

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-118**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: August 1, 2012

ISSUE(S): 1. Entitlement to Income Replacement Indemnity benefits.
2. Entitlement to reimbursement of medications.
3. Entitlement to funding for a mattress.

RELEVANT SECTIONS: Sections 110(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC: 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], has appealed the following Internal Review Decisions:

1. Internal Review Decision dated February 11, 2005, with regards to his entitlement to funding for a TempurPedic King mattress; and
2. Internal Review Decision dated April 29, 2005, with regards to his entitlement to income replacement indemnity ("IRI") benefits beyond July 25, 2005 and his entitlement to reimbursement for certain medications.

The appeal hearing was held on August 1, 2012 commencing at 9:30 a.m. At the outset of the hearing, [text deleted] advised that she was a friend of the Appellant and that the Appellant had passed away in July 2010. She further advised that she did not intend on pursuing the appeal on behalf of the Estate of the Appellant and it was her belief that no one else would be pursuing the appeal on behalf of the Estate of the Appellant. The Commission determined that Notice of the Hearing had been given in accordance with Section 184.1(1) of The MPIC Act and as a result, the Commission proceeded with the hearing of the appeal.

Upon a careful review of all of the medical, paramedical, and other reports and documentary evidence filed in connection with this appeal, the Commission finds that the Appellant has abandoned his appeal of the Internal Review Decisions dated February 11, 2005 and April 29, 2005.

The criteria to be considered in order to determine whether an appeal has been abandoned are:

1. there must have been a continuous intention to prosecute the appeal;
2. there must be a reasonable explanation for any delay in prosecuting the appeal; and
3. there must be arguable grounds of appeal.

Upon reviewing the foregoing factors, the Commission finds that:

1. Since the Appellant's death in July 2010, there have not been any attempts to proceed with the Appellant's appeals. Accordingly, the Commission finds that the Estate of the Appellant has not displayed an intention to pursue the appeals.
2. The Commission finds that the Appellant's death has resulted in the failure to pursue his appeals.

3. The Estate of the Appellant has not provided any evidence in order to support his appeals. The onus is upon the Appellant to establish the appeals. The Commission finds that upon a consideration of the totality of the evidence before it, the Appellant has not established, on a balance of probabilities, that there is an arguable case to be determined before the Commission with respect to the issues under appeal.

As a result, the Appellant's appeals are dismissed and the Internal Review Decisions dated February 11, 2005 and April 29, 2005 are confirmed.

Dated at Winnipeg this 8th day of August, 2012.

YVONNE TAVARES