

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-08-085**

PANEL: Ms Yvonne Tavares

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

HEARING DATE: October 22, 2013

ISSUE(S): Entitlement to Personal Injury Protection Plan benefits.

RELEVANT SECTIONS: Section 83(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

1. The Appellant was involved in a motor vehicle accident on July 1, 2006.
2. MPIC's Internal Review Officer issued a decision dated May 28, 2008 which determined that there was no evidence to support that the Appellant sustained a lower back injury as a result of the accident of July 1, 2006, which prevented him from holding employment.
3. The Appellant filed an appeal of that Internal Review Decision with this Commission on August 29, 2008.
4. An appeal hearing was convened on December 4, 2012. At that appeal hearing, the Appellant advised that he took issue with his classification as a non-earner at the time of the

motor vehicle accident. The Appellant maintained that he was working at the time of the motor vehicle accident. The Appellant was advised to seek an Internal Review of his determination as a non-earner at MPIC and the hearing was adjourned pending that further Internal Review.

5. On July 30, 2013, MPIC's case manager issued a fresh decision respecting the Appellant's entitlement to Income Replacement Indemnity ("IRI") benefits. The decision determined that after further review of the Appellant's file, he had been reclassified as a temporary self-employed earner. IRI benefits were paid to the Appellant following the accident up until November 7, 2006 as the case manager determined that the Appellant was capable of holding employment as of November 8, 2006.
6. A further Case Conference Hearing was held at the Commission on October 22, 2013. The Appellant advised that he has sought an Internal Review of the July 30, 2013 case manager's decision.
7. At the Case Conference Hearing of October 22, 2013, counsel for MPIC made a motion that the Commission had no further jurisdiction with respect to the Internal Review decision of May 28, 2008 since that Internal Review decision has now been replaced by the case manager's decision of July 30, 2013. Further, counsel for MPIC submits that the Appellant has sought an Internal Review of the July 30, 2013 decision and has all rights of appeal open to him with respect to any future Internal Review decision. Counsel for MPIC argues that there are no further outstanding issues arising from the May 28, 2008 Internal Review decision and therefore the Commission should dismiss the Appellant's appeal from that decision.

Upon a careful review of the documentary evidence made available to the Commission, and upon hearing the submissions of counsel for MPIC and of the Appellant, the Commission finds that:

1. The case manager's decision of July 30, 2013 is a fresh decision made by the Corporation based upon the receipt of new information since the decision rendered by the Internal Review Officer of May 28, 2008. The case manager's decision of July 30, 2013 has replaced the Internal Review decision of May 28, 2008 and rendered that decision moot.
2. MPIC has now accepted that the Appellant was self-employed as a construction worker as at the date of the motor vehicle accident as set out in the July 30, 2013 decision. The Appellant has sought an Internal Review of that decision. If he is not satisfied with his Internal Review decision, a further appeal to the Commission can be made.
3. There is no outstanding issue arising from the May 28, 2008 Internal Review decision to be adjudicated. As a result, the Commission has no further jurisdiction regarding the Appellant's appeal of the Internal Review decision of May 28, 2008.

Therefore, by the authority of Section 184(1) of the MPIC Act, the Commission orders that the Appellant's appeal be dismissed.

Dated at Winnipeg this 25th day of October, 2013.

YVONNE TAVARES