

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-02**

PANEL: Ms Laura Diamond, Chairperson

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

HEARING DATE: September 4, 2008

ISSUE(S): Whether the Appellant was paid his full entitlement of Income Replacement Indemnity benefits for the period January 15, 2005 to March 15, 2005

RELEVANT SECTIONS: Sections 111, 112 and 114 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 2(c) of Manitoba Regulation P215 39/94

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 January 5, 2005. At the time of the accident, the Appellant was in receipt of employment insurance benefits, but was scheduled to begin promised employment with a pipeline company in [Text deleted], Alberta, from January 15 to March 15, 2005.

As a result of his injuries, the Appellant was unable to work at this job on the pipeline. The Appellant's case manager determined Income Replacement Indemnity ('IRI') benefits to which

the Appellant was entitled for the period of January 15 to March 15, 2005 in the amount of \$6,921.04.

The Appellant took issue with this calculation and sought an internal review of the case manager's decision, claiming that he was a seasonal worker and on that basis his loss should not be assessed on an annual basis.

On November 4, 2005 an Internal Review Officer for MPIC upheld the decision of the case manager. She noted that having carefully examined the Appellant's file and checked his IRI benefits calculation, she had found that his IRI entitlement exceeded the maximum IRI benefits allowed, and thus, he could not be entitled to receive any more benefits.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant

The Appellant testified at the hearing into his appeal. He described the difficulties he suffered after the motor vehicle accident. He also described his history of working in the oil patch for the past four (4) winters, in different places. He indicated that the best time frame for that employment is between January and March. This was the short time frame which he had to earn income. His ability to earn money during the rest of the year was limited.

He submitted that these factors and the realities of the construction industry should be taken into account when calculating his IRI benefits, so that he could fully recover his losses as a result of the accident.

Submission for MPIC

Counsel for MPIC reviewed both the evidence and the provisions of the MPIC Act and Regulations. He indicated that MPIC accepts the Appellant's position that he had promised employment for the sixty (60) day period from January 15, 2005 to March 15, 2005, which he was unable to undertake because of injuries sustained in the accident.

He noted that the starting point for any IRI calculation is GYEI (Gross Yearly Employment Income). The figure which resulted under the calculations set out in the Act and Regulations exceeded, by a significant margin, the maximum insured GYEI for the 2004-2005 insurance year, which was \$65,000. Accordingly, the Appellant's GYEI was therefore fixed at \$65,000, and his IRI benefits calculated on that basis.

Since Section 111(1) of the Act stipulates that IRI is based on ninety (90%) percent of the "net income computed on a yearly basis", MPIC then applied Section 112(1) of the MPIC Act to produce a figure for net income of \$46,652.89.

The Appellant was then paid at that level, for the sixty (60) days of work that he actually missed.

Counsel submitted that it is important to keep in mind that under the Personal Injury Protection Plan ('PIPP'), "gross income" "GYEI" and "net income" are always calculated on a yearly basis, in accordance with Sections 111(1), 112(1) and 114(2) of the Act and from the wording of Sections 1, 2(a), 2(b), 2(c), 2(d)(vii) and 10(1) of the Regulations. There is no other basis for calculating any of these figures. Accordingly, counsel submitted that the Appellant had been

paid his full entitlement of IRI for the sixty (60) day period from January 15, 2005 to March 15, 2005, inclusive, and that the appeal should therefore be dismissed.

Discussion

The relevant sections of the MPIC Act and Regulations are:

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.

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.

Maximum yearly insurable earnings for and from 1995

114(2) The amount of the maximum yearly insurable earnings for 1995 and each year after 1995 is the result obtained by multiplying the amount of the maximum yearly insurable earnings for 1994 by the ratio between

- (a) the sum of the industrial average wage for each of the 12 months before July 1 of the year preceding the year for which the amount of the maximum yearly insurable earnings is computed; and
- (b) the same sum for each of the 12 months before July 1, 1993.

Manitoba Regulation 39/94:

GYEI not derived from self-employment

2 Subject to this regulation, a victim's gross yearly employment income not derived from self-employment at the time of the accident is the sum of the following amounts:

- ...
- (c) in the case of a non-earner, the salary or wages from an employment that the non-earner would have held, if the accident had not occurred, during the first 180 days following the date of the accident divided by the number of days the employment would have been held, and then multiplied by 365;

The Commission has reviewed the evidence and submission of the Appellant as well as the submission of counsel for MPIC. The Commission finds that both the case manager and the Internal Review Officer were correct in their finding that the Appellant's GYEI exceeded the \$65,000 MPIC insures under the PIPP. The Internal Review Officer was correct in concluding

that the Appellant is not entitled to further IRI benefits, as he had received the maximum payable under the MPIC Act for the time when he was unable to work on the pipeline.

While we appreciate the Appellant's comments regarding the reality of work in the construction industry, as counsel for MPIC points out, the legislation determines the method for calculating benefits and the Internal Review Officer correctly interpreted that legislation in his decision.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated November 4, 2005 is hereby confirmed.

Dated at Winnipeg this 20th day of October, 2008.

LAURA DIAMOND