

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-99**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Jeff Palamar

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

HEARING DATE: May 5, 2003

ISSUE(S): Entitlement to Vocational Retraining.

RELEVANT SECTIONS: Section 138 of The Manitoba Public Insurance Corporation
Act (the "MPIC Act") and Subsection 10(1)(e) 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, [text deleted], was involved in a motor vehicle accident on October 1, 1996, wherein she sustained a head injury, including dental damage, loss of teeth and facial scarring. As a result of those injuries, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

At the time of the motor vehicle accident, the Appellant was employed as an early childhood educator with the [text deleted] at the [text deleted] in Manitoba. As a result of the injuries which she sustained in the motor vehicle accident, the Appellant was unable to resume her

employment until January 5, 1997. She received income replacement indemnity benefits for the time she was unable to hold employment in accordance with the MPIC Act. Prior to her return to work, her position was terminated.

In a decision letter dated June 12, 1997, MPIC's case manager advised the Appellant as follows:

Regarding the "employment capability assessment", I presume that you are referring to Section 107 of the MPIC Act which provides the Corporation with the right to determine the residual earning capacity of a claimant, when that individual is unable to return to their former occupation. In accordance with the statute, this section only applies at the two year stage following the accident if an individual is physically incapable of returning to their former employment. Given that [Appellant's doctor] has cleared you to return to work with no restrictions, this section would not be relevant to your situation.

At the appeal hearing, the Appellant advised that she has not secured a full-time position as an early childhood educator since the motor vehicle accident. She explained that as a result of the accident, she suffered emotional and psychological difficulties and developed depression. The Appellant further explained that she has not been able to secure employment which she feels is as satisfying or rewarding as the position which she held at the time of the accident. As a result of her frustration with her employment situation, she submitted further information to MPIC with a request for assistance with vocational retraining.

In a letter dated May 15, 2002, MPIC's case manager wrote to the Appellant to advise her that the new documentation submitted by her would not alter the previous decision, dated June 12, 1997, with respect to an entitlement to vocational retraining. The Appellant sought an internal review of that decision. The Internal Review decision dated July 31, 2002, determined that the lingering effects from the motor vehicle accident of October 1, 1996 did not prevent the Appellant from returning to her pre-accident occupation. As such, there was no entitlement to vocational retraining.

At the hearing of this matter, counsel for MPIC submitted that there was no evidence to establish that the Appellant had sustained a work related disability as a result of the motor vehicle accident which would necessitate retraining. In addition, he argued that there was no medical evidence to establish that the Appellant could not hold the employment which she held at the time of the accident because of her depression.

Counsel for MPIC maintains that the Appellant's testimony establishes that she is capable of working, even though she has not found suitable employment to date. He contends that the Appellant's depression is not preventing her from performing the job she held at the time of the motor vehicle accident and, therefore, there is no requirement for vocational retraining of any kind. As a result, counsel for MPIC submits that the appeal should be dismissed and the Internal Review decision dated July 31, 2002 should be confirmed.

Disposition:

An Appellant may be entitled to vocational retraining if, as a result of a motor vehicle accident, she is unable to return to the employment which she held at the time of the motor vehicle accident. The applicable provisions of the MPIC Act and Regulations are as follows:

Section 138 of the MPIC Act:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Section 10(1)(e) of Manitoba Regulation 40/94:

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:

- (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

Pursuant to Section 138 of the MPIC Act, MPIC has the discretion to take such measures as it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

In carrying out its duties pursuant to Section 138, MPIC is subject to Subsection 10(1)(e) of Manitoba Regulation 40/94. Accordingly, MPIC may exercise its discretion where it considers it necessary or advisable for the rehabilitation of a victim, to provide the victim with funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

The Appellant was cleared to return to work by her physician on January 5, 1997 with no restrictions. The new information supplied by the Appellant does not establish that she is not capable of performing her previous occupation as an early childhood educator due to the motor

vehicle accident. Rather, the new information suggests that her current line of work is not satisfying or challenging and therefore she should be retrained. As a result, we find that the Appellant is able, both physically and mentally, to hold the employment which she held at the time of the motor vehicle accident. Therefore, there is no entitlement to vocational retraining as a result of the motor vehicle accident. As such, we find that the Internal Review decision dated July 31, 2002 should be confirmed and the Appellant's appeal dismissed.

Dated at Winnipeg this 23 day of May, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

JEFF PALAMAR