

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-96-63

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Mr. Keith Addison
[Text deleted], the Appellant, appeared in person

HEARING DATE: February 6th, 1997

ISSUE: Whether Appellant has met onus of establishing right
to benefit under Personal Injury Protection Plan.

RELEVANT SECTIONS: Sections 71(1) and 138 of the M.P.I.C. Act, and Section 8 of
Regulation 40/94

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:

On December 8th, 1995, at approximately 7 o'clock in the morning, [the Appellant] was the sole passenger in the back seat of a police car, being driven from his home to the central police station in [text deleted]. He says that, in the early part of that journey, some serious, verbal

altercation took place between himself and one or both of the police officers. He testifies that, in what he believes to have been a form of reprisal on the part of the driver, the vehicle was driven into the parking lot of the [text deleted] (where the altercation continued) and then, in order to leave that lot, was put into a 360 degree spin, which [the Appellant] refers to as a "donut". [The Appellant] further testifies that, on two occasions thereafter, as the police car was headed northwards on [text deleted], the driver applied the brake pedal with much greater force than would normally be needed. [The Appellant's] further evidence is that, on each of those three occasions - that is, the spin and the two sudden brakings - he was only able to avoid more serious injury by using the muscles of his back and his abdomen to prevent himself from being thrown against either the side of the vehicle or the seat in front of him. [The Appellant] adds that, on both occasions when the driver of the vehicle applied the brakes abruptly, he ([the Appellant]) was leaning forward, trying to read what the other police officer was entering into the onboard computer.

[The Appellant] testified that, on December 28th of 1995, three weeks after the occurrences described above, he saw a doctor at the [text deleted] Walk-in Clinic, that the doctor gave him a "sick slip" but he does not recall either the actual content of that slip nor what he did with it; it did not find its way onto M.P.I.C.'s file and, therefore, was not made available to us. [The Appellant] further testified that he saw another doctor at the same clinic a month later, on January 29th, 1996, but we were given no medical report of any kind to support [the Appellant's] contention that he suffered severe back pain as a result of his journey in the police car.

[The Appellant] gave evidence to the effect that he had been involved in five separate automobile accidents (within the meaning of the Act) within the last three or four years, and has been taking anti-inflammatory drugs sporadically since about September of 1993. He was not employed at the time of the incidents to which he refers. He says that he has looked for work but has been unable to find any employment that he could have accepted, had it not been for the December 8th, 1995 incidents described above.

[The Appellant] asks us to order M.P.I.C. to pay for a course of treatments which he variously describes as massage therapy or physiotherapy. He also made passing reference to an entitlement to income replacement indemnity but, since that does not appear ever to have been dealt with by the Internal Review Officer of M.P.I.C., we have no jurisdiction to deal with it. It should, perhaps, be added that, in light of the decision that follows, an application for income replacement indemnity on [the Appellant's] part would necessarily be unsuccessful.

While there is some evidence on the file, as presented to us, that the two police officers who accompanied [the Appellant] from his home to police headquarters deny each of the incidents that he described and, while both those officers had been subpoenaed by counsel for the insurer, we determined that their testimony would not be required.

We have concluded that, taking all of the evidence into account and although the onus of establishing the validity of his claim is not a particularly heavy one, [the Appellant] has not been able to satisfy us that he suffered any compensable injury as a result of anything that took

place in his ride in the cruiser car on the morning of December 8th, 1995. His story lacks a ring of credibility: we have inspected the parking lot at the [text deleted], and are hard put to it to imagine how any vehicle could be put into a 360 degree spin within the confines of that parking lot, even if the entire lot were devoid of other vehicles; a three-week delay between the alleged occurrences and the date when [the Appellant] first claims to have sought medical attention, combined with any medical evidence to suggest that any injury of which he complains was caused by his journey in the cruiser car, are further indications that [the Appellant's] complaints are more imaginary than real.

In addition to our grave doubts, amounting to disbelief, about the incidents related to us, there is the further fact that medical or chiropractic treatment would have been covered by Manitoba Health Services Commission and massage therapy, unless administered by a physician, physiotherapist, chiropractor or athletic therapist, is not covered under the Act. That would leave only the narrow field of physiotherapy for which, if properly qualified, [the Appellant] would be entitled to reimbursement, but there is no persuasive evidence before us to indicate that [the Appellant] required physiotherapy for injuries sustained by the use of an automobile in the situation described above.

DISPOSITION:

In consequence, we are obliged to dismiss [the Appellant's] appeal and to confirm the decision of the Acting Review Officer bearing date November 26th, 1996.

Dated at Winnipeg this 10th day of February 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX