

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-38**

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

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

HEARING DATE: May 21, 2008

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits including Income Replacement Indemnity, retraining, personal care assistance, therapeutic treatment interventions, permanent impairment benefits, etc.

RELEVANT SECTIONS: Sections 105 and 85 (1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The appeal hearing commenced on May 21, 2008 at 9:30 a.m. at the Commission's office in the City of Winnipeg. MPIC's legal counsel, Mr. Dean Scaletta, attended the hearing, but [the Appellant] was not present at the hearing. MPIC's legal counsel requested that the Commission proceed to hear and determine this appeal.

The first issue that the Commission had to determine was whether the Appellant had been properly served with a Notice of Hearing of the appeal on May 21, 2008.

The Commission issued a Notice of Hearing dated February 27, 2008 to the Appellant and to MPIC's legal counsel, which fixed a date for the appeal hearing for May 21, 2008 at 9:30 a.m., at the Commission's office in Winnipeg. In this Notice of Hearing the Commission stated that:

1. Should either party fail to appear, or be represented at the hearing, the Commission may proceed with the hearing and render its decision.
2. Alternatively, the Commission may dismiss the appeal, adjourn the hearing to a new time and date, or take such further steps as it deems appropriate.

The Commission was advised by the Commissioners' Secretary, at the appeal hearing, that a Notice of Hearing (a copy of which is attached and marked "Exhibit A") in respect of this appeal, dated February 27, 2008, was forwarded by Canada Post Xpresspost to the Appellant's address at [Text deleted], Manitoba, [Text deleted] and [Text deleted], Manitoba [Text deleted].

The Commissioners' Secretary further advised that the Commission received a print out from Canada Post which indicated that on March 4, 2008 the Notice of Hearing ("Exhibit A") was served upon the Appellant at the [Text deleted] address

The Commissioners' Secretary advised the Commission, at the appeal hearing that on May 15, 2008 the Appellant left a voice mail message advising the he was still waiting for a referral by his doctor to a foot specialist, and that there was an appointment scheduled for this month and he wanted the Commission to cancel the hearing. The Commissioners' Secretary sent a letter to the Appellant addressed to the Appellant at [Text deleted], Manitoba, [Text deleted] by courier, and to the Appellant at [Text deleted], Manitoba (sic) [Text deleted] by regular mail, advising the Appellant that if he wished to request an adjournment of the hearing he would need to attend at

the office of the Commission on May 21, 2008 and make that request for an adjournment at the beginning of the hearing. The Appellant was also advised in this letter that if the Commission did not grant the adjournment he would need to be prepared to proceed with the hearing on the merits of his appeal. A copy of this letter was provided to Mr. Dean Scaletta, MPIC's legal counsel.

The Commission determined the Appellant had been properly served with the Notice of Hearing in accordance with the provision of the MPIC Act and decided to proceed with the appeal hearing. MPIC's legal counsel provided the Commission with a written submission (a copy of which is attached and marked "Exhibit B"). He reviewed his written submission and submitted that the Internal Review Officer was correct in determining:

1. That the Appellant had not been gainfully employed at the time of accident, had not been gainfully employment since February 19, 1999, approximately four (4) years before the accident and, as a result, pursuant to Section 105 of the MPIC Act, the Appellant was not entitled to Income Replacement Indemnity benefits.
2. The Appellant was a non-earner and there was no evidence, pursuant to Section 85(1) of the MPIC Act, that the Appellant would have held employment during the first 180 days subsequent to the motor vehicle accident and there was no evidence that his accident related disability extended beyond early December, 2002.

The Commission, after considering the submission of MPIC's legal counsel, upon examination of the documentary evidence filed in the appeal proceedings, finds that the Appellant has failed to establish, on a balance of probabilities, that MPIC had incorrectly failed to provide further Personal Injury Protection Plan benefits to the Appellant as a result of the motor vehicle accident on October 1, 2002 pursuant to Sections 105 and 85(1) of the MPIC Act. The Commission,

therefore, dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated December 15, 2005.

Dated at Winnipeg this 29th day of July, 2008.

MEL MYERS, Q.C.