

## ICBC Medical / Rehabilitation No-Fault Benefits And Travel Expenses

August 11th, 2009

When an ICBC “insured” is injured and receives medical or rehabilitation expenses from the Corporation is the insured entitled to payment for travel to and from the medical appointments?

Reasons for judgment from the Provincial Court of BC (Small Claims Court) were recently brought to my attention dealing with this issue and in this case (Jones v. ICBC) Judge Auxier held that mileage for travel is indeed recoverable from ICBC under the no-fault benefit scheme.

ICBC’s obligation to pay for medical or rehabilitation benefits to their insured’s is set out in s. 88 of the Insurance (Vehicle) Act Regulation which states as follows:

**88 (1)** *Where an insured is injured in an accident for which benefits are provided under this Part, the corporation shall, subject to subsections (5) and (6), pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary medical, surgical, dental, hospital, ambulance or professional nursing services, or for necessary physical therapy, chiropractic treatment, occupational therapy or speech therapy or for prosthesis or orthosis.*

*(1.1) Repealed. [B.C. Reg. 383/89, s. 14.]*

*(2) Where, in the opinion of the corporation’s medical adviser, provision of any one or more of the following is likely to promote the rehabilitation of an insured who is injured in an accident for which benefits are provided under this Part, the corporation may provide any one or more of the following:*

*(a) funds to the insured once during the lifetime of the insured for the acquisition by the insured of one motor vehicle equipped as necessary and appropriate to its use or operation by the insured, the choice of make or model of vehicle to be in the sole discretion of the corporation;*

*(b) funds to the insured once during the lifetime of the insured for alterations to the insured’s residence that are necessary to make the residence accessible to and usable by the insured, the style and cost of the alterations to be in the sole discretion of the corporation and the alterations to be limited to necessary ramps, a necessary lift, necessary bathroom alterations and, where the insured is a homemaker or a person who lives alone, necessary kitchen alterations*

*(c) reimbursement to the insured for the costs of attendant care, other than care provided by a member of the insured’s family, where the insured has returned to and is residing in the community but is not capable of performing some or all of the tasks necessary to sustain an independent lifestyle, the amount of the reimbursement to be limited to the lesser of*

*(i) the monthly cost of a group residence, including a long term care facility, that would be appropriate to the care needs of the insured as determined by the rehabilitation team, and*

*(ii) the monthly cost of attendant care required by the insured as a result of injuries from the motor vehicle accident, the level and type of which will be determined by the rehabilitation team using the same*

*standards and criteria applied under the Long Term Care Program of the Continuing Care Division, Ministry of Health, Province of British Columbia;*

*(d) reimbursement to the insured for costs incurred from time to time by the insured for the purchase and reasonable repair, adjustment or replacement of one or more of the following items:*

*(i) a wheelchair;*

*(ii) a medically prescribed bed for other than hospital use;*

*(iii) bowel and bladder equipment;*

*(iv) aids for communication, dressing, eating, grooming and hygiene;*

*(v) transfer equipment;*

*(vi) a ventilator;*

*(e) funds to the insured for vocational or other training that*

*(i) is consistent with the insured's pre-injury occupation and his post-injury skills and abilities, and*

*(ii) may return the insured as nearly as practicable to his pre-injury status or improve the post-injury earning capacity and level of independence of the insured;*

*(f) funds for any other costs the corporation in its sole discretion agrees to pay.*

*(3) Before incurring an expense or obligation under subsection (2) for which the insured intends to request payment by the corporation, the insured shall obtain written approval from the corporation and the corporation may, before giving its approval, require the insured to submit such information as it considers necessary to assist it in making a decision.*

*(4) The corporation is not liable to insure, repair, replace or maintain a motor vehicle acquired by an insured under subsection (2) (a) except in the course of an approved repair resulting from a subsequent claim for insured loss or damage to the vehicle.*

*(5) The amount by which the liability of the corporation under this section is limited is the amount set out in section 3 of Schedule 3.*

*(6) The corporation is not liable for any expenses paid or payable to or recoverable by the insured under a medical, surgical, dental or hospital plan or law, or paid or payable by another insurer.*

*(7) The maximum amount payable by the corporation under this section for medical, surgical, dental, nursing or physical therapy services or for chiropractic treatment, occupational therapy or speech therapy listed in the payment schedules established by the Medical Services Commission under the Medicare Protection Act is the amount listed in the payment schedules for that service, treatment or therapy.*

*(8) The corporation is not liable to pay for more than 12 physical therapy treatments for an insured for each accident unless, before any additional treatment is given, the corporation's medical advisor or the insured's medical practitioner certifies to the corporation in writing that, in his opinion, the treatment is necessary for the insured.*

This section does not specifically address whether ICBC needs to pay for travel expenses. In *Jones v. ICBC* (reasons for judgement were delivered on June 13 from the Kamloops Registry) the Plaintiff sued ICBC for a variety of matters including payment of travel expenses to and from medical appointments under Part 7 of the Insurance (Vehicle) Act.

The Honourable Judge Auxier sided with the Plaintiff on this issue and concluded that ICBC does indeed need to pay for travel expenses under their Part 7 obligations. Specifically, at paragraph 19 of the decision, the Judge held that *"Ms. Jones has prepared a list of her visits to the doctor in Kamloops and to the physiotherapist in Kamloops. The total is seven trips. I find that she is entitled to mileage for that travel - each round trip being 372 km."*

While the judgment does not specifically state the quantum that was awarded for this damage, a review of the Plaintiff's Notice of Claim reveals that the mileage was assessed at \$0.47 per kilometer of travel. This is a great precedent directly addressing this issue and I would like to congratulate the self-represented Plaintiff for her success.