

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-08

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: April 9, 1997

ISSUE: Termination of Home Care Assistance.

RELEVANT SECTION: Section 131 of the M.P.I.C. Act, Regulation 40/94, Section 2,
Schedule A.

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], a [text deleted], was involved in a Motor Vehicle accident on
January 16, 1995, in which she sustained multiple injuries to her neck, chest and left
shoulder.

Although there was recovery from most injuries, chronic left shoulder pain revealed a need for surgery to repair a type II Superior Labial Lesion. Following surgery on February 2nd, 1996, [the Appellant] was evaluated and approved for Personal and Home Care Assistance to assist her in performing the essential activities of everyday life.

The appellant's appeal from the decision of the Internal Review Officer is based on the issue of the termination of [the Appellant's] home care assistance on July 28, 1996.

She has been trying continuously to become independent. She no longer needed personal assistance at meal times by July 28, 1996 as she was able to cut her food by using a spiked cutting board paid for by M.P.I.C. By November 1st she could do light housekeeping and arrange for her supplies. She did however, require home care assistance for the heavier aspects of meal preparation, house cleaning and laundry three times a week between July 28th to November 1st, 1996, by which date she appears to have been able to manage with minimal help. She paid for that assistance out of her own pocket.

It should be noted, here that entitlement to have home care assistance paid for by the insurer is governed by Section 131 of the Act and by Section 2 of Regulation 40/94, each of which is cited below. Schedule A of Regulation 40/94 sets out a formula, in the form of a so-called "grid system", whereby the extent of the victim's disability and resultant need for home care assistance has to be computed; a prescribed number of points is assigned to each kind of assistance required by the victim and the total of all those points determines how much the

victim is entitled to receive, in cash, towards her home care costs.

On June 12, 1996, a further evaluation was undertaken by [text deleted], an Occupational Therapist, to determine the level of assistance required by [the Appellant]. [Appellant's occupational therapist's]

report, dated June 17, 1996, indicated that [the Appellant] continued to require assistance. She added that the assistance "may" be reduced with occupational therapy education and that assistive devices "may" increase independence. [Appellant's occupational therapist's] June 17th assessment gave [the Appellant] a total of 14.5 points with a qualifying percentage of 31%, entitling her to an amount of \$930/month.

In a letter of June 20, 1996 to [Appellant's occupational therapist], the adjuster, [text deleted], concluded that the provision of a specially designed knife, a spiked cutting board and one hour of education should reduce [the Appellant's] grid score to 5.5 - 6.5, qualifying her for maximum assistance of \$500.00 monthly.

On June 28, 1996 [Appellant's occupational therapist] reported after a session with [the Appellant], that the educational sessions "should" increase her independence and [the Appellant's] assistance payment would be decreased to the maximum of \$500.00 per month.

In a memo, dated July 3rd, 1996, purporting to reflect the essence of a telephone conversation

between himself and [Appellant's occupational therapist], [Appellant's MPIC adjuster] concluded that [the Appellant's] grid score was 7.5 but that she would not need assistance after the end of that month.

The next day, [Appellant's occupational therapist] wrote a clarifying letter to [Appellant's MPIC adjuster], once again stating that [the Appellant] would still require continued assistance in the areas of vacuuming, changing the bed linens, heavy laundry and heavier aspects of dinner preparation.

THE ISSUE:

The sole issue is whether or not the appellant is entitled to reimbursement for home assistance expenses.

THE LAW:

The authority for [the Appellant] to receive 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:

“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.”

[The Appellant] was assessed and qualified for home care assistance, immediately following her surgery in February 1996. The simple fact seems to be that, both in her evaluation of June 28th, 1996 and in her clarifying letter of July 4th, [Appellant’s occupational therapist] makes it clear, to this Commission, that the appellant continued to qualify for assistance as follows:

<u>Area of need</u>	<u>Points assigned to that area</u>
Heavy cleaning	1.0
Heavy laundry and bed-linen changing	1.0
Dinner preparation	<u>5.5</u>
Total	<u>7.5</u>

A total of 7.5 points gives the victim an entitlement of \$ 500.00 per month.

The termination of an approved rehabilitative treatment or expense is generally based on medical reports, an occupational therapist's assessment or the victim's own indication of sufficient independence that he/she no longer requires further assistance.

Despite the written reports stating that the appellant still required assistance at a grid score of 7.5, it would appear that [Appellant's MPIC adjuster] took the report to mean that, since the education sessions were over and the claimant was provided with a cutting board, she no longer needed any assistance. In consequence, he decided to terminate her assistance totally at the end of July.

It is the view of the Commission that [Appellant's MPIC adjuster] prematurely terminated [the Appellant's] assistance, despite the fact it had been made clear by the assessor that she would require continued home care assistance.

DISPOSITION:

For the foregoing reasons the decision of the Internal Review Officer is revoked and MPI is directed to reimburse [the Appellant] for the expenses of home care assistance that she incurred from July 28th until November 1st, 1996, up to a maximum of \$500.00 per month.

Dated at Winnipeg this 22nd day of April 1997.

J.F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED