

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by K.J.
AICAC File No.: AC-05-206**

PANEL: Ms Laura Diamond, Chairperson
Mr. Neil Cohen
Ms Sandra Oakley

APPEARANCES: The Appellant, K.J., was not present at the hearing;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Dean Scaletta.

HEARING DATE: June 17, 2008

ISSUE(S): Entitlement to Income Replacement Indemnity benefits

RELEVANT SECTIONS: Section 83(1) 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 appeal hearing in this matter was scheduled to commence on June 17, 2008 at 9:30 a.m. The Appellant, K.J., did not attend at that time.

The Commission issued a Notice of Hearing dated March 31, 2008 to the Appellant and to MPIC's legal counsel which fixed the date for the appeal hearing for June 17, 2008 at 9:30 a.m. at the Commission's offices in Winnipeg. In this Notice of Hearing, the Commission stated that:

1. 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.
2. Alternatively, the Commission may dismiss the appeal, adjourn the hearing to a new date or take such further steps as it deemed appropriate.

The Commission was advised by the Commissioners' Secretary that a Notice of Hearing, dated March 31, 2008 (a copy of which is attached hereto and marked as Exhibit A) in respect of this appeal was delivered by Canada Post to K.J. on April 4, 2008, and that the Appellant's signature was recorded at the time of the package delivery. The Commissioners' Secretary further advised that the Commission received a print-out form from Canada Post which indicated that on April 4, 2008 the Notice of Hearing was successfully delivered to the Appellant who provided his signature accepting delivery.

When the Appellant did not appear at the scheduled hearing, the panel reviewed the documents on file and determined that the Appellant had been properly served with a Notice of Hearing in accordance with the provisions of the MPIC Act. As a result, the Commission proceeded with the appeal hearing.

The Appellant was injured in a motor vehicle accident on December 23, 2004. His case manager decided that he was not entitled to Income Replacement Indemnity ('IRI') benefits as a result of injuries arising out of the motor vehicle accident, beyond January 5, 2005. The Appellant sought Internal Review of this decision.

The Internal Review Officer, in his decision of November 21, 2005 concluded:

The problem you face is that the medical evidence which currently exists does not support your claim for IRI benefits. It may be that in the future other new information will support your claim but my review is based on the evidence which we have on file.

That evidence was reviewed by Dr. MacKay. It does not appear that you had any ongoing back symptoms from the motor vehicle accident. Clearly you had long standing back issues stemming from Worker's Compensation injuries which were exacerbated by the motor vehicle accident. The exacerbation, however, seems to have resolved in a few weeks, at least according to the medical evidence.

As to your neck symptoms, there was no MRI testing done. As Dr. MacKay indicated, there is a lack of evidence showing that your neck complaints impair your functioning to the point that you cannot work.

I also note there is a lack of evidence concerning any diagnosis of what your subjective eye complaints are and there is simply no evidence that exists which indicates that your eye problems impair your functioning to the point that you are unable to work.

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

Submissions

The Commission reviewed the Appellant's Application for Review of Injury Claim Decision dated September 19, 2005. The Appellant stated:

- 1 Through out their review, they have based a decision on old medical information and made too many mistakes for example I only started taking Gabepentine as per Dr. Pacen in which I had only seen for the first time around Jan-Feb of 2005.
- 2 Already on CT scan on Sept 17/05 that I had gotten from H.S.C. shows new and spine damage, this one was only of my cervical spine and will have another of my mid back very shortly.

The Commission also reviewed the Appellant's Notice of Appeal dated November 25, 2005. He stated:

- The facts in this latest review as well as the facts that were put together by Dr. M. Mackay in making his decision.
- The way MPI has conducted their review's as to prolong decision's obviously I think that the long waits for CT & MRI also play a big factor in what's been happening.

MPIC's legal counsel provided the Commission with a submission (a copy of which is attached hereto and marked Exhibit B). He reviewed his written submission and submitted that the Internal Review Officer was correct in determining that the Appellant was not entitled to further IRI benefits.

Counsel for MPIC submitted that for an entitlement under the MPIC Act to exist, the claimant must demonstrate that he would have held employment during the relevant time and that he was unable to hold that employment because of disabling injuries which were causally related to the motor vehicle accident. He submitted that the totality of the evidence fell well short of establishing either of the criteria to the required standard of a balance of probabilities.

Decision

The Commission, after considering the submission of MPIC's legal counsel, and upon examination of the documentary evidence filed in the appeal proceedings, finds that the Appellant has failed to establish, on a balance of probabilities, that MPIC erred in finding that he was not entitled to Income Replacement Indemnity benefits. The Commission therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated November 21, 2005.

Dated at Winnipeg this 28th day of July, 2008.

LAURA DIAMOND

NEIL COHEN

SANDRA OAKLEY