



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-100

PANEL: Ms Laura Diamond, Chairperson
Ms Mary Lynn Brooks
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: March 7, 2005

ISSUE(S): Whether the Appellant is entitled to personal care assistance
benefits after February 13, 2004

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Act ('MPIC
Act') and Sections 1 and 2 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 injured in a motor vehicle accident on May 5, 2001. As a result of his injuries the Appellant was in receipt of Personal Injury Protection Plan ('PIPP') benefits under Part 2 of the MPIC Act. These benefits included payments for personal care assistance.

On February 12, 2004, the Appellant's case manager, following an assessment by an Occupational Therapist, found that the Appellant no longer qualified for personal care expenses as of February 13, 2004.

Internal Review Decision

The decision of the case manager was reviewed by an Internal Review Officer for MPIC on March 4, 2004. The decision of the case manager was upheld by the Internal Review Officer, because the Appellant's score on the grid assessment done in his home by the Occupational Therapist was at a level which did not qualify for a personal assistance benefit under PIPP. It is from this decision of the Internal Review Officer that the Appellant now appeals.

Submissions

The Commission reviewed documentary evidence and heard testimony from the Appellant and his wife. They described the difficulties which the family has encountered since the Appellant's accident. Prior to the accident, the Appellant's wife, due to her own disabilities, relied on the Appellant to care for, and particularly, to transport the family. The couple have four (4) children and the Appellant was the only driver in the family. He was responsible for transporting both his wife and the children to doctor's appointments and for purchase of groceries and supplies.

The Appellant suffered injuries to his ankle in the accident, and as a result was unable to drive or to perform many of the activities of everyday life which he had previously performed prior to the accident. MPIC arranged for assessments to be done regarding the Appellant's needs for personal care assistance and he was in receipt of such benefits throughout his recovery from the accident. However, an assessment performed by [text deleted], an Occupational Therapist, on January 30, 2004, found that the Appellant, on the personal assistance expenses worksheet, scored a total of 3.5 out of 51. As a minimum score of 5 out of 51 was required in order to

qualify for entitlement to personal care expenses, the Appellant's entitlement ended on February 13, 2004.

However, it was the submission of the Appellant that as of that date, he was still unable to drive, and required personal assistance benefits in order to take care of his family. The Appellant submitted that the grid set out in the legislation and regulations does not fit the life of the Appellant and his family. Due to his wife's disabilities, the Appellant had always carried a greater load in caring for the family and the personal care assistance grid system lacks any flexibility to reflect this reality.

He argued that the purpose of the legislation and, in particular of Section 131 of the MPIC Act, was to bring a claimant back to his pre-accident status by allowing him to recoup losses incurred as a result of the accident.

Counsel for MPIC submitted that the grid calculated on January 30, 2004 was properly and accurately completed and that this was conceded by the Appellant. While the Appellant's situation might be the result of a gap in the relevant legislation, the Commission did not have jurisdiction to fill in that gap, and must enforce the legislation as it is set out in the Act and regulations.

Discussion

Section 131 of the MPIC Act provides:

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.

The onus is on the Appellant to show that he is unable, because of the accident, to care for himself or to perform the essential activities of everyday life without the assistance claimed. This is determined through use of an evaluation grid completed in accordance with Section 1 and 2 of Manitoba Regulation 40/94 which provides:

Reimbursement is subject to Schedules

1 An expense that the corporation is required under this regulation to reimburse is subject to a determination by the corporation of the amount payable in accordance with the Act, regulations under the Act, and the Schedules to this regulation.

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 grid completed by the Occupational Therapist is set out in Schedule A to the Regulations.

While the Commission found the Appellant and his wife to be credible witnesses and while the panel understand the Appellant's argument that the legislation, as drafted, lacks the flexibility to adequately address the reality of his family situation, the Commission finds that the Appellant has failed to establish that the Act and Regulations were not correctly applied or that the case manager and Internal Review Officer were in error in their decisions.

The Commission has reviewed both the evidence on file and the evidence presented by the Appellant and his wife. The Occupational Therapist had the opportunity to observe the Appellant in his home and the Appellant acknowledged that his assessment accurately reflected the Appellant's level of function. Accordingly, it is the finding of the Commission that the Appellant is not entitled, under the MPIC Act and Regulations, to personal care assistance benefits after February 13, 2004.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date March 4, 2004.

Dated at Winnipeg this 30th day of March, 2005.

LAURA DIAMOND

MARY LYNN BROOKS

DEBORAH STEWART