

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-52**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Ms. Laura Diamond

APPEARANCES: The Appellant, [text deleted], together with her son, [text deleted], attended the hearing by telephone conference call; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Joan McKelvey.

HEARING DATE: November 16th, 2000

ISSUE: Whether Appellant entitled to reimbursement for cost of yard care.

RELEVANT SECTIONS: Section 131 of the MPIC Act; Section 2 and Schedule A of Manitoba Regulation No. 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 relevant facts respecting [the Appellant's] appeal are simply and accurately stated by her son, [text deleted], in a letter addressed to this Commission on September 28th, 2000. They are these:

1. As a result of a motor vehicle accident on August 4, 1997, [the Appellant] sustained multiple injuries including a fractured pelvis and vertebra compression fracture.
2. Upon discharge from hospital she returned to her home and was assisted by her 80-year-old husband for much of her personal care and home assistance requirements.

- 3 On August 16, 1999, her attending physician, [text deleted], reported that [the Appellant] continued to suffer from lower back pain and was unable to complete certain tasks, including (but not limited to) maintaining her yard and garden. [Appellant's doctor] further advised MPIC that these tasks had previously been undertaken by the Appellant's husband, but that he had suddenly died in early August of 1999. [Appellant's doctor] requested MPIC to consider assistance for the Appellant, due to her inability to complete specific home maintenance requirements.
- 4 On August 22, 1999, [text deleted], the Appellant's son, asked MPIC to provide assistance for his Mother, specifically in the home assistance areas of snow removal in the winter months and lawn mowing in the summer. He also asked for occasional window cleaning services—particularly exterior work—which would involve the use of a ladder.

MPIC's adjuster declined that request. The corporation's Internal Review Officer upheld that decision.

The Law.

The legislative provisions touching upon MPIC's obligation to reimburse accident victims for certain expenses are Section 131 of the MPIC Act and Section 2 of Manitoba Regulation 40/94, together with Schedule A to that Regulation.

Section 131 reads as follows:

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.

That maximum figure of \$3,000 has, as a result of indexing, now become \$3,302.

By virtue of the first four words of Section 131, we must now refer to the appropriate Regulation, being No. 40/94, of which the first two sections read as follows:

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.

We must then turn to Schedule A. That Schedule consists of three lists or ‘Grids’ (the third of which is not relevant to the present inquiry). Each Grid contains a list of certain activities, beside each of which the assessor is to indicate whether the claimant is completely dependent upon assistance, partially in need of assistance, or in no need of assistance in order to perform that activity. A number, or ‘score’, is assigned to each activity, depending upon the degree of the victim’s dependency in each case. Claimants must achieve a score of at least five out of a possible 27 points in order to qualify for reimbursement of home care expenses necessarily incurred as a result of the accident.

Discussion.

The problem facing [the Appellant] is that nowhere, in any of the Grids, is mention made of yard care or other outside activities. In the first Grid, dealing with personal care assistance requirements, there is one rather nebulous reference to “use of available facilities”, which is explained, in an addendum to the Regulation, as “the ability to independently make use of the facilities (appropriately adapted) regularly used by family members (such as bathroom, telephone, radio, television) as well as use of public services and neighbourhood facilities”. Perhaps, by building the maximum possible elasticity into that phrase, one could include yard work such as snow clearing and grass cutting, but to be “partially in need of assistance” in the use of available facilities would only give [the Appellant] a score of two points. That, when added to the one point assigned to her for dependence upon others for housecleaning and 0.5

points assigned to her for partial assistance in light housekeeping, still only gives her a total of 3.5 points—insufficient to entitle her to reimbursement for her costs of hiring someone else to do that work.

[Appellant's son] makes the point that, if the Grid system does not allow for some of the necessities of day-to-day life, it should. We can only offer the comment that it is not within the mandate of this Commission to amend legislation; we must apply the statute and the Regulations as we find them.

There is one other section of the MPIC Act which is helpful. We refer to Section 138, which reads as follows:

Corporation to assist in rehabilitation

138 Subject to the Regulations, the corporation shall take any measures necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

As we commented in an earlier case (*[text deleted]*), decided on March 6th of this year), “Patently, the removal of snow from residential pathways is essential to enable the victim to enter or exit from his or her residence.” A snow-blocked path could, in an extreme case, literally become a matter of life and death. The same cannot be said with equal force of gardening, grass cutting and other outdoor chores.

We therefore find that [the Appellant] is entitled, by virtue of Section 138, to be reimbursed for monies necessarily expended since her accident for clearing the paths to her home of snow, for as long as her inability to perform that work herself is properly attributable to her motor vehicle accident.

She will be entitled to interest upon those monies at the statutory rate. Unless [the Appellant] has kept an accurate record of monies she has expended for snow removal since the loss of her husband, the amount will probably have to be arrived at by way of an estimate after discussion between [the Appellant] and her adjuster. In the absence of such a record, interest will run from January 30th, 2000, being the approximate half-way mark through the snow season at [text deleted].

Dated at Winnipeg this 22nd day of November, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

LAURA DIAMOND