



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-63

PANEL: Mr. Mel Myers, Q.C., Chairman
Dr. Patrick Doyle
Mr. Wilson Maclellan

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

HEARING DATE: November 2, 2004

ISSUE(S): Entitlement to Income Replacement Indemnity benefits

RELEVANT SECTIONS: Sections 110(1), 111(1), 112(1) and 114 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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 involved in two separate motor vehicle accidents on December 21, 1998 and August 8, 2001. The Appellant is self-employed [text deleted]. As a result of the motor vehicle accidents he asserts that he sustained injuries which prevented him from continuing his work and that he was required to hire individuals to do the work that he otherwise would have done himself.

In a letter to the Appellant, dated August 24, 2001, the case manager, in respect of the Appellant's accident dated December 21, 1998, rejected the Appellant's claim for Income

Replacement Indemnity ('IRI') benefits on the grounds that the Appellant's gross income exceeded the amount provided by Section 114 of the MPIC Act and, therefore, he was not entitled to IRI.

In respect of the second motor vehicle accident of August 8, 2001, the case manager wrote to the Appellant in a letter dated December 10, 2001 and rejected the Appellant's request for IRI on the grounds that the Appellant's gross income exceeded the amount provided for in Section 114 of the MPIC Act and, therefore, he was not entitled to receive IRI. The Appellant made Application for Review of the case manager's two decisions to the Internal Review Office.

In a decision dated April 22, 2002 the Internal Review Officer rejected the Appellant's Application for Review and confirmed the decisions of the case managers, dated August 24, 2001 and December 10, 2001 respectively.

Appeal

The Appellant appealed the decision of the Internal Review Officer dated April 22, 2002 to the Automobile Injury Compensation Appeal Commission.

The Appeal hearing took place on November 2, 2004. The Appellant appeared on his own behalf at the appeal hearing and Mr. Tom Strutt appeared as legal counsel on behalf of MPIC.

At the commencement of the appeal hearing the Appellant requested an adjournment on the grounds that he had no opportunity of reviewing a letter provided by MPIC's legal counsel to the Appellant, dated October 24, 2004, a copy of which letter was also provided to the Commission.

The Appellant asserted that MPIC had modified the reasons for denying the Appellant IRI and he needed an opportunity to review this matter.

MPIC's legal counsel, in reply, indicated that the letter of October 24, 2004 did not change the position of MPIC but was provided to both the Appellant and to the Appeal Commission in order to clarify the decision of the Internal Review Officer, dated April 22, 2002.

The Commission, after considering the submissions of the Appellant and MPIC, determined that the letter of October 24, 2004 did not change the grounds upon which MPIC had rejected the Appellant's application for IRI and dismissed the Appellant's request for an adjournment.

The relevant provisions of the MPIC Act in respect of the appeal are:

Section 111(1) provides that:

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.

"Net Income" is defined in Section 112(1), which provides that:

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 114(1) which provides:

Maximum yearly insurable earnings for 1994

114(1) The amount of the maximum yearly insurable earnings for 1994 is \$55,000.

Section 110(1)(e) which provides:

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

....

(e) the victim holds an employment from which the gross income is equal to or greater than the gross income on which victim's income replacement indemnity is determined;

The Appellant, in his submission to the Commission, did not deal directly with the decision of the Internal Review Officer but dealt primarily with the manner in which the case managers had processed his claims. The Appellant was advised by the Commission that the Commission did not have the jurisdiction to deal with his complaints in respect of the case managers but only with a denial of IRI to him on the grounds that MPIC had misinterpreted the above mentioned provisions of the MPIC Act. In response, the Appellant made no submission to the Commission asserting that MPIC had misinterpreted or misapplied the provisions of Section 111, 112, 114 and 110 of the MPIC Act.

Mr. Strutt, in both a written submission to the Commission and a subsequent oral submission to the Commission, asserted that:

1. pursuant to Section 111(1) of the MPIC Act the IRI of a victim was equal to 90% of his net income computed on a yearly basis.
2. the Appellant's net income, pursuant to Section 112(1) of the MPIC Act was the Appellant's gross yearly employment income, to a maximum of the maximum yearly insurable earnings established under Section 114 of the MPIC Act, less certain deductibles under the *Income Tax Act* and the *Unemployment Insurance Act*.
3. pursuant to Section 114 of the MPIC Act the maximum yearly insurable earnings for 1994 was \$55,000 with a provision for indexing.
4. a calculation of the Appellant's income indicated that the Appellant's maximum yearly insurable earnings for 2001 was \$62,000.

5. as well, in 1999, the first year in which the Appellant had an IRI entitlement due to the first motor vehicle accident, in 1998 the maximum was \$60,000.

Mr. Strutt further pointed out that a person's entitlement to IRI ceased when, pursuant to Section 110(1)(e) of the MPIC Act, that person held an employment from which the gross income was equal or greater than the gross income to which that person's IRI benefit is determined. Mr. Strutt also submitted that since the Appellant's gross income exceeded the amount provided by Section 114 of the MPIC Act, the Appellant was prevented from receiving IRI by the operation of Section 110(1)(e) of the MPIC Act. Mr. Strutt stated that the Appellant's termination of income occurred in 1999 when the Appellant's income exceeded the maximum in subsequent years as well as the income earned by the Appellant following the 2001 motor vehicle accident.

In reply, the Appellant did not challenge the submissions by MPIC's legal counsel.

Decision

The Appellant has failed to establish that MPIC correctly interpreted Sections 110(1), 112(1), 114(1) and 110(1)(e) in determining that the Appellant was not entitled to IRI. The Commission, therefore, dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated April 22, 2002.

Dated at Winnipeg this 25th day of November, 2004.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

WILSON MACLENNAN