



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-207

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms Diane Beresford
Mr. Neil Cohen

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

HEARING DATE: October 31, 2005

ISSUE(S): Entitlement to reimbursement for travel expenses incurred
while traveling to and from job placements.

RELEVANT SECTIONS: Sections 136(1)(d) and 138 of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and Sections 10(1)(e) and 19
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 injured in a motor vehicle accident on October 29, 2002 in which he was ejected from the rear-seat of the vehicle in which he was a passenger. His injuries included a closed head injury, C6, 7 and T1 fractures, abdominal injury, facial lacerations, a left thumb fracture and an injury to his left shoulder. As a result of the injuries, the Appellant became entitled to Compensation for benefits pursuant to Part 2 of the MPIC Act.

The Appellant was assessed by the Department of Rehabilitation Psychology/Neuropsychology at the [hospital], December 11-13, 2002 which reported, December 17, 2002:

Test results suggested that [the Appellant's] visuospatial/perceptual abilities, visual attention, basic verbal reasoning, problem solving, mental flexibility, and organizational abilities were generally within normal limits. However, he displayed impaired auditory attention, impaired memory functioning, slow processing speed, and decreased verbal fluency. He also displayed little insight or concern regarding his deficits. These overall cognitive deficits are likely a decline from previous functioning.. . .

The Report concluded :

[the Appellant] would benefit from supervision and assistance following discharge from hospital. A more thorough psychological evaluation of his cognitive functioning is recommended following a longer period of recovery.

The report noted that the Appellant was agreeable with the recommendations.

On January 14, 2003, the Appellant attended [Appellant's physiotherapist], [text deleted] for an assessment, the purpose of which was:

1. To determine [the Appellant's] current physical status relating to the upper quadrant.
2. To make appropriate recommendations regarding a home/community based exercise program.

On January 22, 2003, the physiotherapist reported:

The Appellant's primary physical deficits are as follows:

- Decreased global range of motion of the left shoulder and left thumb
- Global deficits (sic) in strength and endurance of the left shoulder
- Less than optimal trunk and scapular stability
- Reduced functional left grip due to deficits in thumb range
- Left shoulder dysfunction with signs and symptoms of the following:
 1. mild impingement
 2. mild supraspinatus tendonitis

RECOMMENDATIONS/PLAN

It is recommended that the Appellant attend at the clinic twice weekly for physiotherapy for the next 6-8 weeks. Treatment will be focused on addressing his left shoulder dysfunction. An assessment of the neck will be performed upon the removal of his neck brace with further recommendations to be made at that time. A gym program will be established and conducted at the [gym] when appropriate.

The physical and cognitive deficits faced by the Appellant upon his discharge from hospital were recognized to be considerable, though there was some confidence that he would be able to resume his regular employment as an electrician again.

Following his discharge from hospital, the Appellant entered upon a process of rehabilitation with the aim of returning to his previous occupation as an electrician. On March 21, 2003, [Appellant's vocational rehabilitation consultant] [text deleted], with the [rehabilitation consulting firm #1], commented:

[The Appellant's] occupation is that of journeyman electrician, primarily doing heavy commercial work. Significant work is done with his arms above his head, and he is often required to lift heavy object (sic), pull, push, grasp, etc. ...

Because of ... risk of the Appellant's occupation, it is highly recommended that the rehabilitation process be handled conservatively.

On April 23, 2003, following an assessment of the demands of the Appellant's work, [Appellant's occupational therapist], [text deleted] with [rehabilitation consulting firm #2], reported:

Currently the electrician position does not appear to be a reasonable match for [the Appellant's] physical capacities. His ongoing rehabilitation efforts must be focused on improving his left shoulder range of motion and function, and left thumb range of motion, strength, dexterity and manipulation.

On November 4 and 5, 2003, the Appellant again attended [rehabilitation consulting firm #2] for a Combined Physiotherapy/Occupational Therapy Base Line Work Evaluation. On November 16, 2003, the Evaluation Team, which consisted of both [Appellant's physiotherapist] and [Appellant's occupational therapist], reported:

[The Appellant's] primary deficits in his physical/functional status are as follows:

- Decreased range of motion in his left shoulder

- Reduced strength of the left shoulder
- Less than optimal scapular stability and endurance primarily noted on the left
- Signs and symptoms of mild supraspinatus tendonitis of the left shoulder
- Reduced range of motion of the thumb bilaterally
- Reduced lateral and palmer pinch strength on the left
- Reduced tolerance for sustained work activity at shoulder and above shoulder level. This is improved with position change breaks and position alterations
- Reduced speed and dexterity during unilateral and bilateral tasks
- Reduced concentrations

[The Appellant's] primary strengths in his physical/functional status are as follows:

- Managing MEDIUM physical demand level of work (i.e. above 50lbs), based on material handling testing
- Sustaining work activities for up to 4 hours daily
- Adequate mobility for work (walking, ladder climbing, stair climbing)
- Functional grip strength bilaterally
- Functional right upper extremity pinch strength
- Confidence when performing work tasks

Based on these tasks, [the Appellant] has the functional capacities to commence a graduated, supported return to work program as soon as his employer can accommodate him. He should commence work at 4 hours daily and progress as tolerated. Initially he will be required to work with another employee to monitor his adjustment to the work environment, with particular attention to his level of concentration in the work environment.

[Appellant's occupational therapist] created a Work Trial Plan that commenced with the Appellant working for eight (8) hours the first week and increasing to twenty (20) hours a week with five (5), four (4) hour days by the end of January.

On January 12, 2004, the Appellant began the graduated return to work with his regular employer, [text deleted]. Due to a slow-down in work at the [text deleted], on January 26, 2004, the Appellant was transferred to work at the [text deleted], in [text deleted], where his hours were changed to five (5) hours per day, four (4) days a week to match the hours of other employees. Even with light duties, the Appellant reported shoulder and neck pain although he felt that his condition was improving.

The Appellant attended [Appellant's neuropsychologist] for a follow-up neuropsychological assessment. On April 20, 2004, [Appellant's neuropsychologist] reported:

- 1) [the Appellant] has very good mechanical reasoning, and has recovered in almost all neuropsychological functions. Unfortunately, it is frustrating to see that at this point, we are not seeing any further recovery in his distractibility, and in one measure of speed.
- ...
- 3) I would recommend continuation of the cognitive restrictions when working with high voltage due to my concerns of potential distractibility. However certainly [the Appellant] is capable of other types of troubleshooting, and also of learning new skills if required.
- 4) Integrating [Appellant's occupational therapist's] information and our own test results, suggest that we need to be prepared for the possibility that [the Appellant] might not resume independent duties cognitively and physically as an electrician, and we need to prepare for other career options.
- 5) Since his recent cognitive progress has been slow, I would recommend reassessing [the Appellant] in approximately six months (with his next appointment scheduled for September 15).

Work remained slow with [text deleted] at the [text deleted] which limited the electrician experiences for the Appellant and, on June 11, 2004, the work trial placement with [text deleted] was discontinued. On June 23, 2004, [Appellant's occupational therapist] reported to the case manager that a new work trial program had been arranged to begin July 5, 2004 doing bench work bending conduit and cutting wire harnesses with [text deleted].

The Case Manager's Decision

The Appellant was required to drive to the work trial placements from his home in [text deleted]. The Appellant claimed for compensation of the travel expenses related to this travel. On June 29, 2004, the case manager issued a decision denying the Appellant's claim for reimbursement of travel expenses in relation to attendance at the return to work program. The case manager stated:

Under the Personal Injury Protection Plan, coverage is provided for reimbursement of travel expenses incurred for the purpose of receiving medical care only. As a result we are unable to consider trips to and from your job placements.

On July 5, 2004, the Appellant began the work trial with [text deleted] working four (4) days a week from 8 am to 1 pm. On July 29, 2004, the case manager, in a note to file, placed a record of a team meeting at [text deleted] in which he stated:

. . . The client has been working about 20 hours a week manufacturing items. It is a good placement with no safety issues involving ‘hot’ work. The client has complaints of fatigue [text deleted] is pleased with his productivity and if the fatigue can be resolved his hours can be increased up to full time. The client was upset with the recent travel decision letter sent and raised some concerns on his max IRI as he is not receiving \$34/hour and wants pension and group insurance contributions as well as . . . It was agreed by all present that if this becomes a long term placement that consideration will be given to putting him on the payroll (MPI top up was explained) but all agreed that we are not at that point yet with his hours. The meeting concluded with discussions on possible future plans.

Through this period, the Appellant raised concerns about his financial status. He was receiving Income Replacement Indemnity (‘IRI’) benefits while attending the work trials but was not being reimbursed for the costs of his travel to and from work. A report by [text deleted], [Appellant’s clinical psychologist], August 11, 2004, notes:

It appears that [the Appellant] is generally adjusting well to his ongoing rehabilitation and return to work program. Physically, he is capable of doing his current work with the exception of a reported discomfort in his shoulder and neck and feeling tired following five hours of work. ... His main concerns at this point are relating to financial difficulty with MPI (e.g., IRI, reimbursement for cost of travel, and paying him the rate of a journeyman). His overall impression about his ongoing rehabilitation is that he has been doing his best, adhering to treatment plans, attending all services that has been required of him and following up with his treatments and return to work plan. His final goal is to be able to work full-time, get paid the rate of a journeyman, and reach a level of functionality and financial freedom that he enjoyed prior to his accident.

[Appellant’s clinical psychologist’s] recommendations included:

A meeting with [the Appellant] to explain the ongoing financial disputes and to negotiate the reimbursement of the costs he has incurred.

[Appellant’s clinical psychologist] supported the Appellant continuing in his work trial.

In a Progress Report to the case manager, August 15, 2004, [Appellant's occupational therapist] reported:

I met with [the Appellant] and [text deleted]... to review the progress and learned that both were satisfied with [the Appellant's] performance.

A progress meeting was arranged ... in order to review some of his concerns. In summary, the following was discussed during this meeting:

- [The Appellant] reported that he felt he was doing well at the workplace but that he was very fatigued
- [The Appellant] reported that he has some numbness in his left hand; he is being reviewed/treated by the physiotherapist for this concern.
- ...
- [The Appellant] raised concerns about MPI's coverage of his wages (he is still on IRI even though he is in the workplace, therefore not making pension etc. contributions). He is also concerned about lack of coverage of his mileage to/from work (he recently had a decision letter from MPI stating that since work trials are not considered medical expenses, he will not be covered for the mileage claims he has submitted during travel to the work trial in [text deleted]). Coverage for recommended exercise equipment for his maintenance program is also not likely covered. MPI's position in each of these cases was reviewed by [text deleted]. [The Appellant] indicated that he was not satisfied that this position is fair. He was recommended to appeal these decisions.
- ...
- Since the team is unclear about whether [the Appellant] will eventually be able to participate in all aspects of electrical work due to ongoing physical and cognitive issues, there was some general discussion about related job tasks that may be explored if necessary (after final physical and neuropsychological testing is complete).

The Internal Review Officer's Decision

On August 30, 2004, the Appellant sought review of the Case Manager's decision on the basis that he was not satisfied with that decision in relation to travel expenses, wages and benefits, and exercise equipment for rehabilitation. With the Application for Review, the Appellant submitted invoices for exercise equipment he had purchased.

On October 14, 2004, the Internal Review Officer wrote to the Appellant informing him that the review could only focus on the claim relating to travel expenses. She wrote:

Having reviewed your entire file, I am confirming your case manager's decision and dismissing your Application for Review. ...

Section 136(1) of the Act provides that a victim is entitled to reimbursement of expenses related to a motor vehicle accident, subject to applicable regulations.

Section 19 of Manitoba Regulation 40/94 provides that Manitoba Public Insurance shall pay travel expenses "incurred by a victim for the purpose of receiving care" related to the injuries sustained in their motor vehicle accident.

During the hearing, it was your opinion that you should be compensated for travel expenses while attending a graduated return to work program because you feel it is a form of "therapy" and not work. You are missing out on benefits and dental coverage while attending these programs, therefore, you feel the least Manitoba Public Insurance can do is reimburse you for travel expenses.

This expense does not qualify for reimbursement and is outside the coverage provided by the Personal Injury Protection Plan. Attending a graduated return to work program is not defined as "receiving care" and, therefore, cannot be reimbursed. Accordingly, this review will confirm the June 29, 2004 decision.

On November 30, 2004, the Appellant filed a Notice of Appeal and the appeal hearing was set for October 31, 2005.

The Hearing

The appeal hearing took place on October 31, 2005. The Appellant appeared on his own behalf and Mr. Dean Scaletta appeared on behalf of MPIC.

The Appellant explained that before the accident, he worked as an electrician for [text deleted], mostly in construction, and for his work he frequently traveled out of town. In the months before the accident he had worked in [text deleted] and [text deleted]. For work sites further than 30 kilometers from [text deleted], he told the Commission, he was paid the government rate for travel expenses. He and his co-workers would car-pool and each would receive the travel expenses from the employer.

Since the accident, the Appellant told the Commission, he has been receiving IRI payments at the maximum permitted by the statute, which is considerably less than the income he enjoyed before the accident. In addition, there are no benefits such as pension payments and dental coverage.

In January, 2004, he explained, he began a back to work program with the aim of helping get back to his former employment. Under this work program, he stated, due to his hours being different, it was not possible to car-pool. His return to work program, he explained, consisted of the following:

- [text deleted], at [text deleted], [text deleted], five (5) hours a day;
- [text deleted], at [text deleted], [text deleted], five (5) hours a day;
- [text deleted] in [text deleted], five (5) hours a day;
- [text deleted] at [text deleted] in [text deleted], eight (8) hours a day.

None of the sites, he added, were more than 30 kilometres from his home in [text deleted].

He had put in a claim in the summer of 2004 for work program travel expenses, which claim had been rejected and was the subject of this appeal. The mileage claimed amounted to a total of 5,276 kilometres at the time of the claim. Because he was unable to car-pool, he stated he had to absorb all of the travel expenses personally.

The Appellant argued for reimbursement of the travel expenses, on the basis that his attendance at the return to work program was not work, but was rehabilitation within the meaning of the Act. He had never returned to the work tasks he did before the accident, he explained. He was always assigned light duties, assisting other electricians and, he stated, was never employed as a

journeyman electrician. Also, he pointed out, he was not being paid by the business for whom he was “working”, he was paid IRI by MPIC.

The Appellant explained that he did not fill out all the expense claims he could have because it didn’t seem to be useful given that MPIC had refused his request for reimbursement. He did submit claims when he began the work program with [text deleted], but with the refusal to reimburse the expenses by MPIC, the Appellant commented, he did not always fill out an expense request after that.

Counsel for MPIC argued that s. 136 (1)(d) of the Act governs the type of expenses the Appellant is seeking. That provision reads:

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:

.....

(d) such other expenses as may be prescribed by regulation.

The Regulation passed pursuant to s. 136, explained MPIC’s legal counsel, is MR 40/94 of which the sections pertinent to the Appellant’s claim here are, ss. 19-29 and in particular, s. 19 which reads:

Travel and accommodation

19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

Sections 20 through 29, he argued, deal with more specific situations, but subject always to the overriding requirement that the expenses must have been incurred for the purpose of “receiving care”.

MPIC's counsel further submitted that ss. 5 through 9 of the Regulation indicate what is meant by "care" for the purposes of the ss. 19 through 29. These provisions refer to medical or paramedical care, hospital care, massage therapy, dental care, chiropractic treatment and physiotherapy. A review of these provisions, MPIC's legal counsel noted, demonstrates that the regulation does not anticipate reimbursing an accident victim for expenses related to travel to and from a work site in order to participate in a return to work program.

Furthermore, counsel for MPIC argued, s. 136(1) of the Act and ss. 19 through 29 of the Regulation constitute a complete code governing the reimbursement of the expenses claimed by the Appellant. Since s. 136(1) required authority from the regulation in relation to the reimbursement of any particular expense, and since there is no provision in the expense regulation authorizing the payment of the benefit claimed, it is not open to MPIC, MPIC's legal counsel stated, to reimburse the Appellant for the travel expenses claimed.

The existence of the complete code in s. 136(1) and the Regulation, MPIC's legal counsel asserted, prevents the Appellant from claiming the expenses he seeks under s. 138 of the Act. The Court of Appeal in *Menzies* he commented, discussed ss. 19-29 of the expense regulation in relation to the payment of travel and accommodation expenses incurred by a person accompanying a victim pursuant to s. 137 of the Act. The Court in *Menzies* (supra), MPIC's legal counsel explained, made this point when it commented:

Sections 19-29 of the expense regulation ... contain provisions whereby MPIC pays "travel or accommodation expenses incurred by a victim for the purpose of receiving care" (s. 19). ... Together these provisions constitute a payment regime covering expenses of a person accompanying a victim when that person obtains care. Section 138 could not be the means by which further or greater such expenses could be reimbursed.

MPIC's legal counsel noted:

- s. 138, by its own terms, is subject to the regulations;
- as with s. 137 and Regulation MR 40/94, s. 136 and Regulation MR 40/94 constitute a complete code for the reimbursement of expenses;
- s. 136(1)(a) and the regulation permit the reimbursement of expenses only in relation to a victim receiving medical and paramedical care;
- there is no other regulation to authorize the payment sought by the Appellant;
- the Appellant cannot use s. 138 to access "further expenses" to those authorized under s. 136.

Consequently, counsel for MPIC argued, MPIC cannot reimburse the Appellant the travel expenses claimed.

In reply, the Appellant submitted that he will not get better sitting at home and doing nothing and that he needed to participate in the return to work program in order to build up his muscles. He also stated that since the purpose of the program was to rehabilitate him so he could return to his previous employment, MPIC was required to pay for his travel expenses.

Discussion:

The issue in this appeal relates to whether MPIC is required to reimburse the Appellant for expenses he has incurred while traveling to various work program sites.

The Nature of the Work Trial Program

The Appellant, who was a credible witness who genuinely appeared to want to return to his work, testified that he was not engaged at any time during the return to work program in his regular employment as a journeyman electrician but was, rather, doing light work and assisting other electricians. The Appellant argued convincingly that the work trial program in which he

was engaged, was not employment, but a form of rehabilitation, intended to help him recover from the injuries suffered in the motor vehicle accident.

A review of the evidence before this appeal, both oral and documentary, supports the Appellant on this point and was not disputed by counsel for MPIC. The evidence overwhelmingly shows that the Appellant's caregivers all viewed the work program as an aspect of his rehabilitation and recovery from the effects of the injuries suffered in the motor vehicle accident.

The Commission notes, for example, that an examination of the reports from [rehabilitation consulting firm #2], the occupational therapists brought in to assist with the work program, corroborates the Appellant's position that the focus of the work program was to rehabilitate the Appellant in order that he be able to return to his pre-accident employment.

1. On April 23, 2003, [rehabilitation consulting firm #2] assessed the requirements of the Appellant's regular employment as a journeyman electrician in this way:

The maximum physical demands of the full time position of a journeyman electrician are summarized at VERY HEAVY level of work. ... This job also requires sedentary activities (reviewing plans), light activities (using hand tools), medium activities (using power tools) and heavy activities (managing large, awkward loads in confined spaces). Repetitive and resistive bilateral upper extremity work is required.

The report concluded:

- Currently the electrician position does not appear to be a reasonable match for [the Appellant's] physical capacities. His ongoing rehabilitation efforts must be focused on improving his left shoulder range of motion and function, and left thumb range of motion, strength, dexterity and manipulation.
- Functional testing and job-related rehabilitation activities should be introduced as appropriate in his rehabilitation program. (emphasis added)

This assessment clearly indicates that [rehabilitation consulting firm #2] anticipated that the Appellant would benefit at a later date from a rehabilitation program that included a job-related element.

2. By November 16, 2003, [rehabilitation consulting firm #2] felt that the Appellant was ready for a “graduated, supported return to work program”. At the beginning of the work trial, January 16, 2004, [text deleted], the occupational therapist in charge of the program commented:

[The Appellant] has participated in a number of rehabilitation efforts since his injury ...

[The Appellant] had been recommended to commence a graduated, supported work program. The goal of this step is to further evaluate his abilities in the work trial. Specifically, we want to determine how his physical and cognitive challenges impact his participation at work. (emphasis added)

This clearly indicates that for [Appellant’s occupational therapist] and [rehabilitation consulting firm #2], the “work program” was not a “return to work” but was rather a “rehabilitation effort” with some diagnostic elements included within it.

3. On March 16, 2004, [rehabilitation consulting firm #2] issued a Work Trial Progress Report which states, *inter alia*:

Both [the Appellant] and [text deleted] reported that the placement was going well. ...

[The Appellant] has a number of follow-up medical and rehabilitation appointments over the next two weeks. The rehabilitation team should be in a position to do further planning regarding [the Appellant’s] work program once these reassessments are completed. (emphasis added)

This too clearly shows the diagnostic and rehabilitative nature of the work program in which the Appellant was participating.

Further evidence that the work trial program is in the nature of rehabilitation can be seen from the following reports:

- In his April 20, 2004, report on the Appellant's follow-up neuropsychological assessment, [Appellant's neuropsychologist] commented:

On the day following [the Appellant's] assessment, [Appellant's occupational therapist] and I had discussed his results, and she faxed her most recent report to me (of March 16, 2004). As one suggestion for work trial experience, I indicated that [text deleted] had a special program for individuals who had head injuries (with the contact person, [text deleted], at Occupational Rehabilitation Group, who I understand is on a committee related to this).

- On June 23, 2004, [Appellant's occupational therapist] reported that she had tried to enroll the Appellant in the [text deleted] program but was informed it was full and was asked to get in touch in the fall.
- [Text deleted], in its 2003-2004 Annual Report, describes that program in this way:

Encouraging employee diversity

... [text deleted] created a program that has generated interest from the [text deleted] and the local business community reintegrating workers with Acquired Brain Injuries into the workforce. The Corporation cooperated closely with organizations such as [text deleted] to ensure the program's success. ... Work is continuing with the [text deleted] to identify work placements for individuals with disabilities. (at 44)

- Also on June 23, 2004, [Appellant's occupational therapist] (the Occupational Therapist at [rehabilitation consulting firm #2]), commented on the discontinuance of the work trial program with [text deleted] stating that the work trial program "has been valuable, however, has not allowed for adequate review of his ability to complete the physical demands of an electrician." (emphasis added)
- When [text deleted] agreed to accommodate the Appellant on a new work trial program to begin on July 5, 2004, [Appellant's occupational therapist] reported to the Case Manager that "[text deleted] will require documentation indicating that [the

Appellant] is not expected to be paid during this placement, and that MPI will be responsible for WCB coverage. ... [the Appellant] continues to attend physiotherapy appointments once every three weeks”.

The Commission finds that the testimony of the Appellant and the documentary evidence clearly establish, on a balance of probabilities, that the focus of the work trial program, and indeed the focus of the Appellant’s caregivers, was to bring him to the point where he could once again return to full-time work. The Commission finds that in respect of the work trial program:

1. The intent of the work trial program was:
 - (a) diagnostic and therapeutic in nature and designed to determine the impact of the accident on the Appellant’s ability to perform some aspects of his regular work; and,
 - (b) intended to help in determining for the Appellant, the physiotherapy and other treatments that would best facilitate him in his recovery from the accident and his eventual return to work.
2. The work program was focused on the Appellant’s rehabilitation.

A review of the rehabilitation provisions of the Act, lends further support to the Appellant’s submission and the documentary evidence, that the work trial program in which he was engaged was in the nature of rehabilitation.

Rehabilitation is governed by s. 138 of the Act. The Manitoba Court of Appeal considered the scope of this provision in *Menzies* (supra), and set it out in this way:

Section 138 is intended to require MPIC, subject to the regulations under the *Act*, to take any measure which, in its discretion, it considers necessary or advisable, to achieve any one or more of the five objectives set out in the section. The measures are to be taken if,

in MPIC's discretion, they are necessary or advisable (using the exact words in the section):

- (i) to contribute to the rehabilitation of a victim,
- (ii) to lessen a disability resulting from bodily injury, and
- (iii) to facilitate the victim's return to a normal life or
- (iv) [to facilitate the victim's] reintegration into society or
- (v) [to facilitate the victim's reintegration into] the labour market.

The Court commented

... it is clear that s. 138 is (but "[s]ubject to the regulations") intended to vest MPIC with a considerable discretion ... encompassed within the concept of "rehabilitation" in a broad sense ... but exercisable only if MPIC considers it necessary or advisable to exercise that power, ... in any particular case. (para 33-34)

In *Menzies* (supra), the Manitoba Court of Appeal referred to the decision of the Commission in [text deleted] (AC-01-100) in which the Commission had addressed the interpretation of s. 138.

In [AC-01-100], the Commission had stated:

The Commission rejects MPIC's legal counsel's interpretation of Section 138 of the Act. The Commission notes that the ordinary dictionary definition of 'rehabilitation' has a wider meaning than the specific measures which are addressed in Section 10(1) of the Regulation. One of the dictionary definitions of 'rehabilitation' as set out in the *Dictionary of Canadian Law 2nd Edition, Carswell 1995* is "*the establishment or the restoration of a disabled person to a state of economic and social sufficiency.*" The *Concise Oxford Dictionary 10th Edition, Oxford University Press* defines 'rehabilitation' as "*1. restore to health or normal life by training and therapy after imprisonment, addition, or illness. 2. restore the standing or reputation of. 3. restore to a former condition.*"

It should be noted that these definitions of 'rehabilitation' include restoration of a disabled person to a state of economic sufficiency, social sufficiency, and restoration of a disabled person to health. Therefore, these definitions of 'rehabilitation' encompass economic and/or health and/or social restoration which would assist a person to return to his previous status.

The Commission in [AC-01-100] also referred to the public information set out by MPIC on its website, and noted:

The Manitoba Public Insurance Corporation has a website (www.mpi.mb.ca) which provides an overview of the Personal Injury Protection Plan (PIPP). This website states, in part, as follows:

Bodily Injury (PIPP) Claims – Rehabilitation

PIPP supports your return to normal activities as quickly as possible after the accident. If the injuries from the accident are so serious that you can't resume your pre-accident employment and your pre-accident lifestyle, PIPP helps you minimize the effects of the accident and maximize your employment and personal opportunities.

Key Points

Our goal is to help you to resume your normal pre-accident activities as much as possible. To assist your recovery and offset economic hardship, we provide compensation for treatment costs and a range of economic losses. [*underlining added in the original*]

MPIC has publicly stated that it considers rehabilitation to include not only restoration of a person's health but also provides compensation for real economic losses and to offset economic hardship.

Finally, in [AC-01-100], the Commission concluded:

Having regard to the dictionary definition of 'rehabilitation' and to the public statements by MPIC that the primary purposes of rehabilitation are:

1. to compensate a victim for real economic losses resulting from accidental injuries in automobile collisions,
2. to assist in the victim's recovery and to assist the victim by offsetting economic hardship, and
3. to provide compensation to the victim for a range of economic losses,

the Commission determines that the word 'rehabilitation' in Section 138 includes rehabilitation measures for the purpose of restoring the victim's health, and also for the purpose of assisting the victim economically as set out in paragraphs 1., 2. and 3. as noted above.

Having regard to the interpretation of s. 138 of the Act by the Court of Appeal in *Menzies*, and to the use of the term 'rehabilitation' in the public statements by MPIC in respect to the purpose of the Personal Injury Protection Plan (PIPP), the Commission finds that the work trial program was clearly aimed at restoring the Appellant to health and to his normal activities as quickly as possible after the motor vehicle accident. The Commission further finds that the Appellant has established, on the balance of probabilities, that the work trial program he was engaged in was "rehabilitation" in the sense intended by s. 138 of the Act and was not "medical or paramedical

care” as used in ss. 136 and 137 of the Act. Therefore, for these reasons, the Commission rejects MPIC’s submission in respect to this issue.

The Travel Expenses

The Commission agrees with MPIC’s legal counsel’s submission that the expenses claimed by the Appellant are not reimbursable pursuant to s. 136(1) of the Act. However, the Commission disagrees with MPIC’s legal counsel’s submission that Section 136(1) together with the ss. 19 through 29 of the regulation amount to a “complete code” for the reimbursement of travel expenses in relation to all aspects of a victim’s journey back to health. The Commission finds that Section 136 of the MPIC Act, and Section 19 of Manitoba Regulation 40/94, are silent in relation to travel expenses incurred as an integral part of a rehabilitation effort. Neither the Act nor the regulation specifically refer to any matter which deals with the rehabilitation of the Appellant through a work program.

The Commission agrees with the Appellant’s submission that the reimbursement of travel expenses the Appellant is seeking are an aspect of his rehabilitation intended to return him to employment. The Appellant further submitted that MPIC by its actions clearly indicated that they thought it was necessary and advisable to contribute to the rehabilitation of the Appellant by placing him in a work trial program.

The Appellant’s appeal relates to a claim for travel expenses in relation to his participation in the work trial program. The Commission finds that the relevant provision of M.R. 40/94, the expense regulation, is s. 10(1)(e), which states:

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. (underlining added)

The Commission determines that the work trial program instituted by MPIC is intended to determine if the Appellant was capable of returning to his former employment and, if it is possible, to assist him in his desire to do so. The purpose of this work trial program, therefore, constituted 'vocation rehabilitation' within the meaning of Section 10(1)(e) of M.R. 40/94 and it was intended to facilitate the Appellant's return to the labour market in an employment consistent with the skills and abilities that the Appellant exercised prior to the motor vehicle accident.

The Court of Appeal in *Menzies* (supra) stated in respect of the relationship between s. 138 of the Act and s. 10(1) of M.R. 40/94:

In respect of those matters outlined in some detail in s. 10(1), any exercise of discretion by MPIC under s. 138 would be limited, as described in s. 10(1). If, for example, reimbursement was sought for a victim's occupational rehabilitation expense, then provided that the rehabilitative measure was necessary or advisable for the rehabilitation, the payment could be made. (underlining added)

The Commission finds that the Internal Review Officer failed to consider whether it was necessary and advisable, under Section 138, and pursuant to Section 10(1) of M.R. 40/94, to reimburse the Appellant in respect of the travel expenses he incurred in participating in the work trial program and, as a result, erred in rejecting the Appellant's claim for travel expenses.

The Commission notes that MPIC, on its website, includes in its commitment in relation to rehabilitation the following:

Bodily Injury (PIPP) Claims: Rehabilitation

Getting to Where You Want to Be

As your insurer, our goal is helping you return to the situation you were in before the accident. Sometimes, this goal is easily met within a few weeks. Sometimes, it takes longer. In the most serious cases, it's not possible for you ever to be exactly as you were before the accident. Rehabilitation coverage provides you with various types of support to assist your recovery and your return to normal activities, to the greatest extent possible.

Rehabilitation coverage is flexible and depends on each claimant's personal situation and needs. Unlike other parts of PIPP coverage where the entitlement to a benefit or indemnity is precisely set in the law, rehabilitation expenses are considered extraordinary expenses, which depend on individual circumstances.

We ask these kinds of questions when deciding on coverage for a rehabilitation expense:

- Is this rehabilitation strategy necessary for this person?
- Is it advisable?
- Is this rehabilitation strategy likely to help this person lead a more independent and productive life?
- Will the person make the best use of this rehabilitation?

We look at the Rehabilitation Plan and the recommendations of the medical/rehabilitation team when making our decision.

The Appellant's employment included him having to travel to and from different work sites from time to time. Consistent with that, the work trial program developed by MPIC for the Appellant required him to travel to and from work sites that would reflect his regular employment before the accident and offer the best possible rehabilitation program. The Commission finds that the travel to and from the work sites attended by the Appellant as part of his work trial program, is an integral part of the work trial program itself.

Participation in the work trial program was an essential part of the recovery of the Appellant from the injuries suffered in the motor vehicle accident. The testimony of the Appellant and the documentary evidence clearly establish the diagnostic and therapeutic function of the program. The evidence establishes that participation in the work trial program was either "necessary or advisable" as required by s. 138 and s. 10(1)(e) of the Regulation. The travel incurred by the Appellant in his participation in the work trial program was an essential part of the program.

The Commission finds, based on the documentary evidence, that the rehabilitation strategy pursued by MPIC through having the Appellant participate in the work trial program, was essential for his rehabilitation. Having regard to the testimony of the Appellant, and the documentary evidence filed in this appeal hearing, the Commission finds that the Appellant has established, on a balance of probabilities, that the travel expenses incurred by the Appellant in traveling to and from placement sites were an integral part of the work trial program.

Decision

The Commission finds that the Internal Review Officer erred when she concluded that the expenses claimed by the Appellant did “not qualify for reimbursement and is outside the coverage provided by the Personal Injury Protection Plan”. The Commission finds that the expenses claimed by the Appellant are compensable as related to rehabilitation pursuant to s. 138 of the Act and s. 10(1)(e) of MR P215-40/94.

The Commission therefore directs that this matter be referred back to the case manager for the purpose of computing travel expenses and interest that are to be paid to the Appellant and, if no agreement is reached between the parties within one (1) month from the date this decision is issued, then either party can request the Commission to determine the amount of compensation.

Dated at Winnipeg this 24th day of January, 2006.

MEL MYERS, Q.C.

DIANE BERESFORD

NEIL COHEN