

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-57**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Antoine Frechette

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

HEARING DATE: March 28, 2003

ISSUE(S): Appropriate classification of employment, and level of payment within the classification, at the two-year determination date

RELEVANT SECTIONS: Sections 107, 110(1)(d), 115 and 116 of The Manitoba Public Insurance Corporation Act ("MPIC Act") and Schedule C 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 Commission initially heard an appeal respecting [the Appellant] on September 24, 2001 and January 10, 2002. The Commission, in its Decision dated April 24, 2002, in respect of that appeal, determined that at the time of the two-year determination, the Appellant was self-employed as a salesperson in the import/export business and that MPIC had improperly classified the Appellant as a self-employed commodities broker under Schedule C of Manitoba Regulation 39/94 effective March 2, 2000. The Commission further determined that the work the Appellant was doing on March 2, 2000 was consistent with the class of employment as set

out in Schedule C, Manitoba Regulation 39/94 under Section 9 – Sales Occupation, Commodities – Salespersons. In conclusion, the Commission:

- (a) referred the issue of the two-year determination, effective March 2, 2000, back to MPIC and directed that MPIC properly classify the Appellant's occupation pursuant to Schedule C of Regulation 39/94, under the class of employment in Section 9 – Sales Occupations, and determine his gross earnings per year;
- (b) directed that MPIC, as of March 2, 2001, calculate the IRI payable to the Appellant, in accordance with the new classification;
- (c) directed that MPIC pay to the Appellant the difference between the IRI determined pursuant to Section 115 of the Act, utilizing the net income the Appellant earns or could earn from the employment (as classified pursuant to subsection (a) above), and the amount of IRI the Appellant has already received since March 2, 2001, together with interest thereon, pursuant to Section 163 of the Act;
- (d) retained jurisdiction in this matter if the parties were unable to agree to the appropriate employment classification, level of annual payment, or the amount of compensation, either party could refer this dispute back to the Commission for final determination; and
- (e) determined that the decision of MPIC's Internal Review Officer bearing date April 18, 2001, be rescinded and the foregoing substituted for it.

MPIC, pursuant to the Decision of the Commission, reviewed the two-year determination with respect to the classification of occupation and recalculation of the Appellant's Income Replacement Indemnity ("IRI") benefits. MPIC's case manager met with the Appellant with respect to this matter on May 13, 2002 and gathered further information to assist in the proper

occupational classification. MPIC subsequently retained the services of a rehabilitation consultant to provide her professional opinion as to the Appellant's proper classification of occupation and provided her advice to the case manager.

On June 28, 2002 the case manager wrote to the Appellant and stated:

Given all information available, including what you have provided and that you are not selling a technical product, but rather a service, she advised that the best matching job title and description would be that of a Sales Representative-Wholesale Trade NOC Code #6411. She further indicated that she reviewed this description with you and that you agreed with the match.

Manitoba Public Insurance is guided in large measure by the expertise of such Rehabilitation Consultants. It is our decision that the proper occupational classification is that of a Sales Representative-Wholesale Trade NOC #6411. This classification is in accordance with Schedule C of Regulation 39/94, under the class of employment in Section 9 – Sales Occupations as Business Services Sales Occupations.

Your level of experience in this occupation at the time of your 2-year determination March 2, 2000 falls under level 1, which is less than 36 months. Level 1 is \$37,683.10 gross (indexed by 1.025 for the year 2001).

Pursuant to Section 115 of the Manitoba Public Insurance Act, which is effective March 2, 2001, your IRI is reduced by either your actual net earnings or the income level of \$37,683.10 gross, which ever is higher.

You have reported that you have not received any income from any occupation. Accordingly, we have recalculated your entitlement to IRI back to March 2, 2001. The difference, including interest between your IRI reduced on the basis of \$37,683.10 and the amount you have been receiving reduced on the basis of the previous amount of \$41,882.53 is \$3,562.33. Your ongoing bi-weekly IRI entitlement is \$290.85.

In an Application for Review dated July 12, 2002, the Appellant sought a review of the case manager's decision by an Internal Review Officer. In a decision dated July 26, 2002 the Internal Review Officer confirmed the decision of the case manager and rejected the Appellant's Application for Review.

The Internal Review Officer noted that in the Application for Review the Appellant had requested:

- (a) that the Internal Review Officer review MPIC's decision dated June 28, 2002 which terminated the Appellant's IRI payments on March 2, 2001; and
- (b) reinstate the IRI payments until March 2, 2003.

The Internal Review Officer indicated that the Appellant has misstated the effect of the case manager's decision since the decision had not terminated the Appellant's IRI benefits on March 2, 2001 but rather reduced that entitlement and determined that the ongoing bi-weekly IRI benefits to the Appellant amounted to \$290.85. The Internal Review Officer concluded that the case manager's decision of June 28, 2002 was consistent with the legislation and with the instructions in the Commission's Decision and therefore confirmed the case manager's decision.

Appeal

The Appellant filed a Notice of Appeal dated July 31, 2002 and the appeal hearing took place on March 28, 2003. At this hearing the Commission heard submissions from both parties. At the conclusion of this hearing the Commission adjourned the proceedings and subsequently, by letter dated April 17, 2003, requested legal counsel for MPIC to provide additional information with regard to the employment classification set out in Schedule C of Manitoba Regulation 39/94. On June 9, 2003 the Commission received an Inter-Departmental Memorandum prepared by MPIC's Senior Case Manager which provided the information sought by the Commission with respect to the employment classification issue. A copy of that correspondence was provided to the Appellant for his response and no response was received from the Appellant.

The Commission, upon reviewing all of the documentary information that was provided to it and after considering the comments of both the Appellant and MPIC's legal counsel, is satisfied that MPIC correctly:

- (a) classified the Appellant's occupation pursuant to the two-year determination; and
- (b) determined the level of payment within the classification and the calculation of IRI benefits pursuant to Sections 107, 110(1)(d), 115 and 116 of the Act and Section 9, Schedule C, Manitoba Regulation 39/94.

The Commission therefore dismisses this appeal and confirms the decision of MPIC's Internal Review Officer dated July 26, 2002.

Dated at Winnipeg this 16th day of July, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

ANTOINE FRECHETTE