

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-40**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Leanne Zabudsky.

HEARING DATE: February 17, 2010

ISSUE(S): Entitlement to Personal Care Assistance benefits

RELEVANT SECTIONS: Section 131 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

The Appellant, [text deleted], was involved in a two-car collision on October 27, 2008. As a result of this accident, the Appellant sustained a soft tissue injury to her neck, back, legs and arms, along with headaches. Due to the bodily injuries which the Appellant sustained in this motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant reported an inability to perform household tasks to her case manager and accordingly a personal care assessment was arranged in order to evaluate her personal care needs and the level of care that she required on a daily basis. On January 9, 2009, [Appellant's

Occupational Therapist] completed an assessment tool to assess the Appellant's entitlement to personal care assistance benefits. Based on that assessment, the Appellant required assistance with heavy housecleaning and yard work. She scored "6" points out of a possible 89 points on the personal care assessment. By letter dated January 13, 2009, MPIC's case manager advised the Appellant that she did not qualify for personal care assistance benefits under PIPP. The case manager further advised that in order to qualify for personal care assistance benefits, a minimum score of "9" was required.

The Appellant sought an Internal Review of that case manager's decision. The Internal Review Officer, in a decision dated March 23, 2009, dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there was no entitlement to personal care assistance benefits unless a claimant attains a minimum assessment tool score of "9" points. As a result, the Internal Review Officer determined that the Appellant did not qualify for personal care assistance benefits under PIPP.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to personal care assistance benefits pursuant to Section 131 of the MPIC Act.

Relevant Legislation:

Reimbursement of personal assistance expenses

[131](#) Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

Appellant's Submission:

At the hearing of the appeal, the Appellant submitted that she continues to be unable to do a number of household tasks which were not scored by the occupational therapist on January 9, 2009 when he completed the personal care assessment tool. She advised that:

- She is unable to do the laundry as she cannot bend down to unload the laundry from the washer and load it into the dryer. She is also unable to carry the laundry up and down the stairs.
- She has difficulty with dinner preparation as she can't stand for long periods of time. She may sit in order to prepare meals, or have her daughter assist her with the cooking. Alternatively, she relies on her mother to assist with meal preparation or simply orders take-out food.
- She has difficulty with community outings as she has trouble driving due to the injury to her neck. She can't properly turn her head in order to shoulder check. She also advised that her leg gets numb and she has trouble feeling the brake pedals. She now only drives when it is absolutely necessary.

The Appellant argued that she has been forced to continue to do many of the above household chores even with her injuries. This has led to her developing migraines and prolonging her recovery. She has been unable to perform the household chores without pain and/or migraines and afterwards she remains extremely sore. She maintains that by continuing to undertake the daily household chores, she continues to exacerbate her accident-related injuries, which in turn continues to prolong her recovery. As a result, the Appellant maintains that she is entitled to personal care assistance benefits as she should have scored points for laundry, meal preparation and community outings. If she had been properly assessed and had obtained scores for those

tasks, she would have scored enough points on the personal care assessment tool in order to qualify for personal care assistance benefits. As a result, the Appellant submits that she is entitled to personal care assistance benefits and her appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that a minimum assessment tool score of "9" is required in order to qualify for reimbursement of personal care assistance expenses. She notes that on the assessment tool completed on January 9, 2009, the Appellant only required assistance with heavy housecleaning and yard work. As a result, the Appellant did not meet the minimum score required in order to qualify for personal care assistance benefits under PIPP.

Counsel for MPIC contends that the Appellant has the ability to carry out many of the tasks which she maintains she is unable to do, albeit with difficulty. Counsel for MPIC claims that [Appellant's Occupational Therapist] did properly consider the Appellant's functional abilities when he completed the personal care assessment tool on January 9, 2009. In regards to meal preparation, she notes that [Appellant's Occupational Therapist] did not consider that the Appellant qualified for assistance. With respect to laundry, she notes that [Appellant's Occupational Therapist] noted that the Appellant demonstrated the required range of motion to complete that task and she was therefore independent with laundry. Counsel for MPIC submits that [Appellant's Occupational Therapist] is the only objective measure of the Appellant's functional ability and his assessment is the best objective evidence of her functional capacity. She maintains that there is no other objective evidence to establish that the Appellant cannot accomplish the personal care assistance tasks. Additionally, counsel for MPIC argues that the Appellant has not incurred any expenses for personal care tasks as required pursuant to the MPIC

Act. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated March 23, 2009 should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to personal care assistance benefits pursuant to Section 131 of the MPIC Act.

Reasons for Decision:

Eligibility for personal care assistance benefits is governed by Section 131 of the MPIC Act. Section 2 of Manitoba Regulation 40/94 prescribes the use of a "personal care assistance assessment tool" to assess entitlement to personal care assistance benefits. A minimum assessment tool score of "9" is required in order to qualify for reimbursement of personal care expenses.

The Commission finds that there is a lack of objective evidence, including medical evidence, to substantiate the Appellant's functional abilities as of January 9, 2009. As a result, the personal care assessment tool prepared by [Appellant's Occupational Therapist] is the best objective evidence of the Appellant's functional capacity at that time. The Appellant has not provided sufficient objective evidence in order to challenge that assessment. There was no medical evidence filed in connection with this appeal to corroborate or support the functional deficits reported by the Appellant. Additionally, although the Appellant may have found certain tasks difficult (such as driving), she testified that she was able to complete those responsibilities, albeit, with difficulty. As a result, the Commission finds that the Appellant has not established

that she was unable to care for herself or to perform the essential activities of daily life without assistance.

As a result, upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established that her score on the personal care assessment tool completed on January 9, 2009 should have been greater than the “6” points which she obtained for heavy housecleaning and yard work. Accordingly, the Appellant’s appeal is dismissed and the Internal Review Decision dated March 23, 2009 is therefore confirmed.

Dated at Winnipeg this 9th day of April, 2010.

YVONNE TAVARES