

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-02-61

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Ms. Barbara Miller

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

HEARING DATE: December 6, 2002

ISSUE(S): Entitlement to reimbursement under PIPP for the labour component of certain home maintenance work which, but for the accident on April 24th, 2001, the Appellant would have done himself.

RELEVANT SECTIONS: Section 136(1) of the Manitoba Public Insurance Corporation ("MPIC") Act, and Section 10(1)(b)(i) of Manitoba 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 Appellant was struck by a vehicle while attempting to cross [text deleted] in a marked pedestrian corridor. The Appellant's most significant injuries included a fractured right hip and femur (which had to be pinned, plated and screwed) and an undisplaced fracture to his right clavicle. At the time of the accident, the Appellant was [text deleted] years of age and retired from [text deleted].

In the fall of 2000, the Appellant arranged for a contractor to install 38 new exterior windows in his two-story home. The Appellant decided to wait until the Spring of 2001, when he intended to paint the windows himself. Unfortunately, the accident intervened in the Spring of 2001 and as a result of the nature of his injuries, he was unable to carry out the painting of the window frames. As well, the Appellant had commenced prior to the accident to repair the bathroom ceiling, but had not completed these repairs. Having regard to the injuries he sustained, he was unable to personally complete the window painting, the home repairs, as well as several annual maintenance type projects and retained a contractor to do this work.

The cost of having a contractor complete the above-mentioned work totaled \$5,622.85 computed as follows:

Completion of repairs to the bathroom ceiling	\$300.00
Painting the interior frames of the 38 windows	2,030.00
Painting the exterior frames of the 38 windows	1,800.00
Removal of hardware from old storm windows & screw hole filling	65.00
Cleaning and refinishing exterior deck	420.00
Scraping and repainting peeling soffits	550.00
Repainting portions of front entrance area	90.00
	\$5,255.00
7% tax	367.85
Total:	<u>\$5,622.85</u>

MPIC accepts that the work was required to be done and the injuries the Appellant sustained in the motor vehicle accident prevented him from doing the work personally. However, MPIC has rejected reimbursement of the contractors' costs to the Appellant in whole or part.

On October 23, 2001, the MPIC case manager wrote to [the Appellant] advising him that the reimbursement of expenses incurred as a result of the injuries sustained from the motor vehicle

accident is governed by Section 136(1) of the MPIC Act. The case manager determined that there was no coverage under the Act for reimbursement of contractors' costs and as a result, the case manager rejected the Appellant's claim for reimbursement of these costs.

The Appellant made an application to the Internal Review Office to review the case manager's decision. An Internal Review Hearing took place on March 28, 2002, and on April 8, 2002, the Internal Review Officer wrote to the Appellant confirming the decision of the case manager and dismissing the Appellant's application for review.

The Appellant filed an Appeal to this Commission with respect to the case manager's decision.

Appeal

The relevant provisions of the Act and Regulations governing this appeal were:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

Regulation 40/94 Section 10(1)(b)(i):

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the

rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- (b) funds for an extraordinary cost required
 - (i) where the victim owns his or her principal residence, to alter the residence or, where alteration is not practical or feasible, to relocate the victim,

At the Appeal Hearing MPIC's legal counsel submitted that:

- (a) the projects relating to repairs to the bathroom ceiling, painting of window frames and the various annual maintenance projects for which the Appellant claimed reimbursement were not projects which were "necessary or advisable for the rehabilitation of the Appellant" pursuant to Regulation 40/94 Section 10(1)(b)(i);
- (b) there is no provision under the Act or Regulations which would obligate MPIC to reimburse the Appellant for the cost of these projects.

MPIC's legal counsel referred the Commission to its decision in *[text deleted]* dated May 9, 1995. In that case, the Appellant, with minimal assistance, was constructing an addition to her home in *[text deleted]*, Manitoba. She had, in fact, laid in almost all of the lumber and other building supplies to enable her to build a sun-porch as an extension to her home. On June 7, 1994, she was on her way to a building supply yard to pick up some metal brackets or joist hangers, when another vehicle collided with her vehicle. As a result of the accident, the Appellant suffered significant injuries which prevented her from constructing the addition to her home and she felt obliged to have the work done by a contractor at a cost of \$2,300.00. The Appellant's claim for reimbursement was rejected by MPIC on the grounds that there was no provision in the Act or Regulations which obligated MPIC to reimburse her for the construction expenses she incurred.

The Commission referring to Manitoba Regulation 40/94 Section 10(1)(b)(i) stated:

"We are of the view that the project for which the expense of \$2,300.00 was incurred was not 'necessary or advisable for the rehabilitation of the victim', save only that it was necessary to provide safe ingress to and egress from the building by replacing the steps. (The repair of the leaking roof was not something that [the Appellant] had planned to do personally.) To that end, MPIC has offered to pay [the Appellant] \$500.00. In the absence of evidence to the contrary, that sum seems reasonable, having in mind that the entire closed-in sun-porch, including the back steps, was built for \$2,300.00.

Being unable to find, in the Act or the Regulations, any other provision whereby [the Appellant's] construction expense might be covered, we must dismiss this appeal ..."

The Commission, having regard to Section 136(1) of the Act and Section 10(1)(b)(i) of Manitoba Regulation 40/94, and having regard to the previous decision of the Commission in *[text deleted]*, finds that the Internal Review Officer was correct in determining that having regard to Section 136(1) of the Act and Section 10(1)(b)(i) of Manitoba Regulation 40/94, MPIC was not obligated to reimburse the Appellant in the amount of \$5,622.85 in whole or part.

However, legal counsel for [the Appellant] submitted that pursuant to Section 135 of the Act, the Commission can order MPIC to reimburse the Appellant in the total amount he has claimed from MPIC.

Section 135 of the Act states:

Reimbursement of expenses re family enterprise

135 Where a victim is at the time of the accident working without remuneration in a family enterprise and the victim is unable because of the accident to perform his or her regular duties in the family enterprise, the victim is entitled to the reimbursement of expenses of not more than \$500.00 per week incurred during the first 180 days after the accident to have the duties performed during the 180 days.

The Appellant's legal counsel advanced the argument that since the Appellant would be doing all of the work on the family home as set out in his claim without remuneration, this constituted a family enterprise within the meaning of Section 135 of the Act. Therefore, the Appellant was entitled to be reimbursed by MPIC for the contractors' costs.

In respect of the meaning of the term 'family enterprise', legal counsel for the Appellant referred the Commission to the decision of the Alberta Court of Queens' Bench in *Kelly v. Russ* [1994] A.J. No. 78, a decision of Mr. Justice J. McDonald, and of *Varty v. McCann* [1995] B.C.J. No. 692, a decision of Mr. Justice J. Sigurdson of the British Columbia Supreme Court. In both of these cases, the court dealt with a dispute in respect of the division of property between partners in a common-law relationship. In each case, the partners had separated and were disputing a division of their respective financial interests in the home that they were residing in. In each of these cases, the Court relied in arriving at its decision on *Peter v. Beblow* [1993] 1 S.C.R. 980, a decision of the Supreme Court of Canada.

The Supreme Court of Canada in *Peter v Beblow* (supra) determined that a "value survived" approach was to be used in determining what portion of the value of the property that was attributable in respect to the female claimant's services to the property. In following this approach, the Court determined that it would not focus solely upon contributions made in respect to the costs of construction, maintenance and improvement to the property, but would also include in its consideration the family enterprise as a whole, including the female claimant's activities which were not directly related to the home, ie., activities such as cooking, cleaning and caring for children, all of which activities helped preserve the property itself and in addition, saved the male partner money which he could use for the purpose of acquiring other assets or to generate additional income. The Supreme Court determined that such services by the female claimant should be treated as a contribution to the family enterprise which would permit the female claimant, in a dispute relating to the division of property, to receive a portion of the value of the home that she was residing in with her former partner.

Legal counsel for the Appellant having regard to the legal principles of *Peter v. Beblow*, (supra) in *Varty v. McCann* (supra) and *Kelly v. Russ* (supra), argued that since the Appellant, without remuneration, was intending to do all of the work to the family home in respect of repairing the bathroom ceiling, painting the interior and exterior frames of the 38 windows and doing the other annual maintenance projects, was as a result thereof, adding value to the family home. The Appellant's legal counsel further submitted that the Appellant's activities in respect of the family home formed part of the 'family enterprise' within the meaning of Section 135 of the Act and as a result, the Appellant was entitled to be reimbursed by MPIC in respect to the contracting costs that he was claiming.

In reply, legal counsel for MPIC referred to the decision of the Commission in *[text deleted]* (supra) where the Commission stated:

"It is axiomatic that, where a right sought to be enforced is based upon a statute, that right, and its corresponding remedy, must be found within the four corners of the statute. Part 2 of the Manitoba Public Insurance Corporation Act is, in effect, an insurance policy covering almost all persons injured in motor vehicle accidents in Manitoba. Like all insurance policies, it does not purport to insure against every possible kind of loss, but only against those losses described in the statute itself or in the regulations. Since we are not dealing, in this case, with Income Replacement Indemnity, the statutory provisions that are relevant to [the Appellant's] claim are these:

Section 135

Reimbursement of expenses re family enterprise

135 Where a victim is at the time of the accident working without remuneration in a family enterprise and the victim is unable because of the accident to perform his or her regular duties in the family enterprise, the victim is entitled to the reimbursement of expenses of not more than \$500.00 per week incurred during the first 180 days after the accident to have the duties performed during the 180 days.

[The Appellant] advanced the interesting argument that, since she and her daughters would have been doing all of the work in building the sun-porch and steps, this was a 'family enterprise' and that she was therefore entitled to compensation of \$500.00 per week up to an aggregate of \$2,300.00. She also expressed the view, however, that Section 135 is unlawful and unconstitutional, in that it purports to allow people to be employed without pay - a clear violation, she felt, of human rights and employment

standards legislation.

We content ourselves by expressing the opinion that 'family enterprise', in the context of this statute, necessarily implies that the enterprise has some commercial, financial or agricultural objective, none of which is present here."

The Commission accepts the interpretation rendered by the Commission in *[text deleted]* in respect of the meaning of the term 'family enterprise' in Section 135 of the Act. The Commission concludes that the meaning of family enterprise as determined by the Supreme Court in *Peter v. Beblow* (supra) and as applied in *Varty v. McCann* (supra) and *Kelly v. Russ* (supra), has no application to the meaning of 'family enterprise' as set out in Section 135 of the Act.

In the legal authorities relied on by the Appellant's legal counsel, the term 'family enterprise' refers to the contributions made by the female partner in a common-law relationship in respect of such important household activities as housekeeping, cleaning, shopping, participation in the selection of furniture and furnishings, as well as the care of children, all of which activities permit the other partner to earn income, to save money which could be used for other purposes and which may generate additional income. Where there has been a dispute as to the division of property in these circumstances, the courts have treated these activities by the female partner as her contribution, which has added value to the family home and which permits that partner to receive a financial benefit.

The issue, however, that requires determination by the Commission in this case is wholly different from the issues that the courts were required to deal with in the cases referred to by the Appellant's legal counsel.

We agree with the Commission's decision in *[text deleted]* in respect of its interpretation of the term 'family enterprise' as set out in Section 135 of the Act to mean:

"We content ourselves by expressing the opinion that 'family enterprise', in the context of this statute, necessarily implies that the enterprise has some commercial, financial or agricultural objective, none of which is present here."

Where, for example, a child or wife of a farmer is working on the family farm without direct remuneration and as a result of a motor vehicle accident is unable to contribute or to continue their regular duties in this family enterprise, that person would be entitled to reimbursement pursuant to Section 135 of the Act.

[The Appellant], on the other hand, is not involved in a dispute relating to the division of property similar to disputes set out in the family law cases referred to earlier in this award, and, therefore, legal principles as set out in the cases referred to by the Appellant's legal counsel have no application to this case.

[The Appellant] is not involved in a commercial or financial enterprise with other members of his family within the meaning of Section 135 of the Act in respect to the work that he performed on his home. It should further be noted that the activities for which [the Appellant] requests reimbursement of the contractors' costs are not regular duties that he is required to perform in a family enterprise within the meaning of Section 135 of the Act.

It is clear that [the Appellant] is physically able to perform the work in question, but because of the intervention of the accident, was unable to do so and was forced to hire a contractor at considerable personal expense. The Appellant was an innocent victim in a motor vehicle accident who, but for the accident, would have carried out the painting of the windows, the repair of the

ceiling and other maintenance projects, without being required to incur contractors' costs in the significant amount of \$5,622.85.

The Commission is sympathetic to the Appellant's position in this appeal. However, the Commission, has concluded that there is no provision in the Act or Regulations which require MPIC to reimburse the Appellant for the contracting expenses he has incurred. The Commission, therefore, dismisses this appeal and confirms the decision of MPIC's Internal Review Officer dated April 8, 2002.

Dated at Winnipeg this 6th day of January, 2003.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

BARBARA MILLER