

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-132**

PANEL: **Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Hon. Armand Dureault**

APPEARANCES: **The Appellant, [text deleted], was represented by her father, [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.**

HEARING DATE: **April 8, 2002**

ISSUE: **Calculation of Income Replacement Indemnity benefits.**

RELEVANT SECTIONS: **Sections 89(1), 89(2), 111(1) and 112(1) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Sections 2(b) and 10(3) of Manitoba Regulation 39/94.**

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 Appellant, [text deleted], was involved in a motor vehicle accident ('MVA') on July 28, 2001. [the Appellant] was a full-time student enrolled at the [text deleted]. At the time of the MVA, she was on the summer break from her studies and employed on a full-time basis with [text deleted] as a warehouse worker. As a result of the injuries she sustained in the MVA, the Appellant was unable to return to her position with [text deleted] and became entitled to receive Income Replacement Indemnity ('IRI') benefits in accordance with subsection 89(1) of the MPIC Act.

Subsection 89(1)(a) of the MPIC Act provides as follows:

Entitlement to I.R.I.

89(1) A student is entitled to an income replacement indemnity for any time after an accident that the following occurs as a result of the accident:

- (a) he or she is unable to hold an employment that he or she would have held during that period if the accident had not occurred;

MPIC's case manager advised the Appellant, by letter dated September 6, 2001, of her entitlement to IRI up to and including August 31, 2001. The Appellant disputed the calculation of her IRI benefits and sought an internal review of the case manager's decision.

In a decision dated November 26, 2001, the Internal Review Officer confirmed the case manager's decision of September 6, 2001, and denied the Appellant's Application for Review.

The Appellant has now appealed to this Commission. The issue which requires determination in the Appellant's appeal is the method of calculation of her Income Replacement Indemnity benefits.

The relevant sections of the MPIC Act and Regulations are as follows:

Subsection 89(2)(a):

Determination of I.R.I.

89(2) The corporation shall determine the indemnity to which the student is entitled on the following basis:

- (a) under clause (1)(a), if at the time of the accident

- (i) the student holds or could have held an employment as a salaried worker, the gross income the student earned or would have earned from the employment.

Section 111(1):

I.R.I. is 90% of net income

111(1) The income replacement indemnity of a victim under this Division is equal to 90% of his or her net income computed on a yearly basis.

Section 112(1):

Determination of net income

112(1) A victim's net income is his or her gross yearly employment income, to a maximum of the maximum yearly insurable earnings established under section 114, less an amount determined, in accordance with the regulations, for income tax under *The Income Tax Act* and the *Income Tax Act (Canada)*, premiums under the *Unemployment Insurance Act (Canada)* and contributions under the Canada Pension Plan.

Section 2(b) of Manitoba Regulation 39/94:

GYEI not derived from self-employment

2 Subject to this regulation, a victim's gross yearly employment income not derived from self-employment at the time of the accident is the sum of the following amounts:

...

(b) in the case of a temporary earner or part-time earner, the salary or wages that are received or receivable with respect to employment that the temporary earner or part-time earner held or would have held, if the accident had not occurred, and that are the greater of

- (i) the salary or wages received or receivable for the pay period in which the accident occurred, divided by the number of weeks in the pay period and then multiplied by 52, and
- (ii) the salary or wages receivable during the first 180 days following the date of the accident divided by 180 and then multiplied by 365.

Section 10(3) of Manitoba Regulation 39/94:

Income tax is tax on taxable income less credits

10(3) For the purpose of this regulation, the income tax payable by a victim is the tax payable upon the taxable income of the victim calculated in accordance with the *Income Tax Act* (Canada) and *The Income Tax Act* of Manitoba, and allowing only the following credits:

(a) the credit allowed under section 118.7 of the *Income Tax Act* (Canada), where “B” in the formula set out in that section is the total of

- (i) the premiums payable for unemployment insurance, as determined under subsection (5) of this section, and
- (ii) the contributions payable in respect of the Canada Pension Plan, as determined under subsection (6) of this section;

(b) the credits allowed in subsections 118(1) (personal credits) and (2) (age credit) of the *Income Tax Act* (Canada), without any reduction in the credits in respect of the income of a dependant referred to in section 113 of *The Manitoba Public Insurance Corporation Act*;

(c) any credit or deduction from tax allowed under *The Income Tax Act* of Manitoba, except under subsection 5(5) (deductions for property taxes) of that Act, without any reduction in the credit or deduction in respect of the income of a dependant referred to in section 113 of *The Manitoba Public Insurance Corporation Act*.

The Appellant has appealed the decision of the Internal Review Officer on two grounds:

1. she feels that her IRI should not be calculated on the basis of her income as “extrapolated for an entire year”; and
2. she feels that the tuition and student education tax credits should have been taken into account in arriving at her net income.

The Appellant submits that by annualizing her income, she is shifted into a higher marginal tax bracket, which she would not reach in the usual course as a student only working full-time during the summer months. As a result, she argues that the method of calculation of her IRI

benefits is unfair to those who are in the lowest marginal tax bracket and only employed on a temporary basis. Further, the Appellant submits that, not allowing the tuition and student education tax credits, as a deduction in arriving at net income, is discriminatory towards students. She feels that since several other credits are allowed as deductions, these two credits should also be specifically allowed in arriving at net income.

Counsel for MPIC submits that MPIC correctly followed the MPIC Act and the Regulations in calculating the Appellant's IRI benefits. MPIC does not have the discretion to amend the legislation nor the authority to create a coverage that does not exist under the plan. Accordingly, counsel for MPIC submits that since the Corporation correctly administered the payments of the IRI benefits in accordance with the MPIC Act, there is no reason for interfering with the Internal Review decision of November 26, 2001.

Section 111(1) of the MPIC Act provides that IRI is to be calculated on "net income computed on a yearly basis". The definition of "net income" is found in Section 112(1) of the MPIC Act. Section 112(1) prescribes that the "net income" to be used in the calculation is "gross yearly employment income ... less an amount determined, in accordance with the regulations, for income tax under *The Income Tax Act* and the *Income Tax Act* (Canada), premiums under the *Unemployment Insurance Act* (Canada) and contributions under the Canada Pension Plan." In order to determine gross yearly employment income, subsection 2(b) of Manitoba Regulation 39/94 must be applied. MPIC projected the Appellant's income on an annual basis, as it was required to do under the provisions of subsection 2(b) of that regulation. Next, it becomes necessary to make deductions for income tax, Canada Pension Plan, and Unemployment Insurance contributions, as required by Section 112(1) of the Act. The Appellant believes that

MPIC should then have allowed her to deduct the tuition and education tax credits. However, an examination of subsection 10(3) of Regulation 39/94 provides no allowance for education and tuition credits. The credits that are allowed for the limited purposes of the MPIC Act are clearly set out in Subsection 10(3).

We find that MPIC correctly applied the provisions of the MPIC Act and Regulations when calculating the Appellant's Income Replacement Indemnity benefits. As the Appellant correctly points out, this has the unfortunate result of penalizing a temporary worker who is in the lowest marginal tax bracket. Unfortunately, neither MPIC nor this Commission has any discretion to change the provisions of the MPIC Act, and we are required to apply the MPIC Act as we find it.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date November 26, 2001.

Dated at Winnipeg this 24th day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

HON. ARMAND DUREAULT