

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by V.K.
AICAC File No.: AC-06-113**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Mr. Robert Malazdrewich

APPEARANCES: The Appellant, V.K., was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: July 16, 2009

ISSUE(S):

1. Whether Personal Injury Protection Plan benefits were properly terminated pursuant to Sections 110(1)(a) and 160(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')
2. Whether MPIC is entitled to reimbursement of the overpayment of Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Sections 110(1)(a), 160(a), and 189(1) of the 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, V.K., is appealing the Internal Review Decision dated May 9, 2006 with respect to his entitlement to further Personal Injury Protection Plan ("PIPP") benefits.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On August 9, 2005, the Appellant stepped out of his parked vehicle and slipped and fell, fracturing his left ankle. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to PIPP benefits pursuant to Part 2 of the MPIC Act.
2. At the time of the motor vehicle accident, the Appellant was employed as a driver for [text deleted]. Since the Appellant was unable to return to work immediately following the accident, he became entitled to income replacement indemnity (“IRI”) benefits.
3. Video surveillance footage was undertaken of the Appellant on December 13, 14, 20, and 21, 2005.
4. During the December 13, 2005 surveillance, the Appellant was observed driving a [text deleted] van and attending at the [text deleted] office/shop at [text deleted]. Although limping, the Appellant did not appear to have too much difficulty walking.
5. On December 14, 2005, the Appellant was observed as he drove the [text deleted] van to several locations, including 1080 Arlington Street, the Grace Hospital, 699 Clifton Street, CancerCare Manitoba at 675 McDermot Street, 396 Avalon Road, the Rehabilitation Respiratory Hospital at 800 Sherbrook Street and the Kivalliq Inuit Centre at 310 Burnell Street. At the various stops, he was either picking up or dropping off people. Some were in a wheelchair and he was observed either pushing or pulling the wheelchair into and out of the van. Although the Appellant did limp when walking, he did not appear to have any difficulty pushing or pulling the wheelchairs.
6. During the December 20, 2005 surveillance, the Appellant was observed picking up and dropping off a male passenger, who was ambulatory, on a couple of different occasions. The Appellant was also observed driving to the Taxicab Board office on Weston Street and to the Parkwest Mall where he picked up the same male passenger. He then took the passenger to the Toys-R-Us store on St. Matthews Avenue.

7. On December 21, 2005, the Appellant was observed travelling to various locations in the [text deleted] vehicle, including 87 Perry Bay, the Pan-Am Clinic, Roslyn Road, Nassau Street, Corydon Avenue, Hugo Street, the Health Sciences Centre, Burnell Street, picking up and dropping off people. All the passengers were ambulatory, except one, and were able to enter and exit the van on their own. The one exception was a female in a wheelchair and the Appellant was observed pushing the wheelchair without any difficulty.

On the basis of the video surveillance footage and the Appellant's repeated denials that he had returned to work, MPIC's case manager terminated the Appellant's entitlement to PIPP benefits as of January 15, 2006. In a decision letter dated February 21, 2006, the case manager confirmed the termination of the Appellant's entitlement to PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and ability to work in contravention of Section 160(a) of the MPIC Act. Additionally, the case manager found that despite the Appellant's ongoing assertions that he remained injured and unable to return to his pre-accident employment, subsequent investigation had revealed that he had in fact been working and was capable of returning to his pre-accident employment as of December 14, 2005. Accordingly, the case manager also found that had the Appellant's PIPP benefits not ended pursuant to Section 160(a), his entitlement to IRI benefits would have ended in accordance with Section 110(1)(a) of the MPIC Act as the Appellant had returned to work at his pre-accident employment. Additionally, the case manager found that the Appellant was responsible for reimbursing MPIC the amount of benefits he received as a result of his failure to notify and provide MPIC with accurate information in accordance with Section 189(1) of the MPIC Act. The case manager found that the Appellant was responsible for reimbursing MPIC the amount of

\$619.92, representing IRI payments for the time period of December 14, 2005 to January 15, 2006, to which the Appellant was not entitled.

The Appellant sought an Internal Review of that decision. In a decision dated May 9, 2006, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that the case manager was correct in terminating the Appellant's entitlement to PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and his ability to work in contravention of Section 160(a) of the MPIC Act. The Internal Review Officer also found that the case manager was correct in alternatively terminating the Appellant's IRI benefits under Section 110(1)(a) of the MPIC Act, since the Appellant was able to hold the employment which he held at the time of the accident. Lastly, the Internal Review Officer found that the case manager was correct in requiring the Appellant to reimburse the amount of benefits he received as a failure to notify and provide MPIC with accurate information in accordance with Section 189(1) of the MPIC Act. The Internal Review Officer confirmed that the Appellant was responsible for reimbursing MPIC the amount of \$619.92 representing IRI benefits from December 14, 2005 to January 15, 2006.

The Appellant has now appealed that decision to this Commission. The issues which require determination on this appeal are:

1. whether the Appellant's PIPP benefits were properly terminated pursuant to Sections 160(a) and 110(1)(a) of the MPIC Act; and
2. if so, whether the Appellant is required to reimburse MPIC in the amount of \$619.92 respecting the overpayment of his IRI benefits.

Relevant Legislation:**Events that end entitlement to I.R.I.**

[110\(1\)](#) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

Corporation may refuse or terminate compensation

[160](#) The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

(a) knowingly provides false or inaccurate information to the corporation;

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.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant did not knowingly provide false information to MPIC and therefore his PIPP benefits should be reinstated as of December 14, 2005. The Claimant Adviser argues that:

1. The investigative report of the video surveillance conducted on the Appellant was embellished and amounted to an exaggeration of the Appellant's functional abilities.

2. The videotape surveillance was not conclusive evidence as to whether the Appellant could hold his pre-accident employment since it did not establish whether the Appellant was receiving assistance with his employment duties.
3. The Appellant had merely returned to work on a trial basis or a gradual return to work basis in order to determine whether he could handle his employment duties. The Claimant Adviser contends that the Appellant was being accommodated by his employer, as he was being given fares which required minimal assistance and handling. It was only on that basis that the Appellant could carry out his pre-accident employment.

As a result, the Claimant Adviser submits that the Appellant did not mislead MPIC or provide false information contrary to Section 160(a) of the MPIC Act. She also maintains that he was not capable of returning to work at his pre-accident employment, since the evidence does not establish that he was able to carry out his pre-accident employment. Accordingly, the Claimant Adviser submits that the Appellant's appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that MPIC properly terminated the Appellant's PIPP benefits pursuant to Section 160(a) and Section 110(1)(a) of the MPIC Act. Counsel for MPIC argues that the Appellant was well aware of his obligation to notify MPIC that he had returned to work. Counsel for MPIC contends that the videotape surveillance is unequivocal that the Appellant had returned to work by December 14, 2005. However, the Appellant advised his case manager that he was not working, contrary to the evidence provided by the video surveillance. Thus he provided false and inaccurate information to MPIC and his benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.

Additionally, counsel for MPIC submits that the Appellant was able to hold his pre-accident employment as of December 14, 2005 and therefore his benefits were properly terminated pursuant to Section 110(1)(a) of the MPIC Act. Counsel for MPIC argues that there is no evidence to suggest that the Appellant was carrying out anything other than his normal job duties. Counsel for MPIC contends that the evidence of the Appellant, that he was getting the easiest fares, is unreliable. Counsel for MPIC maintains that he Appellant could push and pull wheelchairs and he was able to perform his duties in less than ideal conditions (snow). Counsel for MPIC argues that there is no significant embellishment in the investigative report of the video surveillance and no inconsistency between the investigative report and the video surveillance that is of any significance. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision of May 9, 2006 upheld.

Decision:

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary and videotape evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commissions finds that the Appellant's PIPP benefits were properly terminated pursuant to Sections 160(a) and 110(1)(a) of the MPIC Act as of December 14, 2005. The Commission also finds that the Appellant received an overpayment of IRI benefits for the period from December 14, 2005 to January 15, 2006 in the amount of \$619.92 and that MPIC is entitled to reimbursement of that overpayment.

Reasons for Decision:

Section 160(a) of the MPIC Act entitles MPIC to terminate an indemnity, where a claimant has knowingly provided false or inaccurate information to the corporation. The Commission finds that the Appellant did knowingly provide false or inaccurate information with respect to his return to work, to his case manager. The videotape surveillance undertaken of the Appellant in December 2005 clearly establishes that the Appellant had returned to work as a driver for [text deleted]. The videotape evidence shows the Appellant picking up and dropping off numerous passengers throughout the course of the day as would normally be expected of the duties of a taxi driver. Accordingly, based upon the videotape evidence which clearly demonstrates that the Appellant is carrying out his employment duties, we find that the Appellant did, on a balance of probabilities, provide false and inaccurate information to MPIC with regard to his return to work.

Additionally, the Commission finds that the Appellant was able to hold his pre-accident employment as of December 14, 2005. Accordingly, his PIPP benefits were properly terminated pursuant to Section 110(1)(a) of the MPIC Act. Once again, the Commission has relied upon the videotape surveillance undertaken of the Appellant in December 2005 which clearly demonstrates that the Appellant could carry out his occupational duties. The Commission finds that the Appellant did not establish, on a balance of probabilities, that the occupational duties which were depicted upon the videotape were anything other than his normal occupational duties, consistent with his job function before the accident. We find that the Appellant's testimony was not credible and we do not accept his testimony that he was being accommodated in his employment duties by his employer. The Appellant could have called his employer to testify on his behalf with respect to his job duties. However, no such testimony or evidence was tendered before the Commission. Instead, the Claimant Adviser attempted to rely upon an unsworn, unsigned statement. The Commission advised that such a statement would carry no

weight and the Commission disregarded the statement which was filed in evidence before it. As a result, the Commission finds that the Appellant has not established that the job duties which he was shown being able to carry out on the videotape surveillance were anything other than his normal job duties. Taking into consideration the totality of the evidence before us, we find that the Appellant was able to hold his pre-accident employment as of December 14, 2005 and therefore the termination of his PIPP benefits pursuant to Section 110(1)(a) was appropriate.

The Commission has also found that pursuant to Section 189(1) of the MPIC Act, MPIC is entitled to repayment of the IRI payments which the Appellant received from December 14, 2005 to January 15, 2006, in the amount of \$619.92 to which the Appellant was not entitled. We find that an overpayment of IRI payments has occurred and that the Appellant has received a benefit to which he was not entitled. Accordingly, pursuant to the provisions of Section 189(1) of the MPIC Act, MPIC is entitled to reimbursement from the Appellant in the amount of \$619.92.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated May 9, 2006 is confirmed.

Lastly, the Commission notes that the Claimant Adviser and MPIC agreed that the Commission's decision in this appeal would be limited to the Appellant's entitlement to PIPP benefits for the period from December 14, 2005 to April 2006. The Appellant's entitlement to PIPP benefits

(including IRI benefits, reimbursement of medical expenses and permanent impairment benefits) following the surgery to his left ankle of August 30, 2007, shall be referred back to MPIC's case manager for determination.

Dated at Winnipeg this 31st day of July, 2009.

YVONNE TAVARES

PAUL JOHNSTON

ROBERT MALAZDREWICH