

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-179**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Laura Diamond
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Dan Joannis of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: December 17, 2009

ISSUE(S): Whether the Appellant is entitled to a lump sum indemnity benefit.

RELEVANT SECTIONS: Sections 87 and 88 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The facts giving rise to this appeal may be briefly summarized as follows:

1. On September 11, 2005, the Appellant was involved in a single vehicle rollover accident, where she struck her head on the ceiling of her car.
2. The Appellant sustained injuries in the accident, including a fractured C4, C5 and C6. She had a spinal fusion at the C5-C6 level with anterior plate and posterior pedicle screws and bars.

3. At the time of the accident, the Appellant was [text deleted] years old and had just commenced Senior 4 (her final year of high school) at [text deleted].
4. The Appellant was unable to physically attend school from September to December 2005. Due to the significant amount of time that the Appellant missed from school in order to recover from her motor vehicle accident related injuries, she was advised to withdraw from pre-calculus math and switch to consumer mathematics, which she did. She testified that she chose to switch to consumer mathematics, in order to ensure that she would graduate with her classmates.
5. The Appellant graduated from high school in June 2006, as originally planned.
6. On June 23, 2006, MPIC's case manger wrote to the Appellant to advise her that she was not entitled to a lump sum indemnity benefit.
7. The Appellant sought a review of that decision. In a decision dated September 22, 2006, the Internal Review Officer confirmed the case manager's decision of June 23, 2006 and dismissed the Appellant's Application for Review. The Internal Review Officer found that since the Appellant did not lose a school term or a school year, she was not entitled to a lump sum indemnity benefit.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to a lump sum indemnity benefit.

Relevant Legislation:

Interpretation of sections 87 to 92

[87\(1\)](#) For the purpose of sections 87 to 92 (students),

"**current studies**" means studies that are part of a program of studies at the secondary level or post-secondary level that, at the time of the accident, the student has admission to begin or continue at an educational institution;

"**secondary level**" means Grades IX to XII;

"**school year**" at the secondary level means the period commencing July 1 and ending on June 30 in the following year.

Student at secondary, post-secondary institution

[87\(2\)](#) For the purpose of sections 87 to 92 (students), a student is considered to be attending a secondary or post-secondary educational institution on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student completes, abandons or is expelled from his or her current studies, or no longer meets the requirements of the educational institution.

Student entitled to fixed indemnity

[88\(1\)](#) A student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies, and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.

Amount of indemnity

[88\(2\)](#) The indemnity referred to in subsection (1) is

(a) \$6,300. for each school year not completed at the secondary level;

(b) \$6,300. for each term not completed at the post-secondary level, to a maximum of \$12,600. per year.

Pro-rating where secondary school year divided

[88\(3\)](#) In a case where a school year at the secondary level is divided into semesters or terms, a pro-rated amount of the indemnity set out in clause (2)(a) is payable for each semester or term not completed, to a maximum of \$6,300. for each school year not completed.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant is entitled to a lump sum indemnity in accordance with Section 88(1) of the MPIC Act. He maintains that the Appellant was required to withdraw from her pre-calculus math class due to her motor vehicle accident related injuries. The Claimant Adviser argues that the Appellant was therefore unable to “continue her current studies” as set out in Section 88(1) because of the accident.

In accordance with the definition of “current studies” set out in Section 87(1), the Claimant Adviser contends that the pre-calculus math course was “part of a program of studies at the secondary level” which the Appellant was enrolled in at the time of the motor vehicle accident. The Claimant Adviser submits that “program of studies” includes all of the courses that the Appellant was enrolled in at the time of the motor vehicle accident, whereas “current studies” refers to a particular course. Since the Appellant was unable, because of the accident, to continue her pre-calculus math course, the Claimant Adviser claims that she therefore comes within the parameters of Section 88(1) of the MPIC Act. As a result, the Claimant Adviser submits that the Appellant is entitled to a lump sum indemnity in accordance with Section 88(1) of the MPIC Act. Further, the Claimant Adviser submits that the Appellant is entitled to an indemnity in the amount of \$6,300.00 in accordance with Section 88(2)(a) of the MPIC Act, since the Appellant did not complete her current studies for the 2005/2006 school year.

MPIC's Submission:

Counsel for MPIC submits that the Appellant is not entitled to an indemnity for the loss of a secondary study session. Counsel for MPIC argues that the Appellant is not entitled to compensation for switching her math course from pre-calculus mathematics to consumer mathematics. She contends that this does not qualify an individual for a lump sum indemnity.

Since the Appellant graduated on time in June 2006, although she was unable to physically attend school for a period of time, she did not fail to complete a school year. Accordingly, counsel for MPIC argues that the Appellant is not entitled to an indemnity for the loss of a secondary school year. Counsel for MPIC submits that where a student is able to complete the educational program of studies as originally planned, there is no entitlement to a lump sum indemnity.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal, and after hearing the submissions of the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant does not qualify for a lump sum indemnity pursuant to the provisions of the MPIC Act.

Reasons for Decision:

Upon a careful review of the specific facts of this case, the Commission finds that the Appellant does not qualify for the indemnity referred to in subsection 88(2)(a) of the MPIC Act, since she did complete the school year. Pursuant to subsection 88(2)(a), the indemnity referred to therein is \$6,300.00 for each school year not completed at the secondary level. "School year" at the secondary level is defined in subsection 87(1) as the period commencing July 1 and ending on June 30 in the following year. The Commission finds that the Appellant did complete the Senior 4 school year. She did graduate her final year of school on time as originally planned. Therefore, she does not qualify for an indemnity of \$6,300.00 for a school year not completed.

The provisions of subsections 87(1), 88(1) and 88(2) must be read as a whole in order to arrive at an interpretation of those provisions of the MPIC Act. Subsection 88(1) of the MPIC Act cannot

be read in isolation of subsection 88(2). Subsection 88(2)(a) of the MPIC Act clearly contemplates compensation for each school year not completed. The Commission finds that the MPIC Act does not provide compensation for the loss of a single course which is part of a program of studies at the secondary school level. The Commission finds that due to the Appellant's own efforts to mitigate her loss and complete her final year of school and graduate on time with her peers, the Appellant does not qualify for an indemnity pursuant to subsection 88(2)(a) of the MPIC Act.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 22, 2006 is confirmed.

Dated at Winnipeg this 2nd day of February, 2010.

YVONNE TAVARES

LAURA DIAMOND

PAUL JOHNSTON