Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-31

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 Mr. Keith Addison** **[Text deleted], the Appellant, appeared in person by way of telephone conference call**
HEARING DATE:	**October 24th, 1996**
ISSUE(S):	**1. Whether Appellant entitled to one, additional month's I.R.I.;** **2. Whether Appellant entitled to lump sum indemnity for loss of one term's studies;** **3. Jurisdiction of Commission to award costs of medication not raised at internal review.**
RELEVANT SECTIONS:	**Sections 110(1), 87 and 88 of the M.P.I.C. 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

At the time of [the Appellant's] injury in an automobile accident on September 21st, 1995, he held seasonal employment with [text deleted] and, on a casual basis, with [text deleted]. Having already attained a degree of [text deleted] at the University of [text deleted], he

had enrolled in a course of [text deleted] at the University of [text deleted].

[The Appellant] had given his notice to [text deleted], voluntarily terminating his employment as of September 21st but, due to the accident, his last actual day of work was September 20th. The Appellant says that the termination of his employment was subject to his ability to obtain a full student loan, but the employer disclaimed any knowledge of that condition.

[The Appellant] withdrew from all University courses on October 5th, 1995, partly because he had already missed four weeks of studies and partly because he was still suffering some pain from his motor vehicle accident. The troubles directly caused by that accident appear largely to have been healed, perhaps as early as mid-October but, almost certainly, by mid-December of 1995.

[The Appellant] was paid income replacement indemnity of $258.59 bi-weekly, based upon his income from [text deleted], and was also paid a lump sum student indemnity of $6,300.00 for the loss of the first term of the 1995/96 academic year, pursuant to Section 88(2) of the M.P.I.C. Act.

His income replacement indemnity was discontinued by M.P.I.C. as of January 31st, 1996, upon the basis that he was no longer disabled from returning to his studies by mid-December of 1995, according to the medical report from [the Appellant's] own, attending physician.

[The Appellant] appealed from that decision, claiming:

(a) payment of a further lump sum benefit of $6,300.00 for the second term of the academic year in question;

(b) payment of one more month of income replacement indemnity, to cover the month of February 1996 because, he says, having moved from Winnipeg to Calgary he was advised by his Calgary physician not to return to work until March 1st of 1996.

With respect to [the Appellant's] claim for income replacement for the month of February, although his physician in [Manitoba], [text deleted], does indicate in his last report of February 16th that [the Appellant's] disability ended on January 31st, the fact is that [Appellant's doctor #1] did not see his patient at any time after January 16th, so that his 'end-of-problem' date can only be an estimate. Meanwhile, the Appellant says that he was unable to return to work until March 1st, citing what can only be described as a somewhat skimpy certificate issued by [Appellant's doctor #2] of [Alberta] on February 13th, 1996. [Appellant's doctor #2's] certificate merely says:

"Return to Work Certificate

[The Appellant] has been under my care from February 13th, 1996 to ....(date left blank) and is able to return to work on March 1st, 1996."

However, the fact is that [the Appellant] had quit his employment with [text deleted] back in September of 1996 and presumably, having moved to [Alberta], had also voluntarily terminated his employment with [text deleted]. It therefore follows that there was no

employment from which he was prevented during the month of February 1996, and his claim on this count must, therefore, fail.

[The Appellant] bases his claim for a further $6,300.00, being the lump sum payment that would be due to him if he was obliged to miss a second academic term as a result of the accident, upon two points: first, he says, he was still suffering sufficiently from the injuries he sustained in the accident that it was too physically painful for him to continue his studies until well into the second academic term; secondly, and more importantly, he says that, even had he been well enough, he would not have been able to complete that second term because a major portion of his studies in that second term were subject to the completion of certain other, prerequisite studies in the first term that he had been obliged to miss.

We are not satisfied, on the evidence, that [the Appellant] could not have returned to school for the second term, beginning in January of 1996. It is possible (although even this is doubtful) that he was still suffering some discomfort from the injuries sustained in his accident, of a nature that would have precluded his return to any gainful employment involving much physical labour, but we are not convinced, on a balance of probabilities, that the degree of his discomfort would have been sufficient to prevent his attending classes and completing his studies.

We wrote to the University[text deleted] to inquire whether, having missed the first term of the studies for which he was enrolled, [the Appellant] would necessarily have been precluded from carrying on with his second term - would he, in other words, have been put back an entire academic year by reason of his accident. The reply that we have received from [text

deleted], head of the Department in which [the Appellant] was registered, is sufficiently succinct to merit reiterating here. He says:

> "[The Appellant], student number [text deleted] has given me written permission to reply to your letter of 29 October 1996.
>
> I have reviewed [the Appellant's] program and find that he requires 36 courses to complete the requirements for the degree. He could have completed the program requirements in 6 terms with no pre-requisite conflicts by taking the normal load of 6 courses per term starting in January of 1996. He would not have been able to take all of the courses which he missed in the fall term of 1995 in the spring term of 96 but could have taken others that met the pre-requisite requirements and taken the remaining courses from the Fall 95 term in the Fall '96 term. He was precluded from taking one course that he selected for his second term [text deleted] because of the lack of prerequisite course [text deleted] but could have taken others.
>
> I have developed programs based on [the Appellant's] original registration and based on a program starting in January 1996 and find that, barring failures and summer session courses, he would have completed the degree requirements at the same time, i.e. December 1998."

From that response, it seems quite clear that [the Appellant] was not denied the benefit of a second term and could, had he wished and had he remained in [Manitoba], have still completed his courses by the end of 1998. This facet of his appeal must, therefore, also fail.

At the hearing of his appeal, [the Appellant] also raised a claim for reimbursement of certain medications apparently prescribed by his [Alberta] physician. His claim, in that context, was for approximately $36.00. The only evidence that we have is a copy of a prescription receipt from [text deleted] in [Alberta], dated February 14th, 1996 (the day after [the Appellant] first saw [Appellant's doctor #2]) for $14.07, covering 30 tablets of Apotex Naproxen; the prescription was marked "no repeats". Since this facet of [the Appellant's] claim was not, apparently, raised with the Internal Review Officer, we have no jurisdiction to deal with it. Were this the subject of a valid appeal, we would have allowed [the Appellant] the sum of $14.07. As

matters stand, it is within the discretion of M.P.I.C. to make an ex gratia payment of that amount to [the Appellant], but, as noted above, we have no jurisdiction to deal with it.

Dated at Winnipeg this 2nd day of December 1996.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED