

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-648**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Paul Johnston
Mr. Les Marks

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

HEARING DATE: September 17, 2007

ISSUE(S): Calculation of the Appellant's entitlement to Income Replacement Indemnity benefits from October 2002 to January 3, 2003

RELEVANT SECTIONS: Sections 81(2) and 111(1) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Section 3(2) and Schedule C of Manitoba Regulation 39/94

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 participated by teleconference in this appeal hearing and MPIC's legal counsel was present in the Commission's Hearing Room. At the commencement of the hearing the Commission indicated that the first issue for determination by the Commission was to decide the issue under appeal. In response the Appellant indicated that he was appealing the amount of his entitlement to Income Replacement Indemnity ('IRI') benefits for the period of October 2002 to

January 2003. The Appellant further submitted that MPIC had miscalculated the amount owing to him and that he was seeking an additional \$7,000.00 dollars from MPIC.

In a letter from the case manager to the Appellant, dated July 29, 2003, the case manager stated:

We have now completed our assessment of your claim for Income Replacement Indemnity (IRI). Based on the available information, you are entitled to \$[text deleted] bi-weekly. This decision is based upon Section 111(1) of the Manitoba Public Insurance Corporation Act, which reads:

IRI is 90% of net income

111(1) The income replacement indemnity of a victim under this Division is equal to 90% of his or her net income computed on a yearly basis.

Please find a copy of the Income Replacement Indemnity IRI worksheet used to calculate your entitlement.

If you have any questions regarding this matter, please contact the writer at [text deleted].

Attached hereto and marked as Schedule A is a true copy of the Income Replacement Indemnity Calculation Schedule.

The Appellant applied to the Internal Review Officer to review the calculation of his IRI entitlement and his application was rejected by the Internal Review Officer in a letter to the Appellant dated April 7, 2003. As a result, the Appellant appealed to this Commission.

Appeal Hearing

At the request of the Commission, MPIC's legal counsel reviewed MPIC's IRI worksheet (Schedule A) and provided a explanation as to the method by which MPIC determined the Appellant's IRI entitlement. In response to questions from the Commission MPIC's legal counsel submitted that as a result of MPIC's calculation as set out in Schedule A, the Appellant's entitlement to IRI was not based on his actual income in the preceding two (2) years prior to his

motor vehicle accident on June 19, 2002 but was based on the highest average income level for a painter in the Appellant's classification pursuant to Sections 81(2) and 111(1) of the MPIC Act and Section 3(2) and Schedule C of Manitoba Regulation 39/94. MPIC's legal counsel further stated that as a result of MPIC's calculations, the Appellant's gross yearly employment income was approximately \$[text deleted] higher than the Appellant's reported income in the previous two (2) years of his employment prior to the motor vehicle accident. As a result of these calculations the Appellant was entitled to a bi-weekly IRI entitlement of \$[text deleted]. MPIC's legal counsel therefore submitted that MPIC had not miscalculated the Appellant's entitlement to IRI, but had determined the Appellant's entitlement based on the above mentioned provisions of the MPIC Act and Regulations.

The Commission requested the Appellant to make his submission in support of his appeal that he was entitled to an additional IRI of \$[text deleted] from October 2002 to January 3, 2003. The Appellant indicated that he was unable to challenge MPIC's calculation and the Commission requested that if the Appellant was unable to challenge MPIC's position in respect of this appeal did he wish to withdraw his appeal. In response the Appellant indicated he had no further submission to make and that he did wish to withdraw his appeal.

Appeal

The Commission finds, having regard to the documentary evidence filed in this appeal, having regard to the submissions of the Appellant and MPIC's legal counsel, the Appellant has failed to establish, on a balance of probabilities that MPIC miscalculated his entitlement to IRI for the period from October 2002 to January 3, 2003 in accordance with the provisions of Sections 81(2) and 111(1) of the MPIC Act and Section 3(2) and Schedule C of Manitoba Regulation 39/94.

The Commission finds that MPIC has correctly applied the Act and Regulations in order to determine the Appellant's IRI entitlement from October 2002 to January 3, 2003 and dismisses the Appellant's appeal.

Dated at Winnipeg this 1st day of October, 2007.

MEL MYERS, Q.C.

PAUL JOHNSTON

LES MARKS