

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-51**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
The Honourable Mr. Wilfred De Graves

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Pardip Nunrha.

HEARING DATE: April 28, 2009

ISSUE(S): 1. Entitlement to Income Replacement Indemnity (IRI)
benefits.
2. Entitlement to reimbursement of medical expenses.

RELEVANT SECTIONS: Sections 83 and 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('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.**

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on May 19, 2002. In a letter dated February 18, 2003, MPIC's case manager wrote to the Appellant to advise as follows:

This letter is further to our meeting of January 20, 2003 wherein we discussed your entitlement to Income Replacement Indemnity (IRI) benefits.

You advised that you returned to work on May 19, 2002 but were unable to do your full duties which consisted of mopping, vacuuming and dusting but you were able to do the

dusting where it did not require you to bend. You continued to work in this capacity until June at which time you sold your franchise to your franchise partner, [text deleted] and you stated that you parted on bad terms. You advised that from June to October, 2002 you were receiving social assistance. From October, 2002 to January, 2003 you returned to [text deleted] as a employee of [text deleted] and were able to do your duties of mopping, vacuuming and dusting but you advised that it caused further problems. You also advised that you did not seek medical attention until January 2003 when you saw [Appellant's doctor] [text deleted].

At the time of the accident you advised that you were self employed but have not supplied tax returns to support your self employment. Due to the absence of acceptable documentation to support your claim that you held employment at the time of your accident you have been classified as a non-earner.

...

You contacted our offices on January 15, 2003 and advised that you were employed with [text deleted] but were unable to continue with this employment due to your motor vehicle accident related injuries.

We have not received any medical information to date from your caregiver therefore we can not support your inability to maintain employment as being directly related to your motor vehicle accident of May 18, 2002, resulting in no entitlement to Income Replacement Indemnity (IRI).

A follow-up decision letter dated April 10, 2003 from MPIC's case manager, reviewed additional medical information that had been received and again concluded that there was no entitlement to IRI because the evidence did not confirm existence of a work-related functional impairment. This decision also determined that there was no entitlement to coverage for medical expenses because there was no evidence of medically required treatment, related to injuries sustained in the motor vehicle accident.

The Appellant sought an Internal Review of those two decisions. In a decision dated March 17, 2004, the Internal Review Officer upheld the case manager's decisions and dismissed the Appellant's Application for Review. The Internal Review Officer found that the Appellant's entitlement to IRI benefits, at any time since the motor vehicle accident, had not been adequately

established. He also found that there was no compelling medical evidence establishing that the Appellant had incurred expenses for medications or for treatment relating to the motor vehicle accident or that these treatments were medically required as a result of injuries arising from the motor vehicle accident.

The Appellant has now appealed from that decision to this Commission. The issues which require determination in this appeal are:

1. whether the Appellant is entitled to IRI benefits due to injuries sustained in the motor vehicle accident; and
2. whether the Appellant is entitled to coverage for medical expenses.

At the hearing of the appeal, the Appellant submitted that as a result of injuries which he sustained in the motor vehicle accident, he was unable to continue his self-employment as a cleaner. He maintained that his cleaning job was very physical work and he was unable to perform that work at his pre-accident level due to the injuries which he sustained in the motor vehicle accident. The Appellant argued that he tried to return to work, but each time he was unable to carry out the required duties. The Appellant also claims that as a result of the accident he suffers with headaches, which continue to this date. He advised that he takes medications for these headaches and argues that these medications should be reimbursed by MPIC. As a result, the Appellant submits that his appeal should be allowed and he should receive IRI benefits and coverage for treatment and medication expenses which he has incurred as a result of the motor vehicle accident.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to IRI benefits or an entitlement to reimbursement for treatment or medication expenses as a result of the motor vehicle accident of May 19, 2002.

Reasons for Decision:

Based upon a careful review of the evidence on the file, the Commission finds that the Appellant has not met the onus of establishing his case, on a balance of probabilities. The Appellant's testimony and submission surrounding his affairs since the motor vehicle accident was very vague and general. He had an extremely poor recollection as to dates and events and he provided very little detail to support any entitlement to IRI benefits since the date of the motor vehicle accident. There was a lack of information to substantiate and corroborate the Appellant's claims and there was no contemporaneous medical evidence supporting an ongoing work-related disability. That fact, coupled with the Appellant's failure to actively seek out medical attention for his injuries (apart from two visits to the hospital within the first week post-accident) until almost 8 months after the accident, lead us to question the severity of the Appellant's accident-related injuries. Furthermore, there was evidence, that he was actually working, throughout some of the time period related to his claim for IRI benefits. Additionally, the Appellant did not file any income tax returns or any other written documents to establish a loss of income. As a result, the Commission concludes that the Appellant has not established an entitlement to IRI benefits at any time since the accident.

The Appellant also provided no detail with respect to his claim for reimbursement of medication expenses or treatment expenses and did not file any receipts for expenses incurred in that regard. The Commission finds that the Appellant's testimony alone was unreliable and insufficient to establish his entitlement to benefits. Taking into consideration the totality of the evidence before us, the Commission finds that the Appellant has simply failed to meet the onus of proof required in order to establish an entitlement to IRI benefits and reimbursement of treatment expenses. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated March 17, 2004 is therefore confirmed.

Dated at Winnipeg this 26th day of May, 2009.

YVONNE TAVARES

MARY LYNN BROOKS

WILFRED DE GRAVES