

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B. M.
AICAC File No.: AC-05-188**

PANEL: Ms Laura Diamond, Chairperson
Ms Diane Beresford
Mr. Paul Johnston

APPEARANCES: The Appellant, B. M., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Dean Scaletta.

HEARING DATE: August 9, 2007

ISSUE(S): Entitlement to Income Replacement Indemnity benefits for
intermittent absences from work to attend for physiotherapy
treatments or medical appointments

RELEVANT SECTIONS: Section 81(1)(a) of *The Manitoba Public Insurance
Corporation Act* ('MPIC Act') and Section 8 of Manitoba
Regulation 37/94

**MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.**

Reasons For Decision

The Appellant was injured in a motor vehicle accident on November 17, 2004. At the time of the accident he was employed by [text deleted]. As a result of his injuries from the accident, the Appellant sought physiotherapy and medical treatment. Some of these appointments took place during working hours and the Appellant sought Income Replacement Indemnity ('IRI') benefits from MPIC for time missed from work.

The Appellant's case manager advised the Appellant that since he was able to perform the essential duties of his employment, there was no entitlement to IRI benefits as a result of time missed for such appointments.

The Appellant sought an Internal Review of this decision. On August 8, 2005, an Internal Review Officer for MPIC noted that Personal Injury Protection Plan ('PIPP') coverage for IRI is available for extended absences from work if an individual is incapable of carrying out his employment duties. He found that IRI is not payable for intermittent absences for a few hours that a claimant misses from work to attend medical appointments and treatment. The Appellant did not meet the criteria of someone unable to hold their employment as he was able to work, and he had not shown that he had lost any wages as a result of his medical appointments.

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

Evidence and Submission for the Appellant

The Appellant testified at the hearing into his appeal. He indicated that he was employed as a "tank farm operator". There are only six (6) employees at [text deleted] Bulk Terminal, where he was employed, who were able to work at this specialized position. The Terminal is a very busy place and it was difficult to find someone to fill in or replace him when he took time off for doctor's appointments or physiotherapy appointments required as a result of his motor vehicle accident injuries.

The Appellant also indicated that he lived on a small acreage and also required time to work around his yard.

It was the Appellant's position that when he had to miss time from work due to his medical appointments, that MPIC should be required to provide compensation for this.

Although the Appellant testified that his employer did not deduct from his wages for the time missed from work and did not deduct from his sick pay accumulation, it was his view that his employer should be reimbursed for the losses that it and his fellow workers had suffered.

The Appellant also felt that he should be compensated for the time taken away from his leisure and home life to attend these medical appointments.

Submission for MPIC

Counsel for MPIC noted that all of the medical reports state that the Appellant's injuries did not preclude his travel to and from work and did not result in an inability to perform his required work related tasks. Nor did they pose a safety or health risk to himself or his co-workers. He continued to be paid his full salary at [text deleted], and there is no evidence confirming that the Appellant actually lost any income as a result of the accident.

Counsel for MPIC referred to the May 9, 2007 decision of the Manitoba Court of Appeal in *Re: Pelchat*, which confirmed that IRI provisions do not extend to individuals who are able to return to work full time but, for whatever reasons, schedule medical or treatment appointments during their working hours.

Counsel also referred to other decisions of the Commission in *L.G. [2006] MAICAC No. 52* and *K.T. [2006] MAICAC No. 49*, which were considered by the Court of Appeal in concluding that IRI is not payable in such cases.

Discussion

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

Manitoba Regulation 37/94:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

The onus is on the Appellant to show, on a balance of probabilities, that he is entitled to the IRI benefit he seeks.

The panel has reviewed the evidence and submissions of both parties. The panel has concluded that the evidence fails to establish any income loss on the part of the Appellant which would entitle him to IRI benefits to compensate his loss.

The Appellant was quite clear that his employer did not deduct pay or sick leave credits from his wages or salary for any time spent at medical appointments during his working hours. He indicated, however, that his employer had suffered loss as a result and should be compensated.

However, the MPIC Act and Regulations do not provide for compensation of this nature to the Appellant's employer, who is neither a party to this appeal or a claimant under the MPIC Act.

The Appellant further claims that he should be compensated for the loss of personal or family time he sustained while receiving medical care as a result of the motor vehicle accident. Again,

the MPIC Act and Regulations do not provide a basis for such entitlement.

Accordingly, for these reasons, and, in accordance with the Manitoba Court of Appeal decision in *Re: Pelchat*, the panel finds that the Appellant has failed to establish an entitlement to IRI benefits. The decision of the Internal Review Officer is hereby confirmed and the Appellant's appeal dismissed.

Dated at Winnipeg this 24th day of September, 2007.

LAURA DIAMOND

DIANE BERESFORD

PAUL JOHNSTON