

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-87**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Colon Settle, Q.C.

APPEARANCES: The Appellant, [text deleted], was represented by his mother and Committee, [text deleted] and by legal counsel, [text deleted] ;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: December 4, 2001

ISSUE: Whether the Appellant is entitled to a capital cost contribution towards the purchase of a wheelchair van.

RELEVANT SECTIONS: Section 138 of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Sections 10(1)(a) and (e) of Manitoba Regulation No. 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 Appellant, [text deleted], was involved in a motor vehicle accident on March 3, 2000, wherein he suffered a serious brain injury. As a result of this injury, [the Appellant] is permanently confined to a wheelchair and has very limited function. His mother and Committee, [text deleted], is his primary caregiver.

In order to allow her a greater measure of convenience and efficiency when transporting her son, [Appellant's mother and Committee] requested that MPIC provide a capital cost contribution towards the purchase of a wheelchair van for use by her son. The Case Manager, in a decision letter dated March 30, 2001, refused to provide a capital cost contribution towards the purchase of a wheelchair van. The Case Manager stated that, "Prior to considering the costs associated with the modification of a vehicle for [the Appellant's] use and/or a contribution towards the purchase of a vehicle, it must be demonstrated that this will aid [the Appellant's] rehabilitation. In addition, we must consider whether or not this action will better meet [the Appellant's] needs than other reasonably available options." Although it declined to provide a capital cost contribution towards the purchase of a wheelchair van, MPIC was prepared to consider personal transportation costs of up to five round trips per week for the Appellant, in addition to continuing to provide transportation for the Appellant's medical visits.

On behalf of her son, [Appellant's mother and Committee] sought an internal review from that decision. In his decision dated June 28, 2001, the Internal Review Officer, upheld the decision of the Case Manager and dismissed [the Appellant's] Application for Review. In his decision, the Internal Review Officer stated that,

The issue for me to determine is whether the use of a van is essential for [the Appellant's] occupational and educational rehabilitation, consistent with his occupation prior to his accident and his skills and abilities after that accident. Additionally, is the ownership and use of a van essential in order to improve your son's earning capacity and level of independence?

The provisions of the Manitoba Public Insurance Corporation Act and Regulations do not require the Corporation, in every case, to provide for either modifications to a van or provide funding for the purchase of a vehicle. I am unable to conclude that the requirement exists in [the Appellant's] case for funding towards the acquisition of a van. Regrettably the prospects for [the Appellant's] educational and/or vocational rehabilitation are non-existent. In addition to meeting the transportation needs for [the Appellant's] medical appointments, [text deleted's] letter permits additional transportation costs for

attendances for non-medical purposes. Under the circumstances it would appear that the Corporation has satisfied its requirements under the legislation and accordingly I am upholding [text deleted's] decision letter of March 30, 2001 and dismissing your Application for Review.

[Appellant's mother and Committee] has now appealed from that decision to this Commission.

Issue

The issue which requires determination in this matter is whether the Appellant is entitled to a capital cost contribution towards the purchase of a wheelchair van.

The Law

The relevant sections of the MPIC Act and Regulations are as follows:

Section 138:

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Subsections 10(1)(a) and (e) of Manitoba Regulation No. 40/94 state:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

- (a) funds for an extraordinary cost required to adapt a motor vehicle for the use of the victim as a driver or passenger;

...

- (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities

after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

Discussion

[Appellant's legal counsel], on behalf of the Appellant, submitted that the Internal Review Officer erred in basing his decision solely on the issue of [the Appellant's] educational or vocational rehabilitation pursuant to subsection 10(1)(e) of Manitoba Regulation 40/94. Rather, he argues that the relevant and applicable subsection of the Regulation is subsection 10(1)(a). Further, [Appellant's legal counsel] submits that this subsection should be interpreted widely so as to meet the intent of Section 138 of the MPIC Act and thereby allow the purchase of a wheelchair van. In support of his position, [Appellant's legal counsel] submits that adaptation of a motor vehicle necessarily includes the purchase of a replacement vehicle if the vehicle which existed at the time of the motor vehicle accident is no longer suitable for the transportation requirements of the victim. [Appellant's legal counsel] argues that limiting compensation only to those whose disabilities are such that they are able to return to work or school has the effect of denying it to the most severely disabled. The effect of this decision is to render [the Appellant] a "shut-in." It also exacerbates the effects of his disability, and denies him the opportunity to reintegrate into society and return as much as possible to a normal life.

Alternatively, counsel for the Appellant submits that the Appellant's request could fall under the provisions of subsection 10(1)(e), such that the provision of a wheelchair van could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

Counsel for MPIC argued that Section 138 of the MPIC Act is clearly “subject to the regulations.” As such, any authority to incur an expense for the purposes of rehabilitation must be found within the scope of the Regulations. He submits that subsection 10(1)(a) of Manitoba Regulation 40/94 is not applicable to the matter at hand. Upon a plain reading of the legislation, that subsection only allows for funds to adapt an existing motor vehicle. If there had been an intention to provide for the acquisition of a vehicle as well as the adaptation, the legislative drafters certainly would have included that within the scope of subsection 10(1)(a), submits counsel for MPIC.

Counsel for MPIC also argued that [the Appellant] regrettably does not meet the conditions set out in subsection 10(1)(e), as previously outlined in the decision of the Internal Review Officer, since the prospects for [the Appellant’s] educational and/or vocational rehabilitation are non-existent. Accordingly, counsel for MPIC submits that the decision of the Internal Review Officer, dated June 28, 2001, should be upheld and the current appeal dismissed.

In this case, the relevant law is found in Section 138 of the MPIC Act which is clearly subject to the Regulations. The qualification of the Regulations must guide the Commission in its application of Section 138 of the MPIC Act. The provisions of subsection 10(1)(a) of Manitoba Regulation 40/94 do not, in our view, encompass the authority to require MPIC to provide funds for the acquisition of a motor vehicle, although the acquisition may be necessary or advisable for the purposes of the victim’s rehabilitation and reintegration into society. Presumably, if the Appellant already possessed a motor vehicle which required adaptation, the argument under this subsection would have been much more persuasive. Furthermore, the legislation could reasonably be interpreted so as to allow for the expenditure of funds for the extraordinary costs

associated with the adaptation of a motor vehicle purchased for a victim. Subsection 10(1)(a) of Manitoba Regulation 40/94 does not expressly require that the victim own his/her own vehicle in order for funds to be provided for its adaptation.

Unfortunately, in this case, the Appellant also does not meet the conditions of subsection 10(1)(e) as regrettably, the prospects for the Appellant's occupational, educational and/or vocational rehabilitation are non-existent. Accordingly, we are obliged to dismiss [the Appellant's] appeal as it currently stands, since our mandate is to apply the law as we find it, and the unfortunate facts in this case do not fall squarely within the technical requirements of the legislation in order to permit a very reasonable expense for the rehabilitation of this Appellant.

Dated at Winnipeg this 10th day of January, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

COLON SETTLE, Q.C.