

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-62**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Leona Barrett
Ms Diane Beresford

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Bob Tyre of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: July 17, 2008

ISSUE(S): Appellant's classification as a non-earner

RELEVANT SECTIONS: Sections 70(1) and 87 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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 June 27, 2005 when he was struck by a motor vehicle while on his bicycle. As a result of the motor vehicle accident, the Appellant sustained a head injury, an injury to his right hand and elbow and an injury to his left hand. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act.

At the time of the motor vehicle accident, the Appellant was unemployed and in receipt of regular Employment Insurance benefits. He had just completed a program of studies at [Text deleted] College on June 17, 2005, obtaining a certificate in [text deleted]. He planned to attend [Text deleted] College (“[Text deleted] College”) to continue his studies towards a degree [text deleted]. The Appellant testified at the appeal hearing that, at the time of the motor vehicle accident, he had attended an information session at [Text deleted] College and made some inquiries. He had not yet been accepted for admission as a student to [Text deleted] College as he was waiting for his official transcript from [Text deleted] College in order to complete the application form for admission to [Text deleted] College.

On November 18, 2005, MPIC’s case manager wrote to the Appellant to advise that:

As discussed on November 16, 2005, this confirm your entitlement to Income Replacement Indemnity (IRI) benefits under the Personal Injury Protection Plan (PIPP).

To qualify for IRI benefits, a classification of earner must be confirmed. In establishing your classification, it is essential that you meet the definition of “employment”, as defined under The Manitoba Public Insurance Corporation Act, which reads as follows:

“employment” means any remunerative occupation

To qualify for IRI benefits as a Student, it must be determined that you were attending a post-secondary institution on a full-time basis. This is in accordance with Section 87(2) of the Manitoba Public Insurance Corporation Act (copy attached).

During our meeting of September 27, 2005, and our subsequent conversations, you indicated the following:

- at the time of the accident, you had completed your post-secondary attendance at [Text deleted] College;
- you had not been admitted to [Text deleted] College;
- you were receiving regular EI benefits and continued to receive these benefits until (approximately) August 24, 2005; and,
- although you have applied to various companies, you were not offered employment at the time of the motor vehicle accident

Based on the information we have received on file to date, you have been classified as a Non-Earner, as defined under the Manitoba Public Insurance Corporation Act, at the time of the motor vehicle accident.

As a Non-Earner, your entitlement to IRI benefits is governed under Section 85(1) of The Manitoba Public Insurance Corporation Act (copy attached).

In accordance with Section 85(1) of the Manitoba Public Insurance Corporation Act, you have not established that you would have held employed (sic), therefore, there is no entitlement to IRI benefits for the initial 180 days following the date of your accident of June 27, 2005.

In order to be eligible to receive IRI benefits after the first 180 days following the accident, you must be unable to hold employment due to a physical or mental injury that was caused by the accident. Medical information on file does not indicate that you are unable to hold employment. Therefore, in accordance with Section 8 of the Manitoba Public Insurance Corporation Act, Regulation 37/94, you are not entitled to Income Replacement Indemnity benefits.

Subsequently, MPIC's case manager conducted further investigation into the Appellant's enrollment status at [Text deleted] and at [Text deleted] College. In a letter dated January 27, 2006, the case manager wrote to the Appellant to advise that:

This is further to our correspondence of November 18, 2005, regarding your entitlement to Income Replacement Indemnity Benefits as a result of the motor vehicle accident of June 27, 2005.

Subsequent to our correspondence of November 18, 2005, information has been received from [Text deleted] College and [Text deleted] College confirming that you were not enrolled as a student, at either institution, at the time of the accident (copy attached).

This information does not provide any new information that would allow us to make a fresh decision as contemplated by Section 171(1) of The Manitoba Public Insurance Corporation Act, which reads as follows:

Corporation may reconsider new information

171(1) The corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

Therefore, this will confirm, as per our decision letter of November 18, 2005, you are classified as a non-earner at the time of the accident.

The Appellant sought an Internal Review of that decision. In a decision dated March 3, 2006, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision of November 18, 2005. The Internal Review Officer determined that:

At the time of the accident, you were receiving regular E.I. benefits and had recently completed your post-secondary attendance at [Text deleted] College. Although you expressed interest in attending [Text deleted] College in the fall of 2005, you had not applied for admission to this institution at the time of the accident.

For your reference, Section 87(2) of the Act states:

“Student at secondary, post-secondary institution

87(2) For the purpose of Sections 87 to 92 (students), a student is considered to be attending a secondary or post-secondary educational institution on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student completes, abandons or is expelled from his or her current studies, or no longer meets the requirements of the educational institution.”

The interpretation of the term “current studies” refers to studies that are a part of a program at a secondary or post-secondary level that, at the time of the accident, the student has admission to begin or continue at an educational institution.

The [Text deleted] College provided clarification of your student status in a letter dated January 13, 2006. The correspondence advised that you were enrolled in a full-time program of studies from December 6, 2004 to June 17, 2005. All of your courses were successfully completed as of June 17, 2005 and you were not enrolled at the College on June 27, 2005, the date of the accident.

A letter provided by [Text deleted] College, dated January 26, 2006, advised that you are not at the present time, nor have you in the past, been enrolled as a student at their facility. The letter confirms your “inquiry” to their institution, but the College has never received an application for your attendance.

Of note, you confirmed during the hearing that the information provided by both Colleges as accurate.

The decision letter under review advises that in accordance with Section 85(1) of the Act, you have not established that you would have held employment on the date of your accident and, therefore, you were not entitled to IRI benefits for the initial 180 days.

Based on the totality of information on your file, your classification as a non-earner on the date of the accident is accurate and, therefore, I am upholding the case manager's decision of November 18, 2005.

The Appellant has now appealed from that decision to this Commission. The issue which requires determination in this appeal is whether or not the Appellant was properly classified as a non-earner for purposes of the MPIC Act.

Relevant Statutory Provisions

Definitions

70(1) In this Part,

"**student**" means a victim who is 16 years of age or older and attending a secondary or post-secondary educational institution on a full-time basis at the time of the accident;

Interpretation of sections 87 to 92

87(1) For the purpose of sections 87 to 92 (students),

"**current studies**" means studies that are part of a program of studies at the secondary level or post-secondary level that, at the time of the accident, the student has admission to begin or continue at an educational institution;

"**secondary level**" means Grades IX to XII;

"**school year**" at the secondary level means the period commencing July 1 and ending on June 30 in the following year.

Student at secondary, post-secondary institution

87(2) For the purpose of sections 87 to 92 (students), a student is considered to be attending a secondary or post-secondary educational institution on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student completes, abandons or is expelled from his or her current studies, or no longer meets the requirements of the educational institution.

Submissions of the Claimant Adviser

At the appeal hearing, the Claimant Adviser submitted that the Appellant should have been classified as a student pursuant to Section 87(2) of the MPIC Act. The Claimant Adviser argues that the Appellant's intention was to enroll in [text deleted] courses at [Text deleted] College as soon as he had received his official transcript from [Text deleted] College. He contends that the Appellant was in the process of being admitted to [Text deleted] College and his failure to finish

the enrollment process was due to the motor vehicle accident. As a result, the Claimant Adviser maintains that the Appellant should be classified as a student pursuant to Section 87(2) of the MPIC Act.

Submissions of MPIC

Counsel for MPIC submits that the Appellant did not meet the definition of a student under the MPIC Act. She argues that pursuant to Section 87(2), the Appellant has to be “admitted” by an educational institution in order to qualify as a student for the purposes of the MPIC Act. She maintains that although the Appellant had inquired about courses at [Text deleted] College, he had not been admitted. As a result, counsel for MPIC submits that the Appellant’s classification as a non-earner should be confirmed and his appeal dismissed.

Discussion

Upon hearing the testimony of the Appellant, and after a careful review of all of the reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that at the time of the motor vehicle accident (June 27, 2005), the Appellant was a non-earner in accordance with ss. 70(1) of the MPIC Act which provides that:

Definitions

70(1) In this Part,
"non-earner" means a victim who, at the time of the accident, is not employed but who is able to work, but does not include a minor or student;

It is clear from all of the information provided to the Commission and from the Appellant’s own testimony that, at the time of the motor vehicle accident, the Appellant had not been admitted by an educational institution as a full-time student in a program of studies. At the time of the motor

vehicle accident, the Appellant had merely made inquiries at [Text deleted] College. Although he had an intention to attend [Text deleted] College, we find that that intention does not meet the requirements of Section 87(2) of the MPIC Act. A student must have been admitted by the educational institution as a full-time student in order to qualify as a student pursuant to Section 87(2) of the MPIC Act. From the circumstances of this case, it is clear that the Appellant still had to be admitted by [Text deleted] College into a program of studies. Since that had not yet occurred at the time of the motor vehicle accident, the Appellant could not be considered a student for the purposes of the MPIC Act. Accordingly, the Commission finds that the Appellant's classification as a non-earner should be confirmed.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated March 3, 2006 is hereby confirmed.

Dated at Winnipeg this 11th day of August, 2008.

YVONNE TAVARES

LEONA BARRETT

DIANE BERESFORD