

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-53**

PANEL: Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed
Mr. F. L. Cox

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Joan McKelvey
[Text deleted], the Appellant, appeared in person

HEARING DATE: January 20th, 1997

ISSUE(S): Should there be full compensation for the purchase of a pair of in-line skates?

RELEVANT SECTIONS: Subsections 10(1)(d)(iii) and 10(1)(e) of Regulation 40/94 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

THE FACTS:

The Appellant was involved in an automobile accident on August 12th, 1995. He was crossing an intersection when a motor vehicle struck his vehicle on the driver's side. He suffered multiple injuries and was hospitalized for a short period of time. For the purposes of

this appeal, we are concerned about the consequences arising from the injuries to the Appellant's ribs, lower back and fracture of the left side of his pelvis. This latter injury affected the obturator nerve and adductor muscle in his left leg.

To help him recover from his injuries, the Appellant started a course of physiotherapy and later received a program of chiropractic treatments. He continued to have residual pains in his lower back, left ribcage and in his left leg. His ongoing problem was a weakness and wasting of the adductor magus muscle in his left leg. The Appellant had difficulty bringing his left leg over to his right side when walking and when he turned to the right, he had to place his hand on his left hip to help turn his leg.

After the Appellant recovered from some of his injuries he returned to his job. Due to the problems with his left leg he was not able to do his regular work or even a modified form of his former job. It was agreed between M.P.I.C. and the Appellant that he should discontinue his employment and concentrate on rehabilitating his leg.

The conventional method of treatments did not improve the function of his left leg. [text deleted], the Appellant's Chiropractor, suggested he try roller blading to strengthen and improve his left leg. [Appellant's rehab specialist], who was responsible for the Appellant's rehabilitation program, agreed with this assessment and incorporated the suggestion into the Appellant's rehabilitation program.

The Appellant lacked knowledge about in-line skates and no one could advise him as to what type to purchase for his program. Consequently, he had to do his own research by reading the available literature and talking to several vendors and various people who used in-line skates to determine what type of skate would be best suited to his program. After completing his research he felt he had discovered the right type of skate but to be certain rented a pair for a trial period. The retail price for the in-line rentals was \$280.00. The Appellant used them extensively for a day and found that the skate boot was too loose, the wheels did not allow for the necessary manoeuvrability and did not absorb the road shocks very well and as a result he suffered pain in his back and legs.

The Appellant conducted further research and determined that he needed skates that had a different wheel design and special equipment to alleviate his earlier problems. He purchased the skates for \$398.99 and discovered after using them that they fit well, absorbed the shocks and did not cause him any pain. Over time the use of the in-line skates helped him improve his leg and he was able to walk and turn without the problems he had previously experienced.

The Appellant purchased the skates out of his own financial resources and then asked M.P.I.C. to reimburse him given the fact that the in-line skates were recommended by his medical team for his recovery program. M.P.I.C. contributed \$150.00 towards the purchase of the skates but would not reimburse the Appellant for the full purchase price. M.P.I.C. did some price research based on the criteria set out by [Appellant's chiropractor] for the type of skate that the Appellant should have, namely:

1. appropriate ankle and subtalar joint support;
2. upper line boot to assure proper comfort and stability;
3. a boot which would permit daily use in the area of two hours;
4. a boot which would provide adequate protection, grip, stability and shock absorption.

M.P.I.C.'s investigation showed that you could purchase in-line skates in a wide price range from \$150.00 to \$700.00 given the above noted criteria and believed that a pair of \$150.00 in-line skates would meet the Appellant's needs.

It is important with any treatment program that the program and/or equipment be used to give the best results. M.P.I.C. attempted to determine the cost of the equipment for the Appellant's rehabilitation program but they did not determine if the equipment they were prepared to pay for was the correct one or that they would do the job without any pain or discomfort. It was this ingredient that was lacking from their research whereas the Appellant went to great lengths to determine the correct in-line skates for his program of rehabilitation.

Based on M.P.I.C.'s decision that in-line skates were necessary for the Appellant's rehabilitation, their contribution towards the purchase under Section 10 of Regulation 40/94 of the M.P.I.C. Act and the Appellant's excellent research, we are of the opinion that the Appellant should be fully compensated for the full purchase price of his in-line skates. The type of in-line skate that he purchased helped his leg improve dramatically. Therefore, we are of the opinion that M.P.I.C. are responsible for the full purchase price of \$398.99 and must therefore pay an additional sum of \$248.99 to the Appellant.

DISPOSITION:

We therefore order that the Review Officer's decision dated September 27th, 1996
be varied accordingly.

Dated at Winnipeg this 28th day of January, 1997.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED

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