

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-114**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Mr. Neil Cohen

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

HEARING DATE: September 15, 2011

ISSUE(S): 1. Calculation of Income Replacement Indemnity benefits.
2. Calculation and recovery of overpayment.

RELEVANT SECTIONS: Sections 115 and 189(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 Appellant, [text deleted], is appealing the Internal Review Decision dated August 16, 2010
with regards to the following issues:

1. calculation of income replacement indemnity benefits ("IRI"); and
2. calculation of 2009 overpayment of IRI benefits and whether MPIC is entitled to
recovery of that amount.

1. Calculation of Income Replacement Indemnity Benefits:

At the hearing of this matter, the Appellant expressed his frustration with the figures used by MPIC to calculate his Gross Yearly Employment Income (“GYEI”) throughout the course of 2009 for his determined employment and for his pre-accident employment. He is unable to replicate MPIC’s calculations in order to determine the figures to be used for his GYEI and his IRI benefits. He submits that the uncertainty which arises from year to year regarding these calculations has led to the confusion regarding his IRI entitlement and the resulting overpayment of IRI benefits by MPIC.

In response to the Appellant’s concerns regarding the calculation of his IRI benefits, counsel for MPIC submitted a lengthy written submission dated September 28, 2011, carefully detailing the calculation of the Appellant’s IRI benefits for 2009. Counsel for MPIC submits that the Appellant’s IRI benefits have been correctly calculated for 2009, which has resulted in an overpayment of benefits in 2009 in the amount of \$2,320.32. She submits that MPIC is entitled to recover the amount of the overpayment and accordingly, the Internal Review Decision of August 16, 2010 should be confirmed.

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant’s IRI benefits were correctly calculated for 2009. The Commission finds that the Appellant has failed to establish that the IRI calculations, which were detailed in the written submission of MPIC’s legal counsel dated September 28, 2011, were incorrect. Accordingly, the Appellant’s IRI calculations for 2009 are confirmed.

2. **Calculation of 2009 Overpayment and Recovery of that Amount:**

At the hearing of this matter, the Appellant indicated that he wanted to try and work out the overpayment issue directly with his case manager at MPIC. If that matter was not resolved by October 31, 2011, the Commission would proceed to issue its decision. Counsel for MPIC indicated that the overpayment of IRI benefits was correctly calculated and pursuant to Section 189(1) of the MPIC Act, MPIC is entitled to recover the amount of the overpayment.

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the overpayment of IRI benefits for 2009 was correctly calculated in accordance with the provisions of the MPIC Act and Regulations in the amount of \$2,320.32. Additionally, the Commission finds that pursuant to Section 189(1), MPIC is entitled to recover the amount of the overpayment. Pursuant to the provisions of Section 189(1) of the MPIC Act, the Appellant did receive a benefit to which he was not entitled and therefore MPIC is entitled to reimbursement from the Appellant for the overpayment of IRI benefits.

Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated August 16, 2010 is confirmed.

Dated at Winnipeg this 28th day of November, 2011.

YVONNE TAVARES

DIANE BERESFORD

NEIL COHEN