

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by L.H.  
AICAC File No.: AC-05-57**

**PANEL:** Mr. Mel Myers, Q.C.

**APPEARANCES:** The Appellant, L.H. was not present at the appeal hearing; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

**HEARING DATE:** April 30, 2009

**ISSUE(S):**

- 1) Whether the Fatal Accidents Act applies to the motor vehicle accident; and
- 2) Entitlement to further death benefits

**RELEVANT SECTIONS:** Sections 72, 123, 184.1(1)(b) and 184.1(2) 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, L.H., is appealing the Internal Review Decision dated February 15, 2005, with regards to her entitlement to an increase in the lump sum death benefit with respect of her son, J.C.H. (the deceased), who was fatally injured in a single vehicle accident on November 6, 2004. The Appellant is the mother of the deceased J.C.H.. The appeal hearing was held on April 30, 2009 and was to commence at 9:30 a.m., however, the Commission waited until 10:00 a.m. to proceed with the hearing of the appeal. The Appellant did not attend the hearing or provide any written submissions to the Commission in support of her appeal.

At the outset of the hearing, it was determined that the Appellant had received notice of the hearing by virtue of her signature claiming the Xpresspost letter (containing the Notice of Hearing from the Commission) from Canada Post. The Commission notes that the Notice of Hearing for Thursday, April 30, 2009 at 9:30 a.m. at the Commission office dated February 19, 2009 was sent by both Xpresspost and regular mail to the Appellant at [text deleted], which is the same address noted on the Appellant's Notice of Appeal dated April 12, 2005. Sections 184.1(1) and 184.1(2) of the MPIC Act state:

**How notices and orders may be given to appellant**

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

**When mailed notice received**

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

The Commission finds that the Appellant was served with the Notice of Hearing on February 25, 2009. The Commission therefore finds that pursuant to Section 184.1(2) of the MPIC Act the Appellant is deemed to have received the Notice of Hearing on or about February 25, 2009. As a result, the Commission proceeded with the hearing of the appeal.

MPIC's legal counsel provided a written submission to the Commission in respect of the two issues which are under appeal. Upon a consideration of the totality of the evidence before it, the Commission finds that the Internal Review Officer was correct in determining that the Fatal

Accidents Act has no application to the motor vehicle accident which gave rise to the entitlement to PIPP benefits. The Commission agrees with the decision of the Internal Review Officer that Section 72 of the MPIC Act takes precedence over the Fatal Accidents Act, and specifically tort actions in connection with motor vehicle accidents.

The Commission further finds that a death benefit of \$10,888.00 – the amount stipulated by Section 123 of the MPIC Act, indexed to March 2004, was paid to each the Appellant, her current husband (T.H.) and the birth father of the deceased (J.H.) on December 24, 2004. The Commission therefore concludes that:

1. the Internal Review Officer was correct in rejecting the Appellant's appeal that the Fatal Accidents Act overrode the provisions in Section 172 of the MPIC Act;
2. the Internal Review Officer correctly determined that the Appellant received the full amount of her entitlement of a death benefit pursuant to Section 123 of the MPIC Act.

As a result, the Appellant has failed to establish, on a balance of probabilities, that she was entitled to a lump sum death benefit greater than \$10,888.00.

As a result, the Appellant's appeal is dismissed and the Internal Review Officer's Decision dated February 15, 2005 is confirmed.

Dated at Winnipeg this 5<sup>th</sup> day of May, 2009.

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**MEL MYERS, Q.C.**