

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.C.
AICAC File No.: AC-08-11**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sheldon Claman
Ms Mary Lynn Brooks

APPEARANCES: The Appellant, D.C., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Cynthia Lau.

HEARING DATE: November 14, 2008

ISSUE(S): 1. Whether Income Replacement Indemnity benefits were
correctly calculated; and
2. Whether MPIC is entitled to reimbursement of the
overpayment.

RELEVANT SECTIONS: Sections 115 and 189(1) of The Manitoba Public Insurance
Corporation Act ('MPIC 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

The Appellant, D.C., was involved in a motor vehicle accident on March 23, 1995. Due to the bodily injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. Additionally, as a result of the bodily injuries which the Appellant sustained in this accident, she was unable to return to the employment which she held at the date of the motor vehicle accident.

Accordingly, on January 24, 2002, MPIC's case manager completed a two-year determination of the Appellant's residual earning capacity. The determination reflected the Appellant's post-accident physical and intellectual abilities and took into consideration her education, work experience, and her recently completed courses at the [Text deleted]. The Appellant's determined employment was that of a "General Office Clerk". As at that date, Schedule C of Manitoba Regulation 39/94 provided a Level One salary for this occupation of \$22,215.00. The Appellant was advised that she was required to report any income earned to MPIC, in order that her IRI benefits could be adjusted. In the year following January 24, 2002, any income earned by the Appellant would reduce her IRI benefits by 75% of the net earned income. Following January 24, 2003, the Appellant's IRI benefits would be reduced by her actual net earnings or the income level attributed to a general office clerk, whichever was greater. This would apply even if the Appellant did not hold the determined employment.

In 2005 and 2006, the Appellant was paid the difference between her initial Gross Yearly Employment Income ("GYEI") indexed to present values and her determined employment GYEI of a general office clerk. After receiving the Appellant's Notices of Assessment for the 2005 and 2006 income tax years, MPIC completed a reconciliation of her IRI benefits and her earned income. Since her actual employment income for 2005 and 2006 exceeded the determined employment income for those years, the Appellant was overpaid IRI benefits. MPIC has claimed the resulting overpayment from the Appellant. The overpayment in the amount of \$10,291.03 was confirmed by MPIC's Internal Review Officer in her decision of October 23, 2007.

The Appellant has appealed from the Internal Review decision dated October 23, 2007 to this Commission, with respect to the following issues:

1. whether the calculation of her Income Replacement Indemnity ('IRI') benefits for the 2005 and 2006 calendar years was correct and whether the resulting overpayment of IRI was correctly calculated; and
2. whether MPIC is entitled to reimbursement of the IRI overpayment.

At the appeal hearing, the Appellant expressed her dissatisfaction and frustration with the handling of her claim by MPIC's case manager. She explained that her case was mishandled, which has resulted in a very distressing situation for her and her family. She maintains that MPIC lost one of her T4 slips which she dropped off to her case manager on March 4, 2006. Due to this mistake, the overpayment of IRI benefits was not discovered as soon as it should have been. This resulted in the overpayment of IRI benefits continuing longer than it should have and the Appellant now finds herself facing a very large debt to MPIC, through no fault of her own. She advises that she complied with all of the reporting requirements imposed upon her by her case manager, and was diligent throughout her claim in reporting her earned income to MPIC. She contends that since the overpayment of IRI was MPIC's mistake, she should not be punished for that mistake now by having to repay the funds to MPIC.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant, D.C., and by counsel on behalf of MPIC, the Commission finds that the Appellant received an overpayment of IRI benefits for the 2005 and 2006 calendar years. The Commission has reviewed the calculations set out in the documents provided for the appeal hearing and confirms that the overpayment set out in the Internal Review decision in the amount of \$10,291.03 for the 2005 and 2006 years is correct.

Section 189(1) of the MPIC Act provides that:

Corporation to be reimbursed for excess payment

189(1) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

The Commission is bound by the provisions of Section 189(1) of the MPIC Act. We find that an overpayment of IRI benefits has occurred and that the Appellant has received a benefit to which she was not entitled. Accordingly, pursuant to the provisions of Section 189(1) of the MPIC Act MPIC is entitled to reimbursement from the Appellant for the amount of the IRI overpayment.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated October 23, 2007 is therefore confirmed.

Dated at Winnipeg this 4th day of December, 2008.

YVONNE TAVARES

DR. SHELDON CLAMAN

MARY LYNN BROOKS