Automobile Injury Compensation Appeal Commission

IN THE MATTER OF AN APPEAL BY [the Appellant]
AICAC File No.: AC-96-27

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., (Chairperson)** **Mr. Charles T. Birt, Q.C.,** **Mrs. Lila Goodspeed**
APPEARANCES:	**[Text deleted], the Appellant, appeared in person;** **Manitoba Public Insurance Corporation ('M.P.I.C.'), represented by Ms Joan McKelvey**.
HEARING DATE:	**September 9th, 1996**
ISSUE(S):	**Claim for expenses for cable television, a specific cordless telephone, and traction boots;** **claim for unused portion of a meal allowance.**
RELEVANT SECTIONS:	**Sections 131, 136(1), 138, 142, 150 of the M.P.I.C. Act Regulation 40/94, Sections 1, 2, 10 (1)(d)(v), 27 and 33, and Schedule B.**

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, [text deleted], was in an automobile accident on March 26th, 1995, in which he sustained a fracture to his right leg and a fracture to his left arm requiring hospitalization for ten days. He refractured his right leg on September 15th, 1995 for which he required five days of hospitalization. [The Appellant] was compensated for numerous rehabilitation and other aspects of his claim for medical and personal assistance care.

The Appellant's appeal from the decision of the Internal Review Officer covers the following matters:

1. the cost of a cable television subscription;
2. the cost of a particular cordless telephone;
3. the cost of traction boots; and
4. compensation for the unused portion of meal entitlement.

Regarding the first three items, the Appellant viewed them as 'rehabilitative expenses' and apparently decided to incur those expenses for the following reasons:

(a) He believed that conversations with his initial adjuster, [text deleted], equated to an authorization to subscribe for cable T.V. at the insurer's expense, particularly since the Corporation had paid for that service during the period of his hospitalization.

(b) The Appellant spoke to his Doctor about his need for a cordless telephone. A prescription form with a notation "1 cordless phone" was signed August 30th, 1995, by [Appellant's doctor] and precipitated the purchase of a phone of the Appellant's choice, at a cost of $289.99, without M.P.I.C. authorization. Despite there being no specific provision in the Statute for the purchase of a telephone under rehabilitative compensation, the adjuster agreed to an allowance of $129.99 plus taxes, being the cost of a cordless telephone suitable for use in [the Appellant's] apartment. [The Appellant] still feels that he should be reimbursed for the expense that he actually incurred, no matter what the cost, and now appeals from the decision of the Internal Review Officer confirming the $129.99 figure.

(c) The Appellant, on his own volition, purchased a pair of traction boots without any authorization other than that he believed he would need them in anticipation of a snowy and icy winter. He argued that there was a record in his file of footwear being prescribed. He did

obtain a pair of orthopaedic shoes that were prescribed by his Doctor and was reimbursed for this expense.

[The Appellant] is also requesting compensation for the unused portion of what he believed was his meal entitlement. The Appellant believes he was entitled to a daily meal allotment of $22.30 pursuant to Regulation 40/94, Schedule B. He testified that he was provided with meals at a cost of approximately $11.20 per day since his accident until January 15th, 1996. He first received two meals a day from [text deleted] which he did not like; he switched to two meals a day from [text deleted] which he again tired of; eventually, he started receiving one meal a day from [text deleted], with whose quality he was more content. He testified that one meal a day was not sufficient because it required him either to save a portion of it for later in the day or to go without a second meal. He said he did not bother with having breakfast, but waited until mid-day to receive meals. He stated he switched to [text deleted] at the end of June 1995 and received one meal per day at a fixed rate of around $11.20 per day. Although one meal was not sufficient, he said, [text deleted] service and quality were better. The evidence on the file, indicates that in fact, [the Appellant] appears to have received two meals per day from [text deleted].

THE LAW:

The victim is entitled to be reimbursed for any expenses that occur as a result of an automobile accident to the extent that those expenses qualify under the terms of the Act and Regulations.

Under Section 138 of the Act, the Corporation is under an obligation "subject to the regulations, to take measures it considers necessary to rehabilitate a victim, to lessen the disability and facilitate their return to normal life."

[The Appellant] was entitled to, and received, all necessary personal care assistance and other rehabilitation considerations. He was covered for expenses under medical and paramedical rehabilitation such as taxi service, vocational rehabilitation services, meals, house cleaning, etc., but the Corporation did not pay the expenses addressed in this appeal.

The relevant section of the Act reads, in part, as follows:

> "**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 of 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 orthopaedic 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 expenses claimed by [the Appellant] 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).

Regulation 40/94 entitled "Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation", outlines all of the expenses to which an individual is entitled specific to rehabilitation. The overlying section that pertains to reimbursement of expenses read

as follows:

> "**Reimbursement is subject to schedules**
>
> 1. An expense that the corporation is required under this regulation to reimburse is subject to a determination by the corporation of the amount payable in accordance with the Act, regulations under the Act, and the Schedules to this regulation."

The pertinent portion of this regulation regarding the first three portions of [the Appellant's] claim 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:..... adapting a vehicle, altering a residence, relocating a victim or altering construction plans for residence, reimbursement for wheelchairs, mobility aids, medically required beds, specialized medical supplies, communication and learning aids, specialized hygiene equipment, specialized kitchen and homemaking aids, cognitive therapy devices, and educational rehabilitation to return a victim to an earning, independent capacity."

Cable T.V.

Since there was no indication in the written records of the Corporation that any authorization for cable television had been given to [the Appellant], it was agreed that clarification would be sought from [Appellant's MPIC adjuster]. [Appellant's MPIC adjuster] apparently confirms that he did not authorize payment of expenses related to cable television, adding that he would not have made a promise to pay for cable T.V. in that this type of expense is not covered by the Act and Regulations. [Appellant's MPIC adjuster] ceased handling the file of [the Appellant] as of June 1995, and would not have had an opportunity to consider further the cable television issue.

[The Appellant] had commenced his cable TV subscription, without any recorded authorization, on the 13th of April, 1995. Bills were submitted by the Appellant to his new adjuster later in August, 1995, with an attached note stating (untruthfully) that [Appellant's MPIC adjuster] had covered the cable expenses for the previous four months. The cable was installed at his original residence and despite being told that there was no compensation for this expense, he resubscribed to cable television when he relocated to a new residence. It begs the question why, upon learning that he was not entitled to the recovery of expenses for the cable TV, he did not cancel the subscription and why he continues to incur expenses that are not compensable under the Statute. We do not consider access to cable television for a few months to be necessary for a victim's rehabilitation, and must dismiss this portion of [the Appellant's] claim.

Cordless Telephone

The Appellant was advised by M.P.I.C. that there is no specific provision in the Regulations for a cordless telephone, but that special consideration would be given because he had to relocate to another apartment, a two-storey structure, and was not able to manage the stairs comfortably or quickly on crutches. It is at least arguable that, under Section 10 of Regulation 40/94, a telephone might be considered a 'communication aid' and, to someone who can only navigate stairs slowly and with difficulty, 'necessary or advisable for rehabilitation'. In consequence, we consider the reimbursement of the $129.99 plus taxes to be quite proper. But that would not extend to the cost of the more expensive model acquired by [the Appellant], whose claim for the higher amount must fail.

Traction Boots

In Section 33, there is a provision for coverage of expenses for shoes. This provision reads as follows:

> "**Shoes**
>
> 33. The corporation shall pay an expense incurred for the purchase, manufacture, alteration, repair or replacement of shoes that are prescribed by a physician."

In that shoes were needed for rehabilitation, a prescription was tendered by [Appellant's doctor] for "orthopaedic correct running shoes, 1 pair" and this expense was incurred by [the Appellant]; he was reimbursed for it. However, [the Appellant's] traction boots were not prescribed by any physician nor made necessary by an automobile accident. It seems clear that these boots were an 'off-the-shelf' item that [the Appellant] would have purchased in any event, even in the absence of his accidents, and were not a medical nor a rehabilitative necessity. This part of the appeal must also fail.

Meal Allowance

The Appellant believes, from his reading of the Act and Regulations, that he was entitled to $22.30 per day for meals. Initially, he says, he was told that he would not be provided with any more than $11.50 per day, plus taxes. He believes that he was misled by the Corporation and should have been told that he could have spent up to the maximum of $22.30 per day outlined in Schedule B of Regulation 40/94. He therefore claims the difference between what he received and what he believes he was entitled to receive. Once he learned of this meal maximum, he said, he didn't actually incur the expense for meals totalling $22.30 per day, because it would have added up to a substantial amount and he would have been short of cash

until he submitted his bills and received reimbursement from M.P.I.C. That reasoning makes little sense, since the provider of the meals in each case was billing M.P.I.C. directly, with no resultant, adverse effect upon [the Appellant's] cash flow.

Regulation 40/94, Schedule B, is not applicable in this situation but rather applies to those individuals who incur expenses for travel and accommodation when they need to travel over 100 kilometres to receive medical care.

Where a right is sought to be enforced, that right and corresponding remedy must be found within the four corners of the Statute. The authority for [the Appellant] to receive meals and other home care assistance is found in the Act and in Regulation 40/94.

> Section 131 of the Act reads as follows:
>
> "**Reimbursement of personal assistance expenses**
>
> Subject to the regulations, the corporation may 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."

> Section 2 of Regulation 40/94 reads as follows:
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> "**Reimbursement of personal home assistance under Schedule A**
> 2. Subject to the maximum amount set under section 131 of the Act, where a victim incurs an expense for personal home assistance that is not covered under The Health Services Insurance Act or any other Act, the corporation shall reimburse the victim for the expense in accordance with Schedule A."

Schedule A provides a method of evaluating the needs of the victim regarding personal and home care assistance. Points are assigned to areas of need on an evaluation grid. They are totalled to determine the qualifying percentage of expenses that is then applied to the maximum provision

under Section 131 of the Act.

Personal and Home Care Assistance Evaluations were conducted with [the Appellant] and appear in the files with the following information:

> **Personal Assistance Summary**
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> Evaluation coverage April 4th - 24th, 1995. Qualifying expense of 63% of the maximum allowable monthly expense which equalled $1,890.00.
> Evaluation coverage May 3rd - June 3rd, 1995. Qualifying expense of 63% of the maximum allowable monthly expense which equalled $1,890.00.
> Evaluation coverage June 5th - July 5th, 1995. Qualifying expense of 52.94% of the maximum allowable monthly expense which equalled $1,610.43.

There are no further evaluations on the file beyond those noted above. Due to the nature of [the Appellant's] injury, M.P.I.C. did not undertake further assessment but chose to continue payments until medical reports indicated when it was appropriate to reduce support levels.

The evaluations indicated that the appellant was completely dependent on assistance and required the preparation of breakfast, lunch and dinner; light housekeeping; house cleaning; laundry and purchase of supplies. The maximum monthly personal assistance expense allocations were determined for [the Appellant], in the aggregate amounts noted above and this allowance was used to cover the expenses of all of the services he required.

Each of the foregoing evaluations indicates that the Appellant was entitled to three meals a day although, because he was rising late in the mornings, he seems to have agreed that he only needed two meals each day. From a review of the files it appears that the meal arrangement was made between the adjuster and appellant with restaurant changes made to accommodate the appellant's food preferences. An agreement was then reached with the food service provider regarding delivery, frequency of meals and a cost that was billed to and paid for by M.P.I.C.

The Commission is of the view that [the Appellant's] meal expenses were covered under his qualifying monthly expense allocation pursuant to Regulation 40/94, Section 2. There is no provision in the Statutes for a fixed maximum or minimum cost of meals under home assistance nor is an individual entitled to compensation for an unused portion of daily meals such as the breakfast the appellant declined each day.

DISPOSITION:

For the foregoing reasons, we must dismiss [the Appellant's] appeal and confirm the decision of the Internal Review Officer.

Dated at Winnipeg this 28th day of October 1996.

J. F. REEH TAYLOR, Q.C.,
(CHAIRPERSON)

CHARLES T. BIRT, Q.C.

LILA GOODSPEED