

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-26**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Neil Cohen
Ms Deborah Stewart

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

HEARING DATE: May 17, 2010

ISSUE(S):

- 1. Entitlement to Lump Sum Indemnity.**
- 2. Entitlement to Reimbursement of Travel Expenses.**
- 3. Entitlement to Personal Care Assistance beyond September 7, 2007.**
- 4. Whether Income Replacement Indemnity benefits were properly terminated effective February 18, 2008.**

RELEVANT SECTIONS: Sections 88, 131, 136(1) and 160(g) 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 Appellant, [text deleted], was involved in two motor vehicle accidents within a couple of weeks of each other. On August 4, 2007, the Appellant was rear-ended and sustained an injury to his low back. The Appellant was diagnosed by [Appellant's Doctor] with back strain which precluded his return to work as a driver for [text deleted] from August 4 to 16, 2007. The

Appellant's second motor vehicle accident occurred on August 16, 2007. In that accident, the Appellant was the front seat passenger in a vehicle that t-boned another vehicle. As a result of this accident, the Appellant sustained an abrasion to his chest wall and suffered chest pain, thoracic/rib pain, and lower back pain. Due to the bodily injuries which the Appellant sustained in these accidents, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing the following Internal Review Decisions, with respect to the following issues:

Internal Review Decision dated February 11, 2008:

1. entitlement to student lump sum indemnity;
2. entitlement to reimbursement of travel expenses; and
3. entitlement to Personal Care Assistance beyond September 7, 2007.

Internal Review Decision dated May 14, 2008:

1. whether income replacement indemnity ("IRI") benefits were properly terminated effective February 18, 2008.

1. Entitlement to Student Lump Sum Indemnity:

The Internal Review Decision of February 11, 2008 confirmed the case manager's decision of October 19, 2007 and dismissed the Appellant's Application for Review with respect to his claim for a lump sum indemnity. The Internal Review Officer found that the Appellant was not entitled to the lump sum indemnity under PIPP.

Upon a careful review of all of the documentary evidence made available to it, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to the student lump sum indemnity.

At the time of the motor vehicle accident, the Appellant was registered for the [text deleted] Diploma Program at [text deleted], starting September 5, 2007 and ending on April 30, 2008. [Text deleted] provided a letter (dated September 21, 2007) which confirmed that the Appellant cancelled his registration for the September 2007 [text deleted] Diploma Program on August 14, 2007 (ten days after the first accident and two days prior to the second accident).

The medical information on the Appellant's file states that as a result of the accident of August 4, 2007, he would have been unable to work from August 4 to 16, 2007 due to the injuries resulting from the accident. There was also a narrative report on file from [Appellant's Doctor] dated October 25, 2007. [Appellant's Doctor] saw the Appellant four days after his first accident and then again on August 14, 2007. It was [Appellant's Doctor's] opinion that the Appellant's withdrawal from the [text deleted] program based solely on this accident (the motor vehicle accident of August 4, 2007) was absolutely unjustifiable and had no medical basis.

The opinion of [Appellant's Doctor] provides strong support for the fact that the Appellant did not have a medical inability to attend [text deleted] as of September 5, 2007, when he withdrew from the [text deleted] program on August 14, 2007. The Commission therefore finds that there is insufficient medical information on the Appellant's file to confirm a medical inability to attend [text deleted] as of September 5, 2007, due to injuries from the August 4, 2007 motor vehicle accident. As a result, the Appellant is not entitled to the student lump sum indemnity.

Accordingly, the Appellant's appeal with respect to this issue is dismissed and the Internal Review Decision dated February 11, 2008, with respect to this issue, is confirmed.

2. Entitlement to Reimbursement of Travel Expenses:

The Internal Review Decision of February 11, 2008 confirmed the case manager's decision of November 1, 2007 and dismissed the Appellant's Application for Review with respect to his claim for reimbursement of travel expenses. The Internal Review Officer found that the Appellant was not entitled to coverage for travel expenses incurred for taking taxis to and from treatment and medical appointments from August 17 to September 7, 2007. The case manager's decision of November 1, 2007 stated that it was explained to the Appellant that the use of taxis must be "medically required" and pre-authorized by the case manager. The decision further stated that "there is no medical report from a health care provider who attended to your injuries in August, who confirms your inability to take the bus during August and early September". Additionally, the use of taxis was not "pre-authorized by the case manager".

Upon a careful review of all of the documentary evidence made available to it, the Commission finds that the Appellant has not established, on a balance of probabilities, that the use of taxis was medically required in order to attend treatment and medical appointments from August 17, 2007 to September 7, 2007. There is no medical documentation from a health care provider indicating that the Appellant was unable to take the bus or receive round trip mileage for those dates. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated February 11, 2008 is confirmed with respect to this issue.

3. Entitlement to Personal Care Assistance beyond September 7, 2007:

The Internal Review Decision of February 11, 2008 confirmed the case manager's decision of November 3, 2007, denying Personal Care Assistance benefits for the Appellant beyond September 7, 2007. The case manager's decision of November 3, 2007 determined that it was reasonable that the Appellant would have required assistance for the first three weeks after the August 16, 2007 accident, up to September 7, 2007, with the following activities:

- meal preparation: breakfast
- meal preparation: lunch
- meal preparation: dinner
- light housekeeping
- heavy housecleaning
- laundry
- grocery shopping
- community outings

This entitled the Appellant to a total maximum payable for 22 days of \$536.47.

In order to qualify for Personal Care Assistance benefits, a claimant has to achieve a total score of "9" or greater on the assessment grid. On the assessment of September 25, 2007, the Appellant received a total score of "6", which did not entitle him to benefits. However, the case manager did extend Personal Care Assistance benefits to the Appellant for the three-week period following the August 16, 2007 accident until September 7, 2007, to be fair and reasonable in the circumstances, since his Personal Care Assessment was not done any earlier.

Upon a careful review of all of the documentary evidence made available to it, the Commission finds that the Appellant has not established, on a balance of probabilities, that he was entitled to reimbursement of Personal Care Assistance expenses beyond September 7, 2007. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated February 11, 2008 is confirmed with respect to this issue.

4. Whether IRI benefits Were Properly Terminated Effective February 18, 2008:

The Internal Review Decision of May 14, 2008 confirmed the case manager's decision of February 27, 2008 and dismissed the Appellant's Application for Review. The Internal Review Officer found that the case manager's decision of February 27, 2008, ending the Appellant's entitlement to IRI for non-compliance with the work hardening program was amply supported by the material on the Appellant's file. The Internal Review Officer found that the evidence on the Appellant's file fell short of establishing that he had a valid reason to not attend his rehabilitation program at [Rehabilitation (Rehab) Clinic].

As previously noted the Appellant did not attend the appeal hearing or provide any written submission in support of his appeal. Upon a careful review of all of the documentary evidence made available to it, the Commission finds that the Appellant has not established, on a balance of probabilities, that he had a valid reason for his non-attendance at [Rehab Clinic] and his non-compliance with the work hardening program. There is in fact no evidence before the Commission to establish that the Appellant had a valid reason to not attend his rehabilitation program at [Rehab Clinic]. The onus of proof rested with the Appellant on this appeal. The Appellant did not make any submissions to the Commission in support of his appeal. As a result, the Commission finds that the Appellant's entitlement to IRI benefits was properly terminated effective February 18, 2008 due to non-compliance with the work hardening program. As a

result, the Appellant's appeal is dismissed and the Internal Review Decision dated May 14, 2008 is confirmed.

Dated at Winnipeg this 31st day of May, 2010.

YVONNE TAVARES

NEIL COHEN

DEBORAH STEWART