



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-119**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Barbara Miller
Ms. Wendy Sol

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf, assisted by her husband, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: April 30, 2004.

ISSUE(S): 1. Entitlement to personal care assistance benefits for the period of February 25, 2003 to May 5, 2003;
2. Level of entitlement for personal care assistance benefits.

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 2 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 Appellant, [text deleted], was involved in a motor vehicle accident on March 19, 2002, when her vehicle was rear-ended. As a result of the injuries which the Appellant sustained in this accident, she became entitled to personal care assistance benefits in accordance with Section 131 of the MPIC Act.

Section 131 of the MPIC Act provides as follows:

Reimbursement of personal assistance expenses

131 Subject to the regulations, the corporation shall 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 Manitoba Regulation 40/94 provides that:

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.

Section 131 of the MPIC Act provides for reimbursement of personal assistance expenses, subject to the regulations. Section 2 of Manitoba Regulation 40/94 provides that MPIC shall reimburse a victim for an expense of personal home assistance 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 MPIC Act.

The Appellant was assessed on August 22, 2002, by [Appellant's occupational therapist #1] and her personal assistance needs were evaluated in accordance with the grids. The Appellant scored 11 out of 51 points on that evaluation, which entitled her to receive a maximum of \$850.80 per month of personal care assistance.

The Appellant's entitlement to personal care assistance was reassessed on February 24, 2003 by [Appellant's occupational therapist #2] to determine the Appellant's continued need. In that assessment, the Appellant scored a total of 2.5 points out of 51. Based upon that assessment, MPIC's case manager wrote to the Appellant on March 20, 2003 to advise her that, since she did not meet the minimum score of 5 to qualify for continued personal assistance expenses, MPIC would no longer fund any further personal assistance expenses beyond February 24, 2003.

The Appellant sought an internal review of that decision. In support of her Application for Review, the Appellant submitted a self-evaluation of her personal assistance needs, in which she scored a total of 20 out of 51 points. She also arranged for an independent assessment to be conducted by [independent occupational therapist #2] on May 7, 2003. The Appellant scored a total of 9 out of 51 points on the evaluation conducted by [independent occupational therapist #2].

In her decision dated July 29, 2003, the Internal Review Officer reviewed the various assessments of the Appellant's personal assistance requirements and she accepted [independent occupational therapist #2's] opinion that the Appellant was partially in need of assistance for the preparation of dinner. Accordingly, the Internal Review Officer determined that the Appellant was entitled to personal care assistance benefits based upon a score of 8 out of 51 from May 6, 2003, until such time as she no longer qualified.

The Appellant has now appealed from that decision to this Commission. The issues which require determination in this appeal are the Appellant's entitlement to personal care assistance benefits for the period of February 25, 2003 to May 5, 2003 and her level of entitlement for personal care assistance benefits.

The Appellant submits that her personal care assistance benefits should have been reinstated from February 25, 2003 when the benefits were terminated, rather than May 6, 2003 as determined by the Internal Review Officer. She also submits that her personal care assistance benefits should be based on a score of 9 out of 51, in accordance with [independent occupational therapist #2's] assessment, rather than 8 out of 51 as allowed by the Internal Review Officer.

Upon a careful review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant is entitled to reimbursement of her personal care assistance expenses from February 25, 2003 to May 5, 2003, inclusive, together with interest in accordance with Section 163 of the MPIC Act. The Commission also finds that the Appellant shall be entitled to personal care assistance benefits, based upon a score of 8 out of 51 from February 24, 2003, until such time as her personal care assistance requirements are reassessed.

Although the Internal Review Officer reinstated the Appellant's personal care assistance benefits retroactive to May 6, 2003, based upon the date of [independent occupational therapist #2's] assessment, we do not accept the Internal Review Officer's reasoning behind the choice of this date. Rather, we accept the Appellant's testimony that her functional capacity did not improve between February 24, 2003 and May 6, 2003 and, as a result, we find that her personal care assistance benefits should be reinstated from February 25, 2003.

With respect to the level of her entitlement, we are satisfied, on a balance of probabilities, that the Appellant was only in partial need of assistance for light housekeeping, and for the purchase of supplies, throughout the relevant period of time. We note that in the original assessment done by [Appellant's occupational therapist #1], the Appellant was only partially in need of assistance

for light housekeeping. Similarly, on the self-evaluation grids completed by the Appellant, she scored herself as only partially in need of assistance for light housekeeping as of May 5, 2003. Accordingly, we are satisfied that the Appellant was only partially in need of assistance for light housekeeping throughout the relevant period of time. We are also satisfied, based on the totality of the evidence contained in the file, and the Appellant's testimony at the hearing of this matter, that the Appellant was only partially in need of assistance for the purchase of supplies throughout the relevant period of time. As a result, we find that the Appellant is entitled to personal care assistance benefits based upon a score of 8 out of 51 from February 25, 2003, until such time as she is reassessed by MPIC.

Dated at Winnipeg this 10th day of May, 2004.

YVONNE TAVARES

BARBARA MILLER

WENDY SOL