessary and advisable for MPIC to reimburse the Appellant in respect of the cost of the two-way radios, pursuant to Section 138 of the Act, and directs MPIC to make this payment. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

5 Coffee Maker with Auto-Shut Off

The Appellant's fifth request from MPIC was entitlement to funding for a coffee maker with auto-shut off.

The Commission notes that as a result of the Appellant's motor vehicle accident on January 3, 2003 the Appellant suffered a cognitive disorder resulting from a concussion.

The Internal Review Officer, in his decision dated May 16, 2005, indicated:

. . . You indicate that you require an automatic-shut off on your coffee maker due to your memory deficits resulting from your injuries. . .

The Appellant confirmed the Internal Review Officer's statement in his testimony before the Commission. The Appellant's testimony in this respect is corroborated by Kelly Carr, the occupational therapist, in her report to the case manager dated November 26, 2004 where she stated:

Based on [E.D.'s] desire to increase his independence in the area of community and home outdoor access and function, the following items are recommended to achieve this goal:

. . .

6. Coffee Maker with Auto Shut Off – During the recent functional reassessment, [E.D.] identified difficulty remembering to turn the coffee maker off. Provision of a coffee maker with an auto shut off feature will prevent burning and subsequent explosion of the carafe and would allow [E.D.] to make his own coffee when alone in the home.

The Commission notes that MPIC did not challenge the Appellant's testimony or Ms Carr's report in respect of the Appellant's need for a coffee maker with an auto-shut off. The Commission finds that, pursuant to Section 138 of the Act, the Appellant's use of a coffee maker with an auto-shut off was a measure that was necessary and advisable to contribute to the Appellant's rehabilitation, lessened his disability resulting from his motor vehicle accident injuries, and facilitated his return to a normal life.

Decision

For these reasons the Commission finds that the Appellant has established, on a balance of probabilities, that it was necessary and advisable for MPIC to reimburse the Appellant in respect

of the cost of the coffee maker with auto-shut off, pursuant to Section 138 of the Act, and directs MPIC to make this payment to the Appellant. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

6 The cost of purchasing residential melting products for the Appellant's walkway and/or driveway

The Appellant's sixth request from MPIC was for reimbursement for the cost of residential melting products for the Appellant's walkway and/or driveway. On March 3, 2005 the case manager rejected this request because, under the provisions of Manitoba Regulation P215-MR 40/94 "Rehabilitation expenses", there was no provision for reimbursement by MPIC of this product. The Internal Review Officer, in his decision dated May 16, 2005, advised the Appellant that he was rejecting the Appellant's Application for Review and confirming the case manager's decision for the same reasons as determined by the case manager.

The Appellant testified that, having regard to the weather in Manitoba during the winter season, his walkway and driveway can become icy and rutted and it is extremely difficult, and even dangerous, for him to travel over this area in his wheelchair. As a result, the Appellant requested MPIC to reimburse him for the cost of residential melting products to remove the ice and rutted areas from his walkway and driveway. MPIC's legal counsel, however, asserted that it was not necessary or required for MPIC to reimburse the Appellant for the purchase of these products, pursuant to Section 138 of the Act, and rejects the Appellant's submission.

The Commission finds the Appellant to be a credible witness and accepts his testimony that it was both difficult and dangerous for him to travel over the icy and rutted areas of his walkway

and driveway in his wheelchair.

In the Commission's decision in *B.J.D. (AC-99-119)* (decided on March 2, 2000), the Commission stated:

Yard Care

During the period of his disability, MPIC has been reimbursing B.J.D. for the cost of clearing snow from the pathways at his residence. The insurer has, however, refused payment for other yard care expenses such as grass cutting, and for the cost of maintaining the exterior of his home. This aspect of B.J.D.'s claim is governed by Section 131 of the MPIC Act, which reads as follows:

Reimbursement of personal assistance expenses

131. Subject to the regulations, the Corporation shall reimburse a victim for expenses of not more than \$3,000.00 per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or perform the essential activities of everyday life without assistance.

...

The insurer justifies payment for the snow removal (in our opinion, quite properly) by reference to Section 138 of the act which reads as follows:

Corporation to Assist in Rehabilitation

138. Subject to the regulations, the Corporation shall take any measures necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Patently, the removal of snow from residential pathways is essential to enable the victim to enter or exit from his or her residence. In B.J.D.'s case, this became the more important since both M.D. and their young daughter were also injured in the accident.

It follows from the foregoing that lawn and garden care, no matter how high the grass or the weeds, do not fall within the kinds of home care assistance for which B.J.D. qualified. We have no evidence that would bring the maintenance of the exterior of his home within the intent of Section 138. This facet of his appeal must, therefore, fail. (underlining added)

The Commission finds that the function of the melting products is to remove ice and rutted areas from the Appellant's walkways and driveways and these products perform the same function as

snow removal from the Appellant's walkways. The Appellant's request is eminently reasonable since the essential means of transportation by the Appellant on his walkway and driveway is by means of his wheelchair or his artificial limbs. In each case it is essential that there is removal of both snow, ice and rutted areas from the Appellant's residential pathways and driveways in order to permit the Appellant to enter or exit from his residence in a safe manner.

Decision

The Commission finds, pursuant to Section 138, that to lessen the Appellant's disability resulting from his motor vehicle accident injury, it was necessary and advisable for the Appellant to use residential melting products to remove the ice and rutted areas on his walkway and driveway as a result of weather conditions. The Commission therefore finds that, for these reasons, the Appellant has established, on a balance of probabilities, that MPIC was obligated, pursuant to Section 138, to reimburse the Appellant for the cost of the residential melting products for his walkway and driveway and therefore directs MPIC to reimburse the Appellant in this respect. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

7 The cost of purchasing canvas pants

The Appellant's seventh request from MPIC was for reimbursement of the cost of canvas pants. The Internal Review Officer, in his decision dated September 29, 2005, determined that the amount of the annual clothing allowance of \$600.00 was adequate and rejected the Appellant's request for additional payment to cover the purchase of canvas pants. In arriving at this decision the Internal Review Officer stated:

As you are aware I am familiar with the serious nature of your injuries which give rise to

the within claim. During the course of the Internal Review Hearing you drew my attention to a prescription provided by Dr. Arneja on January 27, 2004. Confirming your bi-lateral above knee amputation, Dr. Arneja's prescription indicates the following:

“Client needs altered canvas coveralls so he can remain functionally independent.”

The issue of your clothing allowance was confirmed by Ms. Melo in her previous decision of February 11, 2005 in which she indicated:

“Please be advised that effective February 10, 2005, Manitoba Public Insurance will provide an annual allowance toward the repair/replacement of clothing that sustain abnormal wear damage as a result of the use of artificial limbs, required as a result of bodily injury sustained in a compensable motor vehicle accident.

The following are the guidelines for clothing allowance (annual amounts):

- Clothing worn on the lower body, including both limbs \$600.00

“The Corporation will reimburse clothing expenses up to an annual maximum of \$600.00. We will require that you submit your clothing receipts either annually or as you incur the expenses.”

...

The pants which are the subject of this claim are purchased from a men's wear retail store. They are not “specialty clothing” medically designed to deal with a specific medical problem. My understanding is that following purchase, the pants are altered in order to accommodate your needs both with and without your prosthetics limbs.

As you may be aware, Compensation payable to victims of automobile accidents occurring after March 1, 1994, is provided for within the provisions of The Manitoba Public Insurance Corporation Act and Regulations thereunder.

An individual's entitlement to reimbursement for various expenses is provided for under Section 136(1) of the Act which states:

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:

...

(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.

More specifically, Section 34 of Manitoba Regulation P215-RM 40/94 states:

Prescribed appliance, medical equipment, clothing

34 Subject to sections 35 to 37 and Schedule B, the corporation shall pay an expense incurred for the purchase, rental, repair, replacement, fitting or adjustment of clothing or a medical appliance or medical equipment if the expense is incurred for a medical reason related to the accident, and on the prescription of a physician, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist.

The Internal Review Officer further stated:

The fact that coveralls have been prescribed by Dr. Arneja is not determinative of the issue before me. In order to invoke coverage under Section 34 of the Regulation it must be established that the item prescribed is incurred for a medical reasons related to the accident. The evidence (consisting of Dr. Arneja's prescription, your e-mail of May 7, 2004 and the information you provided at the hearing) fails to establish that the expense was incurred for a medical reason as required.

As you pointed out to the Case Manager, there are no specific provisions in the legislation provided for this type of clothing claim. In response to your request and situation, a clothing allowance was introduced by the Corporation. The clothing allowance, in my view, is intended to cover premature wear to your clothing on account of your injuries whether you are using your artificial limbs or not. Taking into account the reasonableness of the clothing allowance, I am dismissing your Application for Review and upholding Mr. Andersen's decision of June 13, 2005. (underlining added)

In response the Appellant provided a written submission to the Commission wherein he states:

Prior to this new "benefit", I purchased canvas pants as required and was reimbursed for them accordingly under the prescription that they were issued. We did attend all the recommended stores looking for "specialty" clothing that would suit my needs but there were none to be had. There are no "specialty" pants available for a legless man on the market. The canvas pants are altered and reinforced for durability. They protect my stumps from damage from ground debris and freezing in the winter.

...

The clothing allowance was brought in as **a result of excessive wear on regular clothing from wearing a prosthetic device or using a wheelchair.** It was not brought in as a result of NOT wearing a prosthetic device as Mr. Kumka rambles in his decision review. My canvas pants and my clothing allowance are two different issues for two different modes of function and should not be combined and limited as such.

My records reflect a full year of purchases and include all required canvas pants for that

time period. The total of our records is \$1192.33 (**Item B_page 1**). Of this, approximately \$700.00 was a result of all canvas pant purchases (includes alterations).

I ask that either the required canvas pants and associated alterations are allowed to be reimbursed under prescription as before with the current clothing allowance being paid separately, or, the current clothing allowance for this MPIC client, needs to be increased to cover the required costs of functioning as indicated in Dr. Arnasia's (sic) original Rx stating "*client needs altered canvas coveralls so he can remain functionally independent*".

The Appellant, in his submission to the Commission, asserted that MPIC's clothing allowance of \$600.00 was inadequate to meet his clothing needs. The Commission notes that MPIC's legal counsel did not challenge the Appellant's evidence that the total cost of his clothing for the year 2005 was \$1,192.33 and that at least \$700.00 of this amount was a result of the purchase and alteration of canvas pants. Having regard to the Appellant's clothing needs, the Commission agrees with the Appellant's submission that the clothing allowance to the Appellant in the amount of \$600.00 is not adequate. Although a clothing allowance of \$600.00 may be adequate for the majority of motor vehicle accident victims it is not adequate for the Appellant. The Commission finds, having regard to the motor vehicle accident injuries that the Appellant sustained, the Appellant is justified in requesting a higher clothing allowance.

The Commission also finds that the Appellant acted prudently in respect of the purchase of canvas pants. The Commission accepts the Appellant's testimony that:

1. he made every reasonable effort to find the appropriate clothing to protect his body at the most reasonable price.
2. the best value he was able to determine in order to meet his needs were the canvas pants purchased at Mark's Work Wearhouse in the amount of \$85.00 unlined, and the cost of \$150.00 for lined pants, including alterations.

Section 34 of Manitoba Regulation P215-MR 40/94

The Internal Review Officer, in his decision in respect of the canvas pants stated:

As you are aware I am familiar with the serious nature of your injuries which give rise to the within claim. During the course of the Internal Review Hearing you drew my attention to a prescription provided by Dr. Arneja on January 27, 2004. Confirming your bi-lateral above knee amputation, Dr. Arneja's prescription indicates the following:

“Client needs altered canvas coveralls so he can remain functionally independent.”

However, the Internal Review Officer in this decision rejected Dr. Arneja's prescription as failing to establish that the expense was incurred for medical reasons as required under Section 34 of Manitoba Regulation P215-M.R. 40/94.

The Commission rejects the Internal Review Officer's decision in this request and finds that Dr. Arneja's prescription comes within the scope of Section 34 of Manitoba Regulation 40/94. The Appellant has testified without any challenge that in order for him to be mobile he is required from time to time to crawl on the ground and therefore needs protection to his leg stumps from ground debris and freezing rain. Dr. Arneja prescribed that the Appellant needs altered canvas coveralls so he can remain functionally independent. The Commission therefore concludes that, pursuant to Section 34 of Manitoba Regulation P215-40/94, there was a medical reason related to the motor vehicle accident which required MPIC to reimburse the Appellant for the purchase of altered canvas coveralls.

Decision

The Commission therefore finds that the Appellant has established, on a balance of probabilities, that MPIC was required:

1. to pay the Appellant his annual clothing allowance of \$600.00;

2. pursuant to Section 34 of Manitoba Regulation P215-M.R. 40/94, to pay the Appellant's expenses incurred for the purchase, fitting and adjustment of the canvas pants in the amount of \$700.00 for the year 2005.

As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

Section 138

In the alternative, the Commission finds that the Appellant has established, on a balance of probabilities, that the Corporation is required, under Section 138 of the Act, to compensate the Appellant for the purchase and alteration of the canvas pants in the amount of \$700.00 for the calendar year 2005. The Appellant testified, without any challenge, that in order for him to be mobile he is required from time to time to crawl on the ground and therefore needs protection to his leg stumps from ground debris and freezing rain. Dr. Arneja has prescribed that the Appellant needs the altered canvas pants so he can remain functioning independent. The Commission therefore determines that the Appellant's need for altered canvas pants is necessary and advisable to contribute to the Appellant's rehabilitation, lessen his disability resulting from his motor vehicle accident, and facilitating his return to a normal life within the meaning of Section 138 of the Act.

Decision

In the alternative, the Commission therefore finds the Appellant has established, on a balance of probabilities, that MPIC was required to pay the clothing allowance to the Appellant in amount of \$600.00 and that MPIC was required to pay the expenses incurred, pursuant to Section 138, for the purchase, fitting and adjustment of the canvas pants in the amount of \$700.00 for the year

2005 and, as a result, the Commission rescinds the decision of the Internal Review Officer dated September 29, 2005 in this respect and allows the Appellant's appeal.

8 Cost of snow blowing at the cottage

The Appellant's eighth request from MPIC was entitlement to funding for snow blowing at the cottage. The Appellant testified that he spends a substantial period of time at his cottage during the spring, fall and summer months, and during the winter months he is at his cottage every weekend. The Internal Review Officer, in his decision dated June 20, 2005, confirmed the case manager's decision and rejected the Appellant's request for the following reasons:

2. Cottage – Snow blowing

According to Ms. Melo's decision, the Corporation will not reimburse you for the cost of snow blowing as your cottage is not your primary residence. She went on to indicate that snow blowing, which is subject to coverage under the Personal Care Assistance (PCA) monthly allowance is to be used for your primary residence.

In assessing your entitlement to Personal Care Assistance under the Personal Care Assistance Assessment Tool, snow removal would be taken into account in determining your general Personal Care Assistance entitlement. That entitlement is not subject to increase to reflect additional or multiple locations. (underlining added)

Therefore I am upholding Ms. Melo's decision with respect to this issue and dismissing your Application for Review with respect to same.

The relevant provisions relating to this appeal are Section 131 of the Act and Regulation P215-RM 40/94, Section 2(1) and Section 2(2):

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

PERSONAL HOME ASSISTANCE EXPENSES

Definition

2(1) In this section, “**personal care assistance**” means assistance with an activity where

- (a) the activity is described in Schedule C and, in accordance with that Schedule,
 - (i) it applies to the victim,
 - (ii) it is appropriate for the victim’s age, and
 - (iii) the victim had the capacity to perform it at the time of the accident; and
- (b) the assistance
 - (i) is provided directly to and solely for the benefit of a victim, and
 - (ii) has been evaluated in accordance with Schedule C.

Interpretation – section 131 of the Act

2(2) For the purposes of section 131 of the Act, qualifying personal care assistance is personal home assistance.

In *Menzies* (supra), the Manitoba Court of Appeal stated:

Words in a statute are to be given “the meaning that best fits the object of the statute, provided that the words themselves can reasonably bear that construction” (*R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025, at p. 1042).

The court described the purpose of the Act in this way:

The *Act* is intended to provide compensation based on “real economic loss”, and see *McMillan v. Thompson (Rural Municipality)* where Helper J.A. said the legislature in the *Act*: “created an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile”. (authorities omitted)

The Court then reached its decision as to the meaning of the particular provisions of s. 138 at issue in *Menzies*, by giving the section its “plain and ordinary meaning, consistent with the . . . principles” of statutory interpretation.

The Commission therefore determines that in order to arrive at the meaning of a provision of the MPIC statute, MPIC must:

1. Consider the plain language of the legislation, as understood within the context of the Act.
2. Pursue a purposive analysis of the legislation in order to arrive at the meaning of the provision of the statute.
3. Apply Section 6 of *The Interpretation Act of Manitoba CCSM*, c. 180, which states:

Rule of liberal interpretation

s. 6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

An application of these principles does not support MPIC's interpretation of Section 2(1)(2) of the Act.

An examination of Schedule C refers to activities both at a victim's home and activities outside his home. However, an examination of Sections 131 of the Act, Sections 2(1), 2(2) and Schedule C of Manitoba Regulation 40/94, does not specify that the personal home assistance under these provisions can only be provided at the primary residence of the Appellant or at the Appellant's principal residence.

On the other hand, the Commission notes that in Sections 10(1)(b)(i) & (ii), and (c) of the very same Regulation, MPIC is required to compensate a victim for rehabilitation expenses at the victim's principal residence. Sections 10(1)(b)(i) & (ii) and (c) state:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

...

- (b) funds for an extraordinary cost required

- (i) where the victim owns his or her principal residence, to alter the residence or, where alteration is not practical or feasible, to relocate the victim.
- (ii) where the victim does not own his or her principal residence, to relocate the victim or, where relocation is not practical or feasible, to alter the victim's residence, or
- ...
- (c) funds for an extraordinary cost required to alter the victim's primary residence, where the victim is moving in order to accommodate an approved academic or vocational rehabilitation plan, or the victim was a minor or dependant at the time of the accident who is moving from the family home; (underlining added)

It appears to the Commission that we are obliged by the normal rules of statutory interpretation to infer that the exclusion of a reference to a primary residence or a principal residence from Sections 131 of the Act and Manitoba Regulation 40/94, Sections 2 and Schedule C, was purposeful on the part of the Legislature. If the Legislature had intended that the personal home assistance that MPIC was required to compensate could only be performed in the Appellant's primary residence, it would have specifically set this out in Section 131 of the Act and Section 2 and Schedule C of Manitoba Regulation 40/94. However, since the reference to primary residence is not set out in these provisions as set out in Section 10 of the same Regulation, the Commission finds that one cannot infer from the language of Section 131, or Section 2 or Schedule C, that it was a requirement, with respect to the provision of personal home assistance, that the monthly allowance be paid only for the services at the Appellant's primary residence.

The use of the words 'personal home assistance' in Section 131 and Section 2(2) of the Act was intended to exclude MPIC from requiring to pay a victim for expenses for personal care assistance if such assistance was being provided in an institutional setting. For example, after a motor vehicle accident a victim may be required to receive personal care assistance in an institution such as a hospital and in these circumstances MPIC is not obligated to reimburse the institution for such expenses. However, where a victim is entitled to receive personal care

assistance in a non-institutional setting such as his home, then MPIC would be required to reimburse the victim for such expenses if, pursuant to Section 131, the victim was unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance. The Commission therefore notes that the scope of Section 131 was to ensure that a victim who needed the personal care assistance as defined in Section 131 be entitled to receive such assistance in a non-institutional environment but not in a institution such as a hospital.

The Commission further notes that it was not intended by Section 131 that MPIC would terminate the personal care assistance of a person who is receiving such assistance under Section 131 when, for a variety of reasons, there would be a temporary change in the residence of the victim.

The scope of Section 131 can be illustrated by several examples as follows:

The Appellant testified that during the majority of the spring, summer and fall months he spends a great deal of his time not only at his [text deleted] residence, but also at his summer cottage. He further testified that during the winter months he spends every weekend at his cottage. The Appellant further testified that as a result of an agreement between MPIC, himself and his wife, MPIC compensates his wife for providing personal care to the Appellant for several hours each day during the calendar year. There is no evidence before the Commission that MPIC only reimburses the Appellant's expenses under Section 131 when he resides at his home in [text deleted] and terminates these expenses when he is at his cottage.

The scope of Section 131 may further be illustrated by the following example:

An elderly claimant who resides in his own home may be receiving personal care assistance from one of his children who is compensated by agreement for this assistance by MPIC, pursuant to Section 131 of the Act. It may be that during the course of a calendar year that this elderly claimant may, for a variety of reasons including ill health, be required temporarily to be cared for at his child's residence. In these circumstances the Commission would expect that this claimant would be treated in the same fashion as the Appellant in that there would be no termination of the compensation for personal care assistance provided by the claimant's child.

The Commission therefore concludes that there is no provision under Section 131 that prohibits MPIC compensating personal care assistance to a victim in multiple locations in appropriate cases. The Commission notes that MPIC is not bound automatically to provide compensation for every personal care assistance request. MPIC is required to examine each request on their merits and, having regard to the provisions of the Act, make a fair and reasonable decision in respect of every request. However, MPIC cannot refuse such a request solely on the grounds that these services are not being provided at the Appellant's primary residence.

It has been the practice of MPIC to reimburse a claimant for the cost of snow blowing at their residence where the claimant is unable, because of the motor vehicle accident, to care for themselves or to perform the essential activities of everyday life without assistance, pursuant to Section 131 of the Act. This practice was noted by the Commission in its decision in *B.J.D. (AC-99-119)* (decided on March 2, 2000) where the commission stated:

Yard Care

During the period of his disability, MPIC has been reimbursing B.J.D. for the cost of clearing snow from the pathways at his residence.

The Commission finds that, having regard to the nature of the motor vehicle accident injuries the Appellant sustained and the regular use the Appellant makes of his cottage during the entire calendar year, the Appellant's request for reimbursement of snow blowing at his cottage comes within the scope of Section 131 of the Act. Having regard to the Appellant's inability because of the accident to care for himself and to perform the essential activity of snow removal at his cottage without assistance, MPIC is required, pursuant to Section 131 to reimburse the Appellant for the cost of snow blowing expenses at his cottage.

The Commission therefore finds that the Internal Review Officer erred in concluding that the cost of reimbursing the Appellant for snow blowing can only be provided at the Appellant's [text deleted] residence and not at his cottage residence.

Decision

For these reasons the Commission finds that the Appellant has established, on a balance of probabilities, that MPIC was required to reimburse the Appellant for the cost of snow blowing at his cottage and directs MPIC to reimburse the Appellant in this respect. As a result, the Commission rescinds the decision of the Internal Review Officer in this respect dated May 16, 2005 and allows the Appellant's appeal.

Section 138

In the alternative, the Commission finds that there are no provisions in Section 131 of the Act or Sections 2(1)(2) and Schedule C of Manitoba Regulation 40/94 which prevents MPIC from reimbursing the Appellant for the cost of snow blowing at his cottage under Section 138 of the Act. It is essential, having regard to the weather conditions in Manitoba, that residents have

access to their residences. The removal of snow which would permit the Appellant to have access to his cottage constitutes an essential activity of every day life which the Appellant is unable to do without such assistance.

The language in Section 131 of the Act and Sections 2(1)(2) and Schedule C of Manitoba Regulation 40/94, supports the Commission's interpretation that the removal of snow from the Appellant's cottage was a measure that was necessary and advisable to contribute to the Appellant's rehabilitation, lessened his disability resulting from his motor vehicle accident and facilitated his return to a normal life pursuant to Section 138 of the Act.

Decision

In the alternative, the Commission finds, for these reasons, that the Appellant has established, on a balance of probabilities, in accordance with Section 138 of the Act, MPIC is required to reimburse the Appellant in respect of the cost of snow blowing at the Appellant's cottage and MPIC is directed to reimburse the Appellant in this respect. As a result, the Commission rescinds the decision of the Internal Review Officer dated May 16, 2005 and allows the Appellant's appeal.

9 Insurance Coverage – C – Legs and Other Prosthetic Limb Equipment

The Appellant's ninth request from MPIC was for Insurance Coverage – C – Legs and other prosthetic limb equipment.

The Appellant has requested that the Corporation reimburse him for any additional premium costs (ie loss of claim free discount) in the event that the Appellant's limbs are lost and a claim was advanced by him under his Personal Homeowner's Policy.

The Internal Review Officer, in his decision dated June 20, 2005, rejected the Appellant's request for compensation for the following reasons:

The Internal Review Application arises as a result of discussions which took place between you and the Corporation relating to insuring your prosthetic limbs. Arrangements were made for MPI to reimburse you for the increased cost of having the costly prosthetic limbs scheduled on your homeowner's policy. That arrangement broke down when you sought confirmation from the Corporation that MPI would also reimburse you for any additional premium costs (i.e. loss of claim free discount) in the event the limbs were lost and a claim was advanced by you under your policy.

Section 11 of Manitoba Regulation 40/94 states:

Prosthesis and orthosis

11 Subject to sections 12 to 18, the corporation shall pay any expense that the corporation considers reasonable and proper and that the victim incurs for the purchase, rental repair, replacement, fitting or adjustment of a prosthesis or orthosis if the prosthesis or orthosis is medically required and prescribed by a physician, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist.

Section 16 of the Manitoba Regulation deals with expenses relating to the repair replacement fitting or adjustment of a prosthesis not worn before the accident.

There is no reference in the legislation to costs relating to insurance. I note that Section 11 does indicate that the Corporation "...shall pay any expense that the Corporation considers reasonable and proper and that the victim incurs for the purchase, rental etc".

Under the circumstances I am dismissing your Application for Review for the following reasons:

1. Notwithstanding the willingness of the Corporation to pay the amount of the increase in premium to insure the limbs on your home owner's policy, the Corporation is within its right under Section 11 to decline to pay a cost which it does not consider reasonable and proper (see Section 11).
2. In any event, I do not have jurisdiction to deal with this issue as you are seeking a decision based upon a hypothetical set of facts

Therefore I am dismissing your Application for Review on this issue.

The Commission agrees with the reasons provided by the Internal Review Officer in rejecting the Appellant's claim and confirming the case manager's decision. As a result, the Commission therefore dismisses the Appellant's appeal in this respect.

Dated at Winnipeg this 11th day of October, 2006.

MEL MYERS, Q.C.

WENDY SOL

DR. PATRICK DOYLE