

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-06-151**

**PANEL:** Ms Yvonne Tavares, Chairperson

**APPEARANCES:** The Appellant, [text deleted], was represented by Mr. Bob Tyre of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

**HEARING DATE:** February 15, 2007

**ISSUE(S):** Whether the Appellant can reinstate his appeal.

**RELEVANT SECTIONS:** Sections 174 and 182(3) of *The Manitoba Public Insurance Corporation Act* (the 'MPIC 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.

**Decision**

The Appellant, [text deleted], is seeking to reinstate his appeal from the decision of the Internal Review Officer dated September 15, 2006.

The Appellant's original Notice of Appeal was filed with the Commission on September 29, 2006. On October 16, 2006, the Commission received notice from the Appellant that he wanted to withdraw his appeal. On November 23, 2006, the Appellant advised the Commission that he wished to proceed with his appeal of the Internal Review decision dated September 15, 2006, on the basis of advice and information which he had received from the Claimant Adviser Office.

The Appellant is seeking to challenge the Internal Review decision dated September 15, 2006 on the basis that there is no regulation in effect limiting coverage for damaged clothing. He argues that he should therefore be entitled to reimbursement of expenses for replacement of his clothing which was damaged in his motorcycle accident of June 16, 2006, pursuant to Section 136(1)(c) of the MPIC Act, which states that:

**Reimbursement of victim for various expenses**

**136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

...

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

In support of the Appellant's request to reopen his appeal, the Claimant Adviser submits that:

- ◆ The Appellant filed his request to reinstate his appeal within the ninety (90) day appeal period provided by Section 174(1) of the MPIC Act and accordingly, his request to reinstate his appeal should be treated as a fresh Notice of Appeal;
- ◆ There is no prejudice to MPIC by the request to reinstate the appeal;
- ◆ There has been no delay in the proceedings; and
- ◆ The Appellant has an arguable case which should be determined by the Commission to clear up any confusion respecting reimbursement of expenses for damaged clothing.

Counsel for MPIC submits that the Appellant has not established a reasonable prospect of success upon the appeal, and therefore the Commission should not reopen an appeal which

has been expressly abandoned. He notes that between March 1, 1994 and February 28, 2003, Sections 30 and 31 of Manitoba Regulation 40/94 (the ‘Regulation’) provided limited coverage for damaged clothing worn by a claimant at the time of an accident. Both provisions were expressly repealed by Manitoba Regulation 46/2003 and have not reappeared – in any fashion – in the regulations. Counsel for MPIC argues that Section 136(1)(c) of the MPIC Act contains wording very similar to that found in the repealed sections of the Regulation. Although this particular provision has not been repealed, counsel for MPIC argues that the progression of amendments to the Regulation makes it clear that the intention of the legislature was to limit coverage for damaged clothing generally in the manner expressly set out in Sections 34 and 34.1 of the current version of the Regulation. Counsel for MPIC maintains that in this case, the Appellant is clearly not entitled to the benefit he is seeking and it makes no sense to proceed with an appeal which, on the face of it, is doomed to failure in any event.

### **Jurisdiction of the Commission**

The withdrawal by the Appellant of his appeal left the Commission without any jurisdiction to adjudicate the matter. The request by the Appellant to revise his appeal has reinstated the jurisdiction of the Commission to consider his request and determine the procedure to be followed in this instance.

### **Discussion**

Section 182(3) of the MPIC Act provides that:

#### **Commission to determine its practice and procedure**

[182\(3\)](#) The commission shall determine its own practice and procedure and shall give full opportunity to the appellant and the corporation to present evidence and make submissions.

Pursuant to this section, the Commission has the power to determine its own procedures and practices and may for that purpose make an order with respect to the procedures and practices that apply in any particular proceeding.

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the relevant factors surrounding the Appellant's request to reactivate his appeal, the Commission finds that the Appellant has demonstrated that there is an arguable issue to be determined. The Commission notes that, once an appeal has been withdrawn or abandoned, it should not be reopened, except in exceptional circumstances. The circumstances of the Appellant's intended appeal fall into that category. The Appellant's position presents an arguable case with respect to the interpretation of the MPIC Act and it should be allowed to proceed to adjudication. As a result, the Commission will permit the Appellant to reinstate his appeal of the Internal Review decision dated September 15, 2006.

Dated at Winnipeg this 21<sup>st</sup> day of March, 2007.

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**YVONNE TAVARES**

\* **Please see attached Notice.**

## **Notice**

### **Appeal to Court of Appeal on Question of Law or Jurisdiction**

#### **Appeal to Court of Appeal**

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

#### **Appeal with Leave**

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

#### **Application for Leave to Appeal**

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

#### **Commission Entitled to be Heard**

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

#### **Order of Commission Stayed**

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

#### **Powers of Court on Appeal**

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

#### **Decision Not Subject to Appeal to Court**

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.