

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-69**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Mr. Tom Strutt
[Text deleted], the Appellant, appeared in person

HEARING DATE: February 7th, 1997

ISSUE(S): Whether Appellant entitled to reimbursement of cost of
mattress and box spring.

RELEVANT SECTIONS: Sections 138, 163 and 184(1) of M.P.I.C. Act ('the Act') and
Section 10(1) of Regulation 40/94

**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 FACTS:

[The Appellant] is, by his own testimony, 'a big guy'. He is about [text deleted]
two years of age, six feet tall and weighs about 290 pounds. He has, for several years, been

employed in an administrative capacity in [text deleted]. [The Appellant] was behind the wheel of his stationary [text deleted] on January 30th, 1996, when it was rear-ended by another vehicle, as a result of which [the Appellant's] car was damaged to the tune of about \$4,500.00. The front seat of his car collapsed entirely and [the Appellant] wound up in the back seat, having sustained injuries to his neck and back. He attended at the office of [Appellant's chiropractor] at the [text deleted] Chiropractic Centre on January 31st, where he started receiving chiropractic treatment in the form of spinal adjustments, three times per week.

Some time in mid-to-late March - the actual date was not made known to us - [the Appellant] found himself in extreme pain and unable to walk. He arranged to get himself to the emergency departments at [hospital #1] and [hospital #2] respectively on two consecutive days, had Demerol administered to ease his pain, and returned home where he remained, bedridden for the most part, until about the end of April 1996. While [the Appellant] was confined to his residence, [Appellant's chiropractor] attended there regularly in order to continue his treatments and, noticing that [the Appellant] was using a soft, foam-filled mattress, told [the Appellant] that the cure of his back problems would be greatly assisted by the use of a much firmer, 'chiropractic' mattress.

Although [the Appellant] was able to obtain substantial, if temporary, relief from his pain by means of occasional Cortisone injections that commenced in mid-April of 1996 and continued sporadically up to the present time, and although those injections enabled him to quit his chiropractic treatments and return to work, on May 8th he bought a new headboard, box spring and

mattress, all of which were delivered to him on May 14th of 1996. He also paid a \$25.00 delivery charge and, of course, Goods and Services Tax and Provincial Sales Tax, for all of which he now seeks reimbursement.

THE LAW:

Those sections of the Act and Regulations having a bearing upon [the Appellant's] claim are set out in a schedule annexed to these Reasons. They may be summarized this way:

- Section 138 of the Act embodied the general philosophy upon which the statute is based, i.e. the insurer should take appropriate steps to facilitate a victim's return to normalcy, subject, of course, to the remainder of the Act and to the Regulations;
- Section 10(1)(d)(iii) of Regulation 40/94 provides for reimbursement to a victim of the cost of 'medically required beds...', but at the discretion of the insurer;
- Section 184(1) of the Act allows this Commission to substitute its own decision for that of the Corporation.

It is the position of M.P.I.C. that

'beds and mattresses will only be considered in cases where a demonstrated medical or physiological need exists (e.g.: paraplegia, quadriplegia, persistent vegetative states, et cetera).'

With deference, we do not agree that this is a reasonable interpretation of the language of the

statute. We are of the view that, when a qualified professional practitioner, whose services are covered by the Act, prescribes a particular kind of bedding, and if it is apparent that, in light of all the circumstances, there is a strong likelihood that the items in question will materially improve the victim's chances of recovery, then it is reasonable for the Corporation's discretion to be exercised in favour of the victim. Granted, all of the surrounding facts must be taken into consideration; we have done that in arriving at our decision.

As noted above, [the Appellant] seeks reimbursement, not only for the mattress that he purchased but also for the box spring and the delivery charge, plus taxes. Inquiries made by this Commission indicate that the box spring and mattress purchased by [the Appellant] are in the medium price range and have a guaranteed life expectancy of fifteen years. The box spring and mattress that he turned in for a \$400.00 credit were about four to five years old, and [the Appellant] has therefore obtained a 'betterment' of approximately five years or one-third of the life of his new bedding. In our respectful view, the box spring was not necessary for [the Appellant's] rehabilitation. True, the sales staff at [text deleted], where the equipment was purchased, strongly recommended that he purchase a box spring along with the new mattress, since the manufacturers, in turn, always recommend that the two be sold as one unit and, indeed, they reduce their guarantee by 50% if either the mattress or the box spring is sold separately. However, our inquiries elicit the information that, since the original box spring was only four or five years of age, that factor should not materially affect the life expectancy of the new mattress.

DISPOSITION:

In consequence, we find [the Appellant] entitled to reimbursement by M.P.I.C of the sum of \$486.61, calculated as follows:

Price of new box spring (\$470.00 plus taxes of \$65.80)	\$535.80
Price of new mattress (\$829.00 plus taxes of \$116.00)	<u>945.06</u>
	\$1,480.86

A \$400.00 trade-in allowance to be prorated between the new box spring and mattress:

Box spring	$\frac{535.80}{1,480.86} \times 400 =$	\$144.73
Mattress	$\frac{945.06}{1,480.86} \times 400 =$	<u>255.27</u>
		\$400.00

Net cost to Appellant of mattress:

\$945.06 less proportion of trade-in, being \$255.27	\$689.79
Less one-third 'betterment'	<u>229.93</u>
	459.86
Add delivery charge plus GST	<u>26.75</u>
	\$486.61

Pursuant to Section 163 of the Act, [the Appellant] is entitled to interest at the prejudgment rate determined under Section 79 of the Court of Queen's Bench Act, computed from the day upon which he became entitled to repayment of that expense. He became entitled to that repayment once he had provided M.P.I.C. with proof of his purchase and with confirmation from [Appellant's chiropractor] that he had done so upon [Appellant's chiropractor's] advice. By our calculation, that would have been on or about May 15th, and we so order.

Dated at Winnipeg this 12th day of February 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX