

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-14**

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

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Mr. Keith Addison
the Appellant, [text deleted], was represented by [Appellant's
representative]

HEARING DATE: April 16th, 1998

ISSUE(S): (a) Whether Appellant entitled to reimbursement for alleged
cost of hiring replacement workers;
(b) Whether Appellant entitled to reimbursement for travel,
physiotherapy or other medical expenses.

RELEVANT SECTIONS: Sections 81(1) and 136(1) of the MPIC Act and 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

These reasons are, merely, supplementary to the reason of MPIC's Internal Review Officer.

COST OF REPLACEMENT WORKERS:

While the statute and its regulations make no specific provision for the hiring of replacement workers, the insurer and this Commission have from time to time awarded a self-employed claimant income replacement out of which he or she would then be able to pay all or part of the wages of a full or part-time replacement worker. This facet of [the Appellant's] claim therefore falls, more accurately, under the head of a claim for income replacement indemnity and has properly been treated as such by MPIC's Internal Review Officer.

At the hearing of [the Appellant's] appeal on April 16th, 1998, we were referred to certain affidavit evidence of the Appellant's son, [text deleted], and of the Appellant's daughter, [text deleted]. Those Affidavits had been prepared by [the Appellant's] counsel from information provided by [the Appellant] himself. Those Affidavits, once typed, had then been amended by [the Appellant] in longhand, presumably to correct them. The purpose of the Affidavits was to establish the dates during which each of the Appellant's children had been employed by him in the residential care home which he operated at [text deleted], Manitoba, and the amount of money that each of them had been paid, or claimed to be owed, for the performance of those services. Along with those two Affidavits we were also provided with forms of Certificate, written by someone else but purportedly signed by [text deleted], (described by the Appellant as [Appellant's daughter's] boyfriend), purporting to set out the dates when [Appellant's daughter's boyfriend], also, had been employed by [the Appellant] and the amounts of money that [Appellant's daughter's boyfriend] had received for his services.

However, the oral testimony of the Appellant was seriously at odds with the two Affidavits and the two 'Certificates' referred to above, to such an extent that the Appellant himself advised us to disregard that written evidence in its entirety - a suggestion that we had no hesitation in adopting.

The remainder of [the Appellant's] evidence lacked any measure of real credibility, and we were therefore left with nothing but a series of contradictory statements from which the Appellant asks us to calculate some hypothetical amount that he allegedly paid to his son, his daughter and his daughter's boyfriend between the date of his accident on March 16th, 1995 up to the end of July of that year. He says that he was obliged to hire those three young people to care for the three mentally retarded patients who had been placed in his care by the Province of Manitoba under contract, since the injuries he sustained from his motor vehicle accident rendered him incapable of doing the work himself.

We can only add to the decision of the Internal Review Officer the comment that the Appellant's testimony was so unreliable and so contradictory that we are quite unable to make the calculation that his counsel invites us to make. The onus is upon the Appellant to establish the amount of his claim and the underlying reasons for it; he did neither.

CLAIM FOR PHYSIOTHERAPY AND ALLIED EXPENSES:

As to whether MPIC was justified in finding that [the Appellant] refused to cooperate by

attending at [Appellant's daughter's boyfriend] for a functional capacity assessment, the reasons advanced by [the Appellant] for that refusal appear to this Commission to be specious and to lack credibility. He told this Commission that his primary reason for refusing to attend was that he wanted to be assessed in [text deleted] rather than in [text deleted], since he believed that the personnel of [vocational rehab consulting company]. in [text deleted] were corrupt and lackeys of the insurer. While that allegation is not worthy of comment, we note only that [the Appellant] had never requested that the assessment be done at [text deleted] until the time of his appearance before this Commission. He agreed that, had he been sent to [text deleted] for the assessment, he would have had no excuse for his non-attendance. He also claimed that he could not afford to go to [text deleted] from [text deleted], although MPIC had undertaken to pay for his mileage, hotel and other expenses. He added that, in any event, he was not well enough to drive into [text deleted], although he could have travelled by bus. A plea of inability to pay from an Appellant who owns either four or six houses (depending upon which facet of his evidence one believes) and who claims to be paying between \$60,000.00 and \$70,000.00 US per annum for the costs of sending his two children to college in the United States of America, is laughable. He is paid \$8,172.00 per annum for each of the three handicapped persons in his care, and is only required to expend \$1,680.00 of that on food; the rest is gross profit. He is also given \$240.00 per month for each of those persons; that money is the property of the persons in his care, but he administers it for each of them, for the purchase of personal items such as toiletries and the like.

DISPOSITION:

For the foregoing reasons and for those contained in the decision of MPIC's Internal Review Officer, of which a copy is attached, [the Appellant's] appeal is dismissed.

We must add that we would not wish anything in these Reasons to be interpreted as a criticism of [the Appellant's] counsel who, in our view, conducted himself admirably and was patently embarrassed by his client's inability to give truthful answers to straightforward questions.

Dated at Winnipeg this 17th day of April 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED