

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-138**

PANEL: Mr. Mel Myers, Q.C., Chairperson

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: January 4, 2008

ISSUE(S): Should the Income Replacement Indemnity ('IRI') have included an amount reflecting annualized tips

RELEVANT SECTIONS: Manitoba Regulation 39/94, Sections 2(a)&(d)(ii)

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 appeal hearing in this matter was scheduled to commence on January 4, 2008 at 9:30 a.m. The Appellant, [text deleted], did not attend at that time. As a result, the Commission adjourned the hearing until 10:00 a.m. to give the Appellant an opportunity to attend the hearing. The Commissioners' Secretary, [text deleted], attempted to contact the Appellant by telephone but was unable to reach the Appellant.

MPIC's legal counsel, Mr. Dean Scaletta, was present at the commencement of the hearing at 9:30 a.m. and at 10:00 a.m. the Commission reconvened the hearing. The Commission was advised by the Commissioners' Secretary that a Notice of Hearing (a copy of which is attached hereto and marked Exhibit A) in respect of this appeal, dated October 31, 2007, was forwarded by Canada Post Xpresspost, to the Appellant's address at [text deleted], being the address of the Appellant as set out in her Notice of Appeal. The Commissioners' Secretary further advised the Commission that the Commission received a print out from Canada Post which indicated that on November 7, 2007 the Notice of Appeal (Exhibit A) was served upon a occupant at the Appellant's residence at [text deleted].

The Commission therefore determined that the Appellant had been properly served with the Notice of Hearing in accordance with the provisions of the MPIC Act and, as a result, decided to proceed with the appeal hearing.

MPIC's legal counsel provided the Commission with a written submission (a copy of which is attached hereto and marked as Exhibit B). MPIC's legal counsel reviewed his written submission and indicated that the Internal Review Officer, in respect of the Appellant's gross yearly employment income ('GYEI'), made a correct calculation pursuant to Manitoba Regulation P215-39/94, Section 2(a)&(d)(ii), when dismissing the Appellant's Application for Review and confirming the case manager's decision.

The Commission, after considering the submissions of MPIC's legal counsel, and upon examination of the documentary evidence filed in these appeal proceedings, finds that the Appellant has failed to establish, on a balance of probabilities, that MPIC incorrectly calculated the Appellant's GYEI pursuant to Manitoba Regulation 39/94, Section 2(a)&(d)(ii). The

Commission therefore dismissed the Appellant's appeal and confirmed the decision of the Internal Review Officer dated May 13, 2004.

Dated at Winnipeg this 15th day of January, 2008.

MEL MYERS, Q.C.