

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-18**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Ms Joan McKelvey
[Text deleted], the Appellant, appeared in person

HEARING DATE: November 28th, 1995

ISSUE: Entitlement to reimbursement of cancellation fee when accident
resulted in Appellant canceling a scheduled airline flight.

RELEVANT SECTIONS: Section 136(1) of the M.P.I.C. Act and Regulation 40/94,
Schedule (D)

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.

REASONS FOR DECISION

THE FACTS:

[The Appellant] sustained injuries on November 19th, 1994 as a result of a rear-end automobile collision. He suffered neck pain and shoulder stiffness. Due to his condition he chose to cancel an airplane trip for which he held a non-refundable ticket with a scheduled

departure date of November 25th, 1995, six days following the accident. His decision to defer his flight to a later date was based, in large measure, upon the fact that he had planned a 'golfing vacation' with a relative who lives in [California], and his temporary soreness would have precluded golf and, thus, have robbed the trip of its main purpose. The airline allowed the deferral of the flight, but at a cost of \$50.00 (U.S.).

On December 13th, 1994 [the Appellant] had had an initial examination by his physician because of the continuing stiffness and lack of ability to move his left arm past 45 degrees. He was advised to undertake physiotherapy treatment; he followed that advice. [The Appellant] who testified in a forthright manner, believes that he should be reimbursed for the airline cancellation fee in that his condition due to his injuries precluded him from flying. He had not taken out cancellation insurance.

THE LAW:

Any authority for payment by M.P.I.C. of a claim must be found within the four corners of the Act and Regulations. The relevant section of the Act reads as follows:

“Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging

for the purpose of receiving the care;

- (b) the purchase of prostheses or orthopaedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.”

Since [the Appellant’s] claim is not covered by Subsections (a), (b) or (c) of Section 136(1), we must have recourse to the regulation referred to in Subsection (d), which is Regulation 40/94 entitled “Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation”. It makes no provision for reimbursement of the kind of expense incurred by [the Appellant].

The mandate of this Commission is limited to administration of the law as we find it; we cannot override the statute by substituting different views for those of the legislators.

The M.P.I.C. Act is in effect an insurance policy covering almost all persons injured in motor vehicle accidents in Manitoba. Like all insurance policies, it does not purport to insure against every possible kind of loss but only for those losses described in the Act and Regulations.

DISPOSITION:

After a careful review of the entirety of Regulation 40/94 we find that there is no

provision in the governing legislation that allows for reimbursement of the expense of an airline cancellation fee. Accordingly we affirm the decision of the Acting Internal Review Officer.

Dated at Winnipeg this 30th day of November, 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED