

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-36**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sharon Macdonald
Ms Sandra Oakley

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

HEARING DATE: November 17, 2009

ISSUE(S): Entitlement to Personal Care Assistance benefits beyond
October 10, 2008.

RELEVANT SECTIONS: Section 131 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Section 2 of Manitoba Regulation
40/94.

**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 Appellant, [text deleted], was involved in a motor vehicle accident on October 30, 2007 wherein she sustained numerous injuries including a fractured right calcaneus, boney defect right talus, multiple contusions and lacerations, a laceration over her right temple requiring sutures, and soft tissue injuries to her shoulders and back. As a result of the bodily injuries which the Appellant sustained in the motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is

appealing the Internal Review Decision dated January 22, 2009, with respect to her entitlement to reimbursement of expenses for personal care assistance beyond October 10, 2008.

In a decision dated October 1, 2008, MPIC's case manager confirmed the Appellant's entitlement to personal care assistance benefits. An assessment of the Appellant's needs had been completed by [Appellant's Occupational Therapist], on April 1, 2008. This assessment indicated that the Appellant required assistance with the following activities: light housekeeping, heavy housecleaning, laundry, and community outings. These requirements gave the Appellant a score of ten, which equalled a monthly maximum entitlement of \$449.00. The Appellant's entitlement to personal care assistance in this amount became effective on October 30, 2007.

The Appellant's requirement for personal care assistance was reassessed on October 10, 2008 by [Appellant's Occupational Therapist]. [Appellant's Occupational Therapist] again completed the standard assessment tool in order to evaluate the Appellant's personal care needs and the level of care that she required on a daily basis. On October 10, 2008, the Appellant obtained a score of three for assistance required with heavy housecleaning based upon the assessment tool completed by [Appellant's Occupational Therapist].

In a decision letter dated October 16, 2008, MPIC's case manager advised the Appellant that she was no longer entitled to reimbursement of expenses for personal care assistance beyond October 10, 2008, as her assessment score was below the minimum score of nine required in order to qualify for reimbursement of personal care assistance expenses.

The Appellant sought an Internal Review of that decision. In a decision dated January 22, 2009, the Internal Review Officer confirmed the case manager's decision of October 16, 2008 and

dismissed the Appellant's application for review. The Internal Review Officer found that there was no entitlement to personal care assistance benefits unless a claimant attains a minimum assessment tool score of "9" points. Although the Appellant may have required assistance with heavy housecleaning, she did not qualify for personal care assistance benefits under PIPP.

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 reimbursement of personal care assistance expenses beyond October 10, 2008.

Appellant's Submission:

At the hearing of the appeal, the Appellant submitted that her condition did not change between the first and second assessment (April 1, 2008 to October 10, 2008) and her functional status remained virtually the same. The Appellant testified that the injuries to her right foot and the head trauma sustained in the motor vehicle accident continued to impact her ability to properly care for herself. Consequently, she argues that her entitlement to personal care assistance benefits should not have changed.

The Appellant claims that [Appellant's Occupational Therapist] did not do a proper assessment of her personal care requirements during his October 10, 2008 visit and disregarded many of her concerns. She maintains that although she was no longer walking with crutches at the time of the October 10, 2008 assessment, she was wearing a walking cast. Further, she advised that she was under doctor's orders to stay off her injured foot as much as possible, not to weight bear on her injured foot and to keep it elevated as much as possible. The Appellant also indicated that she had been instructed to use a walker to assist her in keeping weight off her injured foot. As a

result, the Appellant indicated that she still required assistance with the following activities: light housekeeping, heavy housecleaning, laundry, and community outings.

Additionally, the Appellant testified that because of the injury to her foot:

- she was unable to walk any significant distance, stand for any length of time, or drive;
- she required assistance with grocery shopping as she needed someone to help her carry her groceries;
- she required assistance with carrying laundry up and down the stairs;
- she was unable to clean her house and to sweep her floors;
- it was difficult to carry dishes from the dishwasher and put them away; and
- carrying items increased the pain in her foot and she relied on visitors to take her garbage out to the curb.

As a result, the Appellant submits that she continued to be entitled to reimbursement of personal care assistance expenses beyond October 10, 2008 as her condition had not changed; her functional abilities remained much the same as they had during the first assessment and she continued to be unable to do light housekeeping, heavy housecleaning, laundry and community outings. Accordingly, the Appellant requested that her appeal be allowed.

MPIC's Submission:

Counsel for MPIC submits that a minimum assessment tool score of "9" is required in order to qualify for reimbursement of personal care assistance expenses. She notes that on the assessment tool completed on October 10, 2008, the Appellant only required assistance with

heavy housecleaning. As a result, the Appellant did not meet the minimum score required to qualify for personal care assistance benefits under PIPP.

Counsel for MPIC contends that the Appellant has the ability to do many of the tasks which she maintains she is unable to do, albeit with difficulty. Counsel for MPIC claims that [Appellant's Occupational Therapist] did consider whether the Appellant could weight bear, when he completed the second personal care assessment on October 10, 2008. She submits that [Appellant's Occupational Therapist] is the only objective measure of the Appellant's functional ability and there is no other objective evidence to establish that the Appellant cannot accomplish the personal care assistance tasks. Counsel for MPIC maintains that even if the Appellant had to modify her activities, she was still able to complete them. Counsel for MPIC argues that the personal care assessment tool is a functional assessment in order to determine whether an individual can or cannot do the tasks. She contends that the Appellant is able to complete the personal care tasks, albeit with difficulty. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated January 22, 2009 should be confirmed.

Decision:

Upon 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 is entitled to reimbursement of personal care assistance expenses beyond October 10, 2008.

Reasons for Decision:

Eligibility for personal care assistance benefits is governed by Section 131 of the MPIC Act. Section 2 of Manitoba Regulation 40/94 prescribes the use of a “personal care assistance assessment tool” to assess entitlement to personal care assistance benefits. A minimum assessment tool score of “nine” is required in order to qualify for entitlement to personal care expenses.

The Commission finds that the occupational therapist failed to give sufficient consideration to the Appellant’s ongoing functional limitations when he conducted the second assessment on October 10, 2008. Upon a review of the medical reports and upon hearing the testimony of the Appellant, the Commission finds that there was virtually no change in her physical condition between the first and second assessment. There was no explanation given by [Appellant’s Occupational Therapist] for the different assessments, when the Appellant’s condition remained substantially the same from his first visit to his second visit. There had been no resolution of her injury. She continued to face the ongoing problems with her foot and she was unable to weight bear on her foot.

The Commission finds that the fact that the Appellant was using her crutches less appears to have influenced the occupational therapist to reduce her personal care assessment scores during his second visit. However, a review of the medical evidence establishes that she was advised not to weight bear and to keep her foot elevated to control the swelling and the pain. Further, she was reporting constant pain as a result of her motor vehicle accident-related injuries. Specifically, [Appellant’s Doctor], the Appellant’s family physician, in her report dated December 1, 2008 reported that:

[The Appellant] has been seen on a monthly basis. Her complaints and symptoms have remained unchanged. She complains of severe right foot pain. She continues to wear a walking cast and is unable to weight bear due to pain. For analgesia she takes one Percocet, on an as needed basis, as well as Elavil 10 mg at bedtime. Furthermore, she complains of chronic headaches since the motor vehicle accident.

...

Functionally, [the Appellant] has remained significantly disabled. Since she has been unable to weight bear she has not been able to care for her daughter who is confined to a wheelchair. She has also had difficulty with ADL and maintaining her home due to the severe chronic foot pain and being unable to weight bear on her right foot.

Upon a consideration of a totality of the evidence before it, the Commission finds that the Appellant's score on the personal care assessment tool conducted on October 10, 2008 should not have differed from the original assessment conducted on April 1, 2008. We find that, based upon the Appellant's sworn testimony at the appeal hearing that, as of October 10, 2008, the Appellant continued to require assistance with light housekeeping, heavy housecleaning, laundry, and community outings. These requirements give the Appellant a score of ten, which equals a monthly maximum entitlement of \$449.00. Accordingly, the Appellant is entitled to reimbursement of a monthly maximum of \$449.00 for personal care assistance expenses until such time as her requirement for personal care assistance expenses is reassessed. Interest in accordance with Section 163 of the MPIC Act shall be added to any amount due and owing to the Appellant.

Accordingly, the Appellant's appeal is allowed and the Internal Review Decision dated January 22, 2009 is therefore rescinded.

Dated at Winnipeg this 12th day of January, 2010.

YVONNE TAVARES

DR. SHARON MACDONALD

SANDRA OAKLEY