Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-93

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey** **the Appellant, [text deleted], appeared in person accompanied by her father**
HEARING DATE:	**September 24th, 1998**
ISSUE:	**Calculation of home care and personal assistance.**
RELEVANT SECTIONS:	**Section 131 of the MPIC Act and Schedule A of Manitoba 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 issue in this appeal is simply stated: was the Appellant, having been seriously injured in a motor vehicle accident, entitled to a greater amount of compensation for home care and personal assistance than she actually received from MPIC immediately following her discharge from hospital.

On April 10th, 1998 [the Appellant], a passenger in a motor vehicle being driven by her friend, suffered a proximal femoral shaft fracture on the left side and a compound dislocation of the first metatarsus on her right foot. In addition, she had multiple lacerations of her elbow and buttock, and bruising over the lateral aspect of her left foot and dorsum. The reports of the attending surgeon, [text deleted], indicate that the surgery on [the Appellant's] right foot proved difficult: a closed reduction of the MTP joint was attempted unsuccessfully; that was followed by an attempt to extend the wound on the plantar aspect with irrigation and cleansing but, because of the compound nature of the dislocation, that attempt was also unsuccessful. This was followed by a longitudinal incision made dorsally and, after a dorsal capsulotomy, it became clear that the head of the metatarsus had 'button-holed' completely through the volar capsul and that everything had been displaced dorsally, thus making it a locked irreducible dislocation. Once the surgical team felt that it had stabilized the problem, the foot was irrigated with the usual iodine and saline solutions, and partial closure of the surgical portion of the plantar wound was performed and the wound dressed.

The description of the surgical procedure related to the left femur also indicates that difficulties were encountered. For example: "the upper portion was drilled and reamed at the piriform fossa and, as there were difficulties in reduction, we had to sacrifice a nail to use as a proximal internal guide and use this then to complete our closed reduction.....there was some undisplaced further fracturing of the lateral cortex with distal fragment during this....in view of the further comminution at the fracture site and her large size, we elected to distally lock as well, although it was a fairly high diaphyseal fracture. The dull drill bit was lost in the proximal hole but the distal one was successfully filled distally with a single transverse 42 mm locking bolt....."

It is clear, from the medical evidence on file, that the trauma of that motor vehicle accident not only had a major impact upon [the Appellant] physically but, as well, had a material, adverse, psychological effect from which, by the time her appeal was heard, she appeared to be well on her way to recovery.

The basis of this appeal is found in Section 131 of the MPIC Act, which reads as follows:

> **Reimbursement of Personal Assistance Expenses**
>
> 131 Subject to the regulations, the Corporation may reimburse a victim for expenses of not more than $3,000.00 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 every day life without assistance.

Under Manitoba Regulation No. 40/94, where a victim incurs an expense for personal home assistance that is not covered under the Health Services Insurance Act or any other Act, MPIC is required to reimburse the victim for that expense in accordance with Schedule A to that regulation. Schedule A, in turn, contains two grids: Grid A is used for evaluating personal care assistance requirements, such as arising from and going to bed, dressing, washing, eating and so on; Grid B is used to evaluate home assistance requirements, in areas such as the preparation of meals, light housekeeping, house cleaning, laundry and the purchase of supplies. Points are awarded on each grid, intended to reflect the degree of the victim's needs in each case, depending upon whether the victim is completely dependent upon the assistance of others, partially in need of assistance or in no need of assistance. The points obtained on Grid A are added to those allotted on Grid B, and the

total is carried over to a chart which allows, for the aggregate points scored by the victim under those two grids, a given percentage of the $3,000.00 maximum referred to in Section 131.

[The Appellant] returned home from the hospital on April 19th and MPIC arranged for an assessment of her personal care and home assistance needs to be made on April 20th by [text deleted], a member of the Victorian Order of Nurses. On that assessment, [the Appellant's] total score was 25.5 out of a possible maximum of 51. Under the chart referred to above, a score between 25 and 28, both inclusive, allows a percentage of 55% of $3,000.00, or $1,650.00 per month.

On May 29th, MPIC caused a second assessment to be made for [the Appellant], by [text deleted], an occupational therapist. This time [the Appellant] scored an aggregate of 29 on the two grids, for which the allowance, to reimburse the victim for expenses incurred, is 63% of $3,000.00, or $1,890.00 per month. [The Appellant] concurs in the results of the second assessment; it is with three specific items forming part of the first assessment that she takes issue. They are:

(i) arising from bed. The April 20th assessment indicated that [the Appellant] was partially in need of assistance in this area, which gave her a score of 1. [The Appellant's] evidence, supported by that of her father, was that she was completely unable to arise from her bed without assistance from the day she came home until the physiotherapist retained by MPIC to assist her, [text deleted], showed her how to get into and out of bed with minimal assistance. She says that this took place approximately one and a half weeks after her return home, and this is borne out by [Appellant's physiotherapist's] report to MPIC which indicates that he first attended at her home on April 30th, 1998, the eleventh day following her discharge from

hospital. We therefore find that, from April 19th to April 30th, [the Appellant] was, for all practical purposes, completely dependent upon the assistance of her father and for that period her score in this particular context would be 2 rather than 1;

(ii) going to bed. Exactly the same comments apply here as are noted above with respect to arising from bed, giving [the Appellant] a score of 2, rather than 1 in that context also;

(iii) preparation of dinner. [The Appellant] was described, in the first assessment of April 20th, 1998, as being partially in need of assistance in the preparation of dinner, for which the grid provides 5.5 points. She testified that, although she had been able to look after the preparation of breakfast and lunch to some extent, with assistance from her father, between April 20th and May 29th, she had been effectively helpless when it came to getting dinner ready, involving the use of the oven, bending to retrieve pots, pans and other utensils from places that were hard to reach, since she was in a wheelchair most of the time and, when navigating narrower spaces, using a walker. Her evidence was that it was not until her occupational therapist, [text deleted], showed her how to place her weight properly and brought her a basket to place upon her walker in order to carry utensils and other items, showing her father where to place bread and other foodstuffs so that she could reach them, that her dependency was reduced from total to partial. Total dependency on assistance for the preparation of dinner gives the victim 11 points, rather than the 5.5 points that are allowed to partial assistance.

Both [the Appellant] and her father testified that, although [Appellant's nurse] had certainly attended at their home, the actual, written assessment had not been completed in their presence and that they

were not shown it nor consulted about it until quite some time later. We note, also, that [text deleted], the occupational therapist, in her report to MPIC of June 5th, says, in part, "....it is not recommended that [the Appellant] participate in meal preparation or cleaning activities at this time. Modification to her home and use of alternative methods should allow her to become more active in these activities....."

DISPOSITION:

Upon a careful review of all of the medical and paramedical evidence, and upon hearing the testimony of [the Appellant] and her father, we are prepared to vary the personal assistance expenses allowed to [the Appellant] by increasing her score from 25.5 to 33.0 for the period from April 19th to April 30th, both inclusive, and from 25.5 to 31 from May 1st to May 29th, both inclusive. A score of 33 points gives rise to an allowance of up to 71% of the $3,000.00 maximum per month; 31 points produce 63% of that same maximum. [The Appellant] has already been paid an aggregate of $2,310.00 for home assistance for that period. Therefore, by our calculations, the total amount of her home care assistance will be increased by $309.97 computed as follows:

71% of $3,000.00 = $2,130.00 x 12/30ths =	$852.00
63% of $3,000.00 = $1,890.00 x 29/31sts =	1,768.06
Total allowance	2,620.06
Less amount paid to date ($750.00 + $1,560.09)	2,310.09
Balance owing to [the Appellant]	$309.97

The outstanding balance will bear interest from May 29th, 1998 to the date of actual payment at the rate prescribed by statute, which is the prejudgment rate of interest determined under Section 79 of the Court of Queen's Bench Act.

ADDITIONAL RECOMMENDATION:

We strongly recommend that all grid evaluations be signed by the victim as well as by the evaluator, under a clause acknowledging that the assessment has been completed in the presence of, and explained to, the victim whose signature does not necessarily imply agreement with the evaluation.

Dated at Winnipeg this 30th day of September 1998.

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

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

_____ **LILA GOODSPEED**