

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by S.P.
AICAC File No.: AC-02-54**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Ms Linda Newton

APPEARANCES: The Appellant, S.P., was represented by Mr. Phil Lancaster of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

HEARING DATE: February 18, 2009

ISSUE(S): Entitlement to Personal Care Assistance benefits from April 1, 2001 to January 29, 2002.

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 2 and Schedule A of Manitoba Regulation 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

The Appellant, S.P., was involved in a motor vehicle accident on January 6, 2001. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act. As the Appellant was unable to carry out certain activities of daily living without assistance, he qualified for personal care assistance in accordance with Section 131 of the MPIC Act. Section 131 of the MPIC Act provides 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. 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.

Section 2 of Manitoba Regulation 40/94:

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under *The Health Services Insurance Act* or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A.

To determine the Appellant's entitlement to personal care assistance, an evaluation grid was completed in accordance with Schedule A of Manitoba Regulation 40/94. The grid was completed on January 14, 2001. The Appellant's score was 6.5 out of a possible 51, which provided a maximum monthly allowance of \$538.88. At that time, the Appellant was partially in need of assistance with the preparation of dinner, house cleaning and the purchasing of supplies.

The Appellant's personal care assistance needs were reassessed on February 19, 2001. The Appellant's score was again 6.5 out of a possible 51, which provided a maximum monthly allowance of \$538.88. At that time, the Appellant was still partially in need of assistance with the preparation of dinner, house cleaning and the purchasing of supplies.

The Appellant's personal care assistance needs were subsequently reassessed on March 13, 2001 by Dr. I.I. Mayba. Based on that assessment, the Appellant scored a total of 0 points. In a letter dated March 27, 2001, MPIC's case manager advised the Appellant that his entitlement to personal care assistance would cease as of March 30, 2001.

The Appellant sought a review of that decision. The Internal Review Decision of April 4, 2002 confirmed the case manager's decision of March 27, 2001 and dismissed the Appellant's Application for Review. The Internal Review Officer determined that there was no basis in the Appellant's file upon which to overturn the case manager's decision and found that the Appellant did not qualify for further personal care assistance benefits beyond March 30, 2001.

The Appellant has appealed from that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to personal care assistance benefits from April 1, 2001 to January 29, 2002.

At the hearing of the appeal, the Claimant Advisor submitted that the Appellant continued to require personal care assistance beyond March 30, 2001 due to the injuries which he sustained in the motor vehicle accident of January 6, 2001. The Claimant Advisor, on behalf of the Appellant, advised that, from April 1, 2001 through to January 29, 2002, the following tasks were performed by the Appellant's son, M.P., and the following were the particulars of the Appellant's claim:

Housekeeping Assistance	1 hour per day x 304 days = 304 hrs x \$7.00/hr =	\$2,128.00
House Cleaning	2 hours per week x 43 days = 86 x \$7.00/hr =	602.00
Meal Preparation	(30 min/breakfast, 45 min/lunch, 45 min/supper) 2 hours per day x 304 days = 608 hrs x \$7.00/hr =	4,256.00
Laundry	2 hours per week x 43 days = 86 hrs x \$7.00/hr =	602.00
Shopping	2 hours per week x 43 days = 86 hrs x \$7.00/hr =	602.00
Total PCA:		\$8,190.00

The Claimant Adviser argues that:

- The extent of M.P.'s injuries were not fully understood at the time that his personal care assistance benefits were terminated. His injuries were thought to be whiplash type injuries and his traumatic brain injury had not yet been diagnosed.

- Dr. Mayba's report of March 14, 2001, wherein he determined that the Appellant had recovered from his injuries and was able to return to work, should not be relied upon. The Claimant Adviser submits that without taking into account M.P.'s brain injury, Dr. Mayba's report cannot be relied on to determine the full extent of M.P.'s functional deficits. The Claimant Adviser also maintains that there was a lack of consultation with M.P. in filling out the personal care assistance instrument by Dr. Mayba.
- Given that Dr. Mayba's examination of M.P. of March 13, 2001 is no longer a support for the position that M.P. was able to return to work, the Claimant Adviser argues that it can no longer form a support for the position that M.P. was able to fully care for himself and thus not eligible for personal care assistance benefits at that time.

The Claimant Adviser also relies upon Dr. Stoelting's report of July 25, 2008 wherein Dr. Stoelting concludes that ". . . M.P. required the assistance of his son from March 27, 2001 to January 29, 2002 with the following activities: preparation of food, housecleaning, laundry, and purchase of supplies." The Claimant Adviser notes that Dr. Stoelting comments that brain injuries often get overlooked by patients and caregivers where there are also serious physical injuries. Dr. Stoelting also advised that when the Appellant was at the Brain Injury Rehabilitation Centre, he needed assistance with "making adjustments, making decisions, and multi-tasking". Dr. Stoelting then reasons that since he was still suffering from such disabilities while attending the Brain Injury Rehabilitation Centre in November 2002 and afterwards that, during the period in question, from April 1, 2001 to January 29, 2002, M.P. would have been in the early to middle part of recovery and therefore it is probable that M.P. would have required

his son's assistance in personal care. The Claimant's Adviser therefore submits that the opinion of Dr. Stoelting should be relied upon in order to grant the Appellant personal care assistance benefits.

Counsel for MPIC submits that the Appellant is not entitled to personal care assistance coverage. She maintains that the Appellant has not met the onus of proof to establish that he is entitled to such coverage. Counsel for MPIC relies upon the report of Dr. Andrew Jones, psychological consultant to the MPIC Health Care Services team dated October 7, 2008. In that report, Dr. Jones conducted a thorough review of all of the various medical reports on the Appellant's file, completed between January 2001 and January 2003 and Dr. Stoelting's report of July 25, 2008. Dr. Jones concludes that the Appellant would not have qualified for personal care assistance benefits based upon his review of the Appellant's file. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision confirmed.

Decision

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Claimant Adviser and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was entitled to personal care assistance benefits from April 1, 2001 to January 29, 2002.

Reasons for Decision

The Commissions finds that there was a lack of information provided by the Appellant with respect to the particulars of the personal care assistance benefits being claimed, as well as a lack of evidence to establish the Appellant's functional deficits during the relevant time. There was

no evidence presented as to why the Appellant was unable to carry out the personal care assistance tasks including housekeeping, housecleaning, meal preparation, laundry and purchase of supplies, for which assistance is being claimed. Neither the Appellant, nor the Appellant's son, testified at the appeal hearing as to the specifics of the personal care assistance benefits being claimed. The onus rested with the Appellant to establish that he was not capable of performing those tasks during the relevant time. We find that the Appellant has not met that onus and has not established that he was unable to perform those tasks during the relevant time.

Further, we note that, in the first two personal care assistance grids that were completed on the Appellant's behalf, no assistance was required for preparation of breakfast or preparation of lunch. However, assistance with those tasks is being claimed by the Appellant for the period from April 1, 2001 to January 29, 2002. No explanation was provided for the change which would require the additional assistance for meal preparation. As a result, the Commission finds that the Appellant has not established that he qualifies for reimbursement of his personal care assistance expenses pursuant to Section 131 of the MPIC Act.

Accordingly, the Appellant's appeal of the Internal Review Decision dated April 4, 2002 is dismissed and the Internal Review Decision dated April 4, 2002 is therefore confirmed.

Dated at Winnipeg this 28th day of April, 2009.

YVONNE TAVARES

PAUL JOHNSTON

LINDA NEWTON