

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]  
AICAC File No.: AC-95-1**

**PANEL:** Mr. J. F. Reeh Taylor, Q.C. (Chairperson)  
Mr. Charles T. Birt, Q.C.  
Mrs. Lila Goodspeed

**APPEARANCES:** Manitoba Public Insurance Corporation ('M.P.I.C.')  
represented by Ms Joan McKelvey  
[Text deleted], the Appellant, appeared in person

**HEARING DATE:** May 9th, 1995

**ISSUE:** Entitlement to cost of addition to residence when accident  
necessitates hiring of contractor for work that claimant had  
intended to do.

**RELEVANT SECTIONS:** 135 AND 136(1) OF THE M.P.I.C. Act and 10(1)(b)(i) of  
Regulation 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 FACTS**

[The Appellant] is a practical lady, capable, with minimal assistance, of  
constructing an addition to her home at [text deleted], Manitoba. She had, in fact, laid in almost

all of the lumber and other building supplies to enable her to build a sun-porch as an extension to her home and, on June 7th, 1994, was on her way to a building supply yard to pick up some metal brackets or joist-hangers when another vehicle collided with hers. The accident appears to have caused some damage to at least one of [the Appellant's] vertebrae and possible soft tissue injuries to her neck, shoulders and arms; this was probably made more troublesome by the fact that she had sustained similar injuries in an automobile accident in 1987. The result, in any event, was a partial disability which her physician feels may well be permanent. She has been undergoing regular physiotherapy, improvement has been very slow and she continues to experience severe headaches and muscular pains that hinder her performance of heavy housework and yard care. Fortunately, her employment is clerical and has not been adversely affected.

Amongst other things, [the Appellant] was prevented by her disability from constructing, herself, the addition to her home and felt obliged to have that work done by a contractor, [text deleted], at a cost of \$2,300.00. It is for that cost that [the Appellant], having had her claim for reimbursement denied by M.P.I.C.'s Claims Department and largely denied by its Internal Review Officer, now appeals.

Three other matters should also be noted at this juncture:

- (a) [The Appellant], by June 25th, 1994, at the latest, and probably sooner, had asked M.P.I.C. whether it would reimburse her for the cost of having someone else complete the work of rebuilding her front and back steps and of completing the sun-porch. Although an Adjuster appears to have told her, on June 28th, that this type of expense would not be covered, he also said that he would check and let her know. In fact, it was not until August

23rd that [the Appellant] received her first, formal denial of coverage by M.P.I.C. We are constrained to note that two months or more seems an excessive delay between a simple request and, whether right or wrong, an equally simple response;

- (b) the front steps to the home had rotted and had been removed by [the Appellant] some time during 1993; she had planned to replace them, as part of the overall, exterior project - that is to say, front steps plus sun-porch - that she was to complete herself. The back steps, while still in place, were in an unsafe condition and were also to have been replaced as an attachment to the sun-porch;
- (c) the roof on [the Appellant's] home had started to leak prior to the accident of June 7th. She had already arranged for the roof to be reshingled by [text deleted] with the understanding that, by the time the shingling work commenced, she would have erected the walls and roof of the extension so that the entire roof, old and new, could be shingled as one, continuous project. The roof work could not reasonably have been delayed longer, due to the leak, and it would have been more expensive and aesthetically displeasing (at least until all shingles had weathered to the same degree) to have the shingling done in two, separate, stages. For those reasons, [the Appellant], having already postponed the roofing work for a month, elected to go ahead with construction of the sun-porch, without waiting any longer for M.P.I.C.'s decision on the point. The work was completed on August 9th.

## **THE LAW**

It is axiomatic that, where a right sought to be enforced is based upon a statute, that right, and its corresponding remedy, must be found within the four corners of the statute. Part 2 of

the Manitoba Public Insurance Corporation Act is, in effect, an insurance policy covering almost all persons injured in motor vehicle accidents in Manitoba. Like all insurance policies, it does not purport to insure against every possible kind of loss, but only against those losses described in the statute itself or in the regulations. Since we are not dealing, in this case, with Income Replacement Indemnity, the statutory provisions that are relevant to [the Appellant's] claim are these:

**Section 135**

**"Reimbursement of expenses re family enterprise**

135           Where a victim is at the time of the accident working without remuneration in a family enterprise and the victim is unable because of the accident to perform his or her regular duties in the family enterprise, the victim is entitled to the reimbursement of expenses of not more than \$500. per week incurred during the first 180 days after the accident to have the duties performed during the 180 days."

[the Appellant] advanced the interesting argument that, since she and her daughters would have been doing all of the work in building the sun-porch and steps, this was a 'family enterprise' and that she was therefore entitled to compensation of \$500.00 per week up to an aggregate of \$2,300.00. She also expressed the view, however, that Section 135 is unlawful and unconstitutional, in that it purports to allow people to be employed without pay - a clear violation, she felt, of human rights and employment standards legislation.

We content ourselves by expressing the opinion that 'family enterprise', in the context of this statute, necessarily implies that the enterprise has some commercial, financial or agricultural objective, none of which is present here.

**Section 136(1)**

**"Reimbursement of victim for various expenses**

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation."

Since [the Appellant's] construction expenses are not covered by Subsections (a), (b) or (c) of Section 136(1), we must have recourse to the regulations, referred to in Subsection (d).

The only regulation that appears to be relevant bears No. 40/94 and the caption 'Reimbursement of Expenses' (Universal Bodily Injury Compensation) Regulation'. The only portion of that regulation bearing upon [the Appellant's] situation is Section 10(1)(b)(i), which reads as follows:

**"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:...

- (b) funds for an extraordinary cost required
  - (i) where the victim owns his or her principal residence, to alter the residence...."

We are of the view that the project for which the expense of \$2,300.00 was incurred was not 'necessary or advisable for the rehabilitation of the victim', save only that it was necessary to provide safe ingress to and egress from the building by replacing the steps. (The repair of the leaking roof was not something that [the Appellant] had planned to do personally.) To that end, M.P.I.C. has offered to pay [the Appellant] \$500.00. In the absence of evidence to the contrary, that sum seems reasonable, having in mind that the entire closed-in sun-porch, including the back steps, was built for \$2,300.00.

Being unable to find, in the Act or the Regulations, any other provision whereby [the Appellant's] construction expense might be covered, we must dismiss this appeal and affirm the decision of M.P.I.C. to limit its payment to [the Appellant], in this context, to \$500.00.

Dated at Winnipeg this 10th day of May 1995.

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**J. F. REEH TAYLOR, Q.C.**

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**CHARLES T. BIRT, Q.C.**

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**LILA GOODSPEED**