

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-18**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: March 18, 2002

ISSUE(S):

- 1. Entitlement to personal assistance benefits.**
- 2. Entitlement to Income Replacement Indemnity (IRI) benefits during the first 180 days.**
- 3. Entitlement to IRI commencing with the 181st day.**
- 4. Entitlement to compensation for being unable to start up a business.**
- 5. Entitlement to a Lump Sum Student Indemnity.**

RELEVANT SECTIONS: Sections 85(1), 86(1), 87, 88, 131, 170(1) & (2), 173(1) & (2) and 174 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 2 and Schedule A of Manitoba Regulation P.215-40/94.

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

On January 15, 2000, the Appellant, [text deleted], was involved in a motor vehicle accident wherein she sustained soft tissue injuries to her neck, back and shoulders. Various reports produced by the Appellant's care-givers document her subjective complaints of pain in these

areas, as well as complaints of headaches, dizzy spells and blurred vision. In respect of her injuries, the Appellant has been attending for various forms of treatment – primarily physiotherapy and acupuncture – since March 9, 2000.

At the time of the accident, the Appellant had entered a program sponsored by the [text deleted], designed to provide her with skills to open and operate her own business. This program was scheduled to run for one year (to August 23, 2000) but closed on June 2, 2000, when it ran out of money.

The Appellant made the following claims for compensation from her case manager:

1. Personal assistance benefits.
2. Income Replacement Indemnity (IRI) during the first 180 days.
3. IRI commencing with the 181st day.
4. Compensation for being unable to start up a business.
5. A Lump Sum Student Indemnity.

The case manager rejected the Appellant's claims for compensation and, as a result, the Appellant sought an internal review from said decision. In his decision dated January 29, 2001, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. It is from this decision that the Appellant now appeals.

Entitlement to Personal Assistance Benefits – Personal Home Assistance

In terms of personal home assistance, the Appellant advised her case manager that she was capable of managing her personal hygiene, meals, and light housekeeping, and that her daughter attended twice per week to help with the heavier housework, such as vacuuming and laundry.

The Internal Review Officer, in rejecting the Appellant's Application for Review of Personal Assistance benefits, stated:

The entitlement to Personal Assistance benefits typically involves the completion of the grids set out in Manitoba Regulation P215-40/94. This is generally followed by a decision letter from the case manager either indicating that the claimant does not qualify for the benefit, or setting out the dollar amount of the available benefit. The claimant is then reimbursed for expenses actually incurred, up to the monthly maximum dictated by the results of the grid assessment.

In this case, the case manager – based upon your various discussions with him on the point – probably determined in his own mind that you would not have achieved the minimum “score” (5 points out of a total of 51) necessary to trigger an entitlement to a Personal Assistance benefit.

While I agree with his conclusion, it would have been preferable if he had formally completed the grids and sent you a decision letter at the time the issue first arose in August, 2000.

I also note in passing that there is no evidence on the file that you have incurred any out-of-pocket expenses to have the housework you feel unable to do yourself done by somebody else.

The Commission determines that the case manager, in rejecting the Appellant's request for Personal Assistance benefits, failed to properly assess the Appellant's entitlement to these benefits in accordance with the provisions of Section 131 of the MPIC Act and Section 2 and Schedule A of Manitoba Regulation P.215 – 40/94, by not formally completing the grids set out in Schedule A.

Section 131 of the MPIC Act states:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. Per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Section 2 of the Regulation provides:

Reimbursement of personal home assistance under Schedule A

2 Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under *The Health Services Insurance Act* or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A.

Rather than formally completing the grids, the case manager, based on various discussions with the Appellant, determined that the Appellant did not achieve the minimum score necessary to trigger an entitlement for a reimbursement for personal home assistance. By taking a short-cut in assessing the Appellant's entitlement to personal care assistance, the case manager may have inadvertently overlooked an entitlement or improperly assessed the Appellant's entitlement.

When the Internal Review Officer acknowledged that the case manager had failed to comply with the provisions of the regulation, he should have referred this matter back to the case manager with the direction that the case manager comply with said regulation. The Commission, therefore, rescinds the decision of the Internal Review Officer dated January 29, 2001, wherein the Internal Review Officer rejected the Appellant's Application for Review in respect of reimbursement for personal home assistance. The Commission directs that this matter be referred back to the Manitoba Public Insurance Corporation for a formal determination in accordance with the provisions of Section 2 and Schedule A of Manitoba Regulation P.215-40/94.

Application of Sections 170(1) and (2) of the MPIC Act

The Commission finds that the case manager, when rejecting the Appellant's claim for reimbursement in respect of personal home assistance, failed to provide to the Appellant:

- a) written reasons for that decision in accordance with Section 170(1) of the MPIC Act and

- b) the right to have the case manager's decision reviewed pursuant to Section 170(2) of the MPIC Act.

Section 170(1) of the MPIC Act states:

Corporation to give written reasons to claimant

170(1) A decision made by the corporation in respect of a claim for compensation shall be given to the claimant in writing, and shall include reasons for the decision.

Section 170(2) of the MPIC Act states:

Claimant to be given notice of right to review

170(2) Where the corporation makes a decision respecting compensation under this Part, it shall, at the time it gives written notice of the decision to the claimant, give notice of the right of the claimant to apply for a review of the decision.

The case manager, when rendering a decision in respect of a claimant's entitlement to benefits, is required to advise the claimant in writing whether or not the claimant does or does not qualify for benefits. If the claimant does qualify for benefits, then the case manager should provide reasons and specify the dollar amount of the approved available benefit. The case manager should, as well, advise the claimant that pursuant to Section 170(2) of the MPIC Act, the claimant may, within 60 days after receiving notice of the case manager's decision, apply in writing to MPIC for a review of the decision. Where the case manager rejects the claim, written reasons should be provided, together with the appropriate notice pursuant to Section 170(2) of the MPIC Act. As this Commission has previously commented in [text deleted] (Commission file number AC-00-132), the failure to comply with the above-mentioned provision of the MPIC Act can seriously prejudice an Appellant's right to challenge the decisions of the case manager and to seek an internal review and appeal of this decision. Unless written reasons are provided by the case manager, a claimant cannot appeal a review decision made by an Internal Review Officer of MPIC.

Application to appeal from review

174 A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

In the present case, the case manager did provide the Appellant with written reasons rejecting her claims, with the exception of the Appellant's claim for personal home assistance. As a result, the Appellant was able to file applications for review which triggered a review by an Internal Review Officer pursuant to Section 173 of the MPIC Act which provides:

Powers of the corporation on review

173(1) On a review of a decision, the corporation may set aside, confirm or vary the decision.

Corporation to give written reasons

173(2) The corporation shall provide the claimant with written reasons for the review decision.

The Internal Review Officer fortunately dealt not only with the Appellant's Application for Review of the case manager's written decisions to reject her various claims, but also with the verbal decision of the case manager which rejected the Appellant's claim for reimbursement in respect of personal home assistance. As a result, the Appellant was not prejudiced in this case by the failure of the case manager to comply with Sections 170(1) and (2) of the MPIC Act.

DECISION

The Commission therefore reiterates that it is critical for a case manager to comply with Sections 170(1) and (2) of the MPIC Act and rescinds the decision of the Internal Review Officer dated January 29, 2001, in respect of the Appellant's claim for personal home assistance and refers this claim back to MPIC.

In respect of the appeals relating to the following issues:

1. Entitlement to Income Replacement Indemnity (IRI) during the first 180 days;
2. Entitlement to IRI commencing with the 181st day;
3. Entitlement to compensation for being unable to start up a business; and
4. Entitlement to a Lump Sum student Indemnity;

the Commission has carefully considered all of the documentary evidence presented by the parties, the oral testimony of the Appellant, [text deleted], and what was submitted in argument by [the Appellant] and counsel for MPIC, and confirms the decision of the Internal Review Officer dated January 29, 2001, and dismisses the appeal of [the Appellant] in respect of the above-noted matters.

Dated this 9th day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN