

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by S.H.
AICAC File No.: AC-04-191**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Linda Newton
Ms Lorna Turnbull

APPEARANCES: The Appellant, S.H., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Dianne Pemkowski.

HEARING DATE: August 13, 2008

ISSUE(S): 1. Classification of employment; and
2. Extension of time to file an Application for Review.

RELEVANT SECTIONS: Section 107 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Schedule C of Manitoba Regulation
39/94

**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, S.H., was involved in a motor vehicle accident on May 1, 1996. Due to the bodily injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

The Appellant has appealed to this Commission from the following Internal Review decisions, respecting the following issues:

1. Internal Review decision dated September 3, 2004 – Re: Classification of Employment;
2. Internal Review decision dated January 13, 2006 – Re: Extension of Time to file an Application for Review.

1. Classification of Employment

The Internal Review decision of September 3, 2004 confirmed the case manager's decision of May 3, 2004 and dismissed the Appellant's Application for Review. The Internal Review Officer determined that, although the Appellant was not able to pursue classroom teaching as a result of injuries arising from the motor vehicle accident, she was in fact working as a Reading Recovery Teacher, which position was properly included in the classification of Elementary School and Kindergarten Teachers. Therefore, the Internal Review Officer found that the classification of her position was correctly done by the case manager.

The issue which arises on this appeal is whether the Appellant's determined employment as a Reading Recovery Teacher should be properly classified under the class of employment set out in Schedule C of Manitoba Regulation 39/94 as – Elementary and Kindergarten Teachers or under the class of employment – Elementary, Secondary Teaching, and related occupations, n.e.c.

The Appellant submits that a Reading Recovery Teacher is more appropriately classified under the category – Elementary, Secondary Teaching, and related occupations, n.e.c. She maintains that the position is not as intensive as a classroom teacher and therefore she should not be classified into the category of elementary and kindergarten teachers. In support of her position,

the Appellant raises the following distinctions between a Reading Recovery Teacher and a classroom teacher:

- ◆ A Reading Recovery Teacher works with one (1) student at a time, whereas a classroom teacher is responsible for twenty-five to thirty (25-30) students at a time;
- ◆ A Reading Recovery Teacher concentrates on one subject area, whereas a classroom teacher teaches all subject areas;
- ◆ A Reading Recovery Teacher concentrates on reading only, whereas a classroom teacher must be up-to-date on curriculums relating to language arts, math, phys. ed, science, social studies, health, arts, computer and library;
- ◆ A Reading Recovery Teacher can give undivided attention to a student and concentrate on one thing, whereas a classroom teacher requires a high level of multi-tasking, is always working with groups of students as well as in control of a whole class;
- ◆ A Reading Recovery Teacher operates in a quiet environment, whereas a classroom teacher operates in a noisy, hectic environment which is always busy and chaotic;
- ◆ A Reading Recovery Teacher repeats the same daily routine, whereas a classroom teacher must be a fast thinker, creative and very flexible.

The Appellant also argues that, pursuant to the Standards and Guidelines established by the Canadian Institute of Reading Recovery, teachers should return to regular classroom teaching after four (4) to five (5) years of teaching Recovery. The Appellant is not capable of regular classroom teaching due to the injuries she sustained in the motor vehicle accident. As a result, she submits that she is potentially prejudiced if she is unable to continue her employment as a Reading Recovery Teacher, since she could not return to regular classroom teaching. As a result, the Appellant submits that the position of Reading Recovery Teacher should be classified within

the category of Elementary, Secondary Teaching, and related occupations, n.e.c., which would provide her with ongoing support from MPIC in the form of ongoing Income Replacement Indemnity ('IRI').

Counsel for MPIC submits that the occupation of Reading Recovery Teacher was properly classified pursuant to the class of employment – Elementary and Kindergarten Teachers, set out in Schedule C of Manitoba Regulation 39/94. In support of her position, she relies upon the opinion of Ms Kathleen Moore, vocational rehab consultant, set out in her letter dated October 10, 2002. In that letter, Ms Moore noted that a Reading Recovery Teacher would correspond to National Occupational Classification Code #4142 for elementary school and kindergarten teachers (which corresponds to the same classification within Schedule C of Manitoba Regulation 39/94). Counsel for MPIC also argues that various job titles which are similar to that of a Reading Recovery Teacher are included within National Occupational Classification #4142. She includes such positions as remedial teacher – elementary school and elementary school reading clinician as analogous to that of a Reading Recovery Teacher. Further, counsel for MPIC asserts that the duties of an elementary school and kindergarten teacher include:

- Evaluating the progress of students and discussing results with students, parents and school officials;
- Identifying children's individual learning needs; and
- Preparing and implementing remedial programs for students requiring extra help.

Counsel for MPIC maintains that these duties correspond to the duties performed by the Appellant as a Reading Recovery Teacher. Therefore, counsel for MPIC submits that the Appellant's employment as a Reading Recovery Teacher was properly classified within the category of Elementary and Kindergarten Teachers set out in Schedule C of Manitoba

Regulation 39/94. As a result, she submits that the Appellant's appeal should be dismissed and the Internal Review decision dated September 3, 2004 confirmed.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant, S.H., and by counsel on behalf of MPIC, the Commission finds that the position of a Reading Recovery Teacher was properly classified within the class of employment set out in Schedule C of Manitoba Regulation 39/94 as Elementary and Kindergarten Teachers. We find that a Reading Recovery Teacher is essentially a teacher – one must hold elementary teacher certification in accordance with provincial requirements in order to become a Reading Recovery Teacher. Having achieved the requisite qualifications and training, the Appellant has, in effect, been capable of resuming her teaching profession, albeit on different scale. Additionally, the duties performed by a Reading Recovery Teacher equate to the duties performed by elementary school and kindergarten teachers. Many of the duties and responsibilities are the same, although in the reading recovery program they are performed on a much more individualized basis. Accordingly, the Appellant's position is appropriately classified within the category of Elementary and Kindergarten Teachers.

As a result, the Appellant's appeal of the Internal Review decision dated September 3, 2004 is dismissed and the Internal Review decision dated September 3, 2004 is therefore confirmed.

2. Extension of Time to file Application for Review

The Internal Review decision of January 13, 2006 determined the following:

As I indicated to you, the amount of your IRI entitlement was confirmed to you by way of a reassessment of your 180-day determination in a decision letter addressed to your former solicitors dated December 11, 2000. As you did not seek a review of that decision, I am not prepared to conduct an Internal Review of that decision which was made over five years ago. Accordingly, I am dismissing your Application for Review which was provided with respect to Ms. Hancock's decision letter of October 17, 2004 (which should have read 2005). The indexation of your benefits was not challenged.

The Appellant submits that her case manager improperly classified her as a non-earner from the outset of her claim. She maintains that at the date of the motor vehicle accident, she was employed as a casual employee on a part-time basis and she repeatedly raised this concern with her case manager. Therefore, she questions whether the income replacement indemnity calculations on her file have been done correctly from the outset of her claim.

In support of her claim, the Appellant submitted a letter dated May 30, 2008 from the [Text deleted] setting out the dates during which the Appellant had worked as a substitute teacher from October 26, 1995 until March 1, 1996.

At the appeal hearing, the parties agreed that the issue respecting the Appellant's classification as a non-earner would be referred back to the case manager for review pursuant to Section 171 of the MPIC Act. The May 30, 2008 letter from the [Text deleted] will be treated as new information in respect of the Appellant's claim. The case manager shall review that information in order to determine whether the Appellant's initial determination as a non-earner was correct. The Appellant shall then have the right to apply for an Internal Review and appeal of that decision, if she is not satisfied with the case manager's decision resulting from the reconsideration of the new information.

Dated at Winnipeg this 2nd day of October, 2008.

YVONNE TAVARES

LINDA NEWTON

LORNA TURNBULL