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Indexed as:
L.G. (Re)

IN THE MATTER OF an appeal by L.G.
AICAC File No.: AC-97-83

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[1997] M.A.I.C.A.C.D. No. 42

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), L. Goodspeed
and F.L. Cox

Heard: October 21, 1997.
Decision: November 17, 1997.
(23 pp.)

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Issue(s):

- (a) Whether benefits properly terminated for non-cooperation;
- (b) Whether victim suitable candidate for resumption of assessment and treatment.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, ss. 160 and 184.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC')
represented by Keith Addison.
The appellant, L.G., represented by Alain Hogue.

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MAIC 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

[para1] This is an appeal from a decision of MPIC, whereby the Appellant's income replacement indemnity ('IRI') benefits were terminated on the ground that he had failed to cooperate with the insurer in its attempts to rehabilitate him. The insurer relies upon Section 160 of the Act, of which a copy is annexed to these Reasons. The Appellant, for his part,

maintains that he has done everything asked of him, that his statements and conduct have been misunderstood and that both his IRI and his rehabilitation program should be reinstated from the date of termination.

[para2] L.G., The Appellant, was [text deleted] years of age when, on March 8th, 1994, his 1986 Chevrolet truck was in collision with another, similar but older vehicle which, in turn, had been pushed into its path by a third vehicle that ran through a red light at Broadway and Garry Street in Winnipeg.

[para3] The Appellant sustained soft tissue injuries to the cervical and lower lumbar areas of his spine, with no discerned skeletal damage that might have resulted in spinal instability or root entrapment, nor any abnormal neurological signs. He also complained of injury to his left knee, but that does not appear to have been clinically documented by any of his caregivers. The discomfort in his lower back does, however, radiate down his left leg from time to time, particularly with prolonged walking.

[para4] At the time of his motor vehicle accident, L.G. was employed by [text deleted] ('[text deleted]'); he had been there since 1986, officially classified as a plastics technician but, in fact, actually working as a fork-lift operator - he had developed a serious allergy to the resins with which he was working, necessitating Workers' Compensation benefits from February 1st, 1991, for a total of 203 days. It was upon his return to work from that involuntary absence that, by arrangement between his employer and his Union, he had been relocated within the plant as a fork-lift operator.

[para5] L.G.'s work history prior to his motor vehicle accident seems to reflect a hard-working, conscientious employee. He had worked on his father's poultry farm from ages 13 to 22, having left school after completing Grade III; this was followed by 19 years at [text deleted], initially as a iron melter at the furnace and later as a stock-room shipper and fork-lift operator. When [text deleted] closed, L.G. worked for a couple of years as a labourer for [text deleted] on road and sewer construction and maintenance. He then returned to farming for about four years before signing on with [text deleted] in 1986. None of those jobs speaks of a man who is afraid of hard work, and L.G.'s length of service with [text deleted] and with [text deleted] indicates, at least on its face, an apparent loyalty between employee and employer. This is reinforced by the fact that L.G. returned to work at the [text deleted] plant almost immediately after his motor vehicle accident, remaining at work until January of 1995 when, he says, the pains resulting from that accident had become so intense that, on the oft-repeated advice of his chiropractor, Dr. Gerald Bohemier, and with the concurrence of

his insurance adjuster at MPIC, he arranged for sick leave from [text deleted], commencing on January 24th, 1995.

[para6] MPIC, which had been paying for L.G.'s chiropractic treatments from the time of his first post-accident treatment, as well as his travelling costs between his home at [text deleted] and Dr. Bohemier's office plus certain medications, now commenced paying him income replacement indemnity ('IRI') of \$[text deleted] bi-weekly. Those benefits continued until February 5th, 1997, when MPIC discontinued them for reasons that will appear below.

[para7] Between March 8th, 1994 (the date of the accident) and February 5th, 1997, MPIC had disbursed the following amounts to or on behalf of L.G. (the figures are approximate only, total accuracy in this limited context being unnecessary): some \$11,000.00 for 385 chiropractic treatments; about \$5,300.00 for travel expenses; \$800.00, more or less, for drugs; roughly \$1,000.00 for home improvements to facilitate L.G.'s movements around his house; \$2,000.00 for reports from rehabilitation specialists; slightly under \$11,000.00 for direct counselling for L.G. by occupational therapists, physiotherapists and a clinical psychologist (all, with one lamentable and quickly corrected exception, either Francophone or with an interpreter present); plus \$[text deleted] of IRI. That totals something in excess of \$100,000.00. It is mentioned here, not so much by way of a criticism of either party - the insurer has to take victims as it finds them and, if one is genuinely disabled by a motor vehicle accident, so be it; the benefits are prescribed by statute and the victim is entitled to them no matter what the cost. We refer to the amount of money laid out by the insurer to date merely to emphasize that we do not share L.G.'s apparent view of MPIC as an uncaring monolith whose minions were, for some reason, out to deprive him of his rights.

[para8] What else did MPIC do in its attempts to help L.G.? The question, and its answers, are vital when we come to define the issues that fuel this appeal.

[para9] First, after consultation with Dr. Albi, the Appellant's physician, and at the suggestion of Dr. Bohemier, the Appellant's adjuster, Lynne Nixon, made an appointment for L.G. to attend at the Canadian Back Institute ('CBI') on February 1st, 1995. The purpose of that referral was to obtain an assessment, to determine the victim's source(s) of mechanical pain, to identify any impediments to a restoration of the victim's full function, and to provide treatment recommendations. The CBI's assessment of L.G. indicated minimal objective signs of serious injury but, rather, a pain-focussed conviction on L.G.'s part that his injuries were much more serious and permanent than was, in fact, the case. He was discharged from the CBI program on March 20th, 1995, 11

days prior to its scheduled end, but in the possibly mistaken belief on the part of his CBI therapist that he was "100% capable of performing his previous occupation at [text deleted]." (It is not clear what job description CBI was using.) Despite his pessimism, L.G. was found by CBI to be pleasant and cooperative.

[para10] Neither L.G.'s caregivers nor MPIC were prepared to accept CBI's assessment of his readiness to return to work; they accepted L.G.'s self-assessment of serious disability although there were few, if any, objective signs to support that self-assessment other than the degenerative spinal condition that undoubtedly pre-dates his motor vehicle accident and was in all likelihood exacerbated by that accident.

[para11] By April 20th, 1995, Dr. Gilbert Bohemier was "seriously questioning whether or not [L.G.] will ever be able to return to work". It is shortly after this time that the idea starts to take root in the Appellant's psyche that he has, as he puts it, 'an incurable bone disease', that he is never going to get better, that he is, in effect, permanently retired and is inevitably destined for a wheel-chair. Whether that idea has been implanted, knowingly or unwittingly, by his chiropractor or other persons, is not possible for us to determine. It does seem clear that L.G.'s attitude toward those who were trying to assess, and to provide for, his vocational and functional needs started, during the ensuing 12 to 18 months, to fluctuate between the marginally cooperative and the downright hostile.

[para12] On June 19th, 1995, the Appellant had the first of many meetings with Northern Rehabilitation & Consulting Services Inc. ('NRCS') to whom he had been referred by MPIC for a vocational evaluation in order to see whether he was capable of returning to his former employment on a gradual basis or of seeking alternative employment for which he might be reasonably suited. NRCS found him to be seriously pain focussed and unmotivated; they recommended

- (a) a psychological assessment, to identify any barriers to L.G.'s participation in his own recovery process;
- (b) contact with the employer, to set up an appointment with Boeing's own medical examiner for L.G. - a prerequisite to any graduated return to work program but one to which, for no apparent reason, L.G. took exception;
- (c) continued, regular contact with the Appellant in order to maintain encouragement of his participation in rehabilitation efforts; and

(d) the resumption of physiotherapy at a new locale.

[para13] Following the acceptance by MPIC of NRCS's recommendations, arrangements were made by NRCS for L.G. to meet with Dr. Lee Quesnel, a Francophone psychologist, on October 5th, 1995, the first date when Dr. Quesnel could be available. He reported L.G. as being bright, alert and forthcoming, but convinced that he would never be able to return to any gainful employment. Dr. Quesnel, who met with the Appellant for two, one-hour sessions in addition to meeting twice with Dr. Bohemier, expressed the view that 'if [L.G.] is expected to return to the work place I expect he will need substantial psychological support', and that he felt L.G. would 'respond fairly negatively' if expected to go back to work. Dr. Quesnel felt, on the other hand, that if the Appellant's retirement became an accepted fact, he would be able to complete that transition with minimal psychological support.

[para14] MPIC decided to continue its efforts to return L.G. to the work force - efforts which in our view, it had both a statutory and moral obligation to exert if it seemed probable that his absence from the work force was due to his motor vehicle accident. (We voice that opinion here in light of the submission by counsel for the Appellant that MPIC was attempting improperly or unfairly to force L.G. back to work.) But a return to work could only be accomplished by a combination of

- (i) a professional assessment of the Appellant's functional capabilities and needs,
- (ii) an active program of rehabilitation, and
- (iii) most important of all, the maximum possible cooperation on the part of the victim.

[para15] A meeting was therefore held on January 19th, 1996 at the offices of MPIC, involving L.G., Dr. Quesnel, the Appellant's MPIC adjuster (Ms Lynne Nixon) and Mr. Ray Morin, also of MPIC. At that meeting, MPIC's representatives emphasized to L.G. the vital importance of his active participation in any professionally designed rehabilitation program, so that he might become able to return to work. L.G. is reported as having expressed total agreement with that concept, provided that it did not involve his return to the Canadian Back Institute with whose ministrations he had been less than happy. He also appeared to be expecting to receive a lump sum cash settlement for his alleged pain and suffering, until it was fully explained to him that this was not an option. Dr. Quesnel undertook to continue treating the Appellant, if only on a comparatively short-term basis.

[para16] During the weeks that followed, Ms Nixon contacted the Appellant's new physician, Dr. de Moissac, who undertook on February 13th, 1996, to refer L.G. to a specialist in rehabilitative medicine - a step that appears never, in fact, to have been taken. Ms Nixon also kept in touch with the Appellant's senior rehabilitation consultant at NRCS who had been trying, unsuccessfully, to contact Dr. Bohemier in order to set up a conditioning and strengthening program for the Appellant that they had discussed in December of 1995. By February 13th of 1996 Dr. Bohemier had still not returned any of her telephone messages. That approach was eventually abandoned, having borne no fruit, although the Appellant was continuing to see Dr. Bohemier three times each week.

[para17] By the end of May, MPIC authorized NRCS to arrange for L.G. to undergo what was described as a 'final multi-disciplinary assessment to ensure all efforts have been pursued to assist in your rehabilitation process'. An appointment was made for him to attend at the Occupational Rehabilitation Group of Manitoba ('Orgom') on June 17th, 1996 for occupational therapy, physiotherapy and psychological evaluations. Meanwhile, Dr. de Moissac had referred the Appellant to Dr. D. F. Birt, an orthopaedic specialist who had examined the Appellant on an earlier occasion, and whose brief report of June 12th, 1996, merely confirms the presence of cervical and lumbar degenerative disc disease, 'ongoing problems from musculoligamentous strain, cervical and lower lumbar area', but no evidence of spinal instability nor any root entrapment, and no suggested course of treatment.

[para18] The comprehensive, initial report from Orgom bears date June 19th, 1996, and contains the first really serious descriptions of a determinedly uncooperative client. For example: (from the Occupational Therapy report) "minimally cooperative throughout ... pain focussed with extensive pain behaviours ... no wasting of forearm muscles to correlate with weakness of this magnitude (11 lbs. right hand and 6.6 lbs. left hand grip strength compared to age-adjusted norms of 101.1 lbs. and 83.2 lbs. respectively) ... dramatic pain behaviour ... inconsistency of reporting by client ... client self-limited the majority of test components ... There are no objective signs to correlate with client's subjective complaints ... individual is poorly motivated to improve his functional abilities in a rehabilitational environment ...".

[para19] (From the Physiotherapy report) "... turning his head away when the therapist attempted to gesture or demonstrate test manoeuvres or postures ... Range of motion testing and strength testing of the back and lower extremities were self-limited more than what the client was noted to do functionally, and such that an accurate picture of his

physical abilities and limitations was not possible ... there is no physiological reason why he should not be able to attain improved physical fitness with (a physical reconditioning) program. However, due to psychological barriers it is not recommended that he engage in such a program at this time".

[para20] (From the Psychological assessment) "... declined to have his blood pressure checked ... throughout the interview, L.G. was uncooperative answering questions, providing ambiguous responses or telling me that certain questions were 'crazy' ... says he experiences pain "every minute" ... presented with dramatic pain behaviour ...".

[para21] In summary, the assessment that Orgom's specialists were trying to perform could not be completed, due to L.G.'s lack of cooperation, manifested principally by gross exaggerations of his pain and disability, by his lack of candour and by his unwillingness to make even reasonable efforts to perform most of the simple tests asked of him. Orgom's conclusion on June 19th, 1996, was that, in the absence of a change in L.G.'s attitude, a program of rehabilitation could not usefully be recommended.

[para22] It should be noted that L.G. has insisted, throughout, that all communications between him and MPIC or its consultants be conducted in French. That is his right and MPIC appears to have complied with that wish almost completely. We say 'almost', in that there was no interpreter present at the first physiotherapy assessment by Orgom who believed (erroneously, as later appeared) that L.G. would be able and willing to respond to gestures and demonstrated examples. He was also much angered by the fact that he had received letters in English from both Orgom and NRCS; rather than seeking assistance as to their meaning, he elected to throw them out but, fortunately, they appear to have been merely confirmatory of appointments of which he had, in any event, been advised orally in French. The fact is that L.G. has a much greater understanding of English than he cares to acknowledge - he has, after all, been employed for many years surrounded by, and communicating with, anglophone co-workers at a plant where, his employer says, he manages quite well; at least two of MPIC's independent consultants noted that he would often respond in French to a question posed in English before the question had been translated; when his francophone adjuster was on holiday he managed to converse perfectly well with her anglophone colleague. His right to insist upon the use of French at all times is unquestioned; it certainly does not indicate a lack of cooperation and cannot be criticized. However, his exaggeration of his language problem does show an underlying lack of candour, an attitude that concerns us, since his position throughout has been that his English comprehension is minimal.

[para23] Despite the largely negative report received from Orgom under date of June 19th, 1997, and a further report of June 21st from NRCS that speaks of the Appellant's inconsistencies, pain-focussed behaviour, defensiveness and lack of receptiveness to rehabilitation, MPIC sought further, up-dated reports from Drs. de Moissac and Birt and concurrently arranged for a new assessment by Orgom and an occupational therapy home assessment by NRCS. These new efforts met with a much more positive and cooperative spirit on the part of L.G. Orgom's report concludes that the Appellant would certainly benefit from improving his physical abilities and from developing a better understanding of pain and pain management. Orgom identified certain barriers to success, namely L.G.'s significant pain focus, his age, his conviction as to his disability and what Orgom calls his 'lack of psychological mindedness' - a phrase whose meaning is, to say the least, opaque. Their recommendations boiled down to a team approach, with further input from the Appellant's medical and chiropractic practitioners to clarify their views of his condition and, with their concurrence and that of L.G. himself, a trial period of physical reconditioning.

[para24] The Occupational Therapy Home Assessment was also satisfactorily completed, as appears from NRCS's report of September 6th, 1996. With the installation of some 'grab bars' to facilitate entry to and exit from the bath, plus some railings to ensure safe movement on the staircase (recommended by NRCS and authorized by MPIC) the report of NRCS concludes that L.G.'s participation in home management activities does not seem to be markedly different from that which prevailed before his motor vehicle accident. It should, however, be noted that even when appearing to cooperate L.G. displayed several inconsistencies - e.g. he was able to raise each arm separately to its full height above his head, whereas he could only raise them to shoulder height bilaterally; he reported that, if he walks too much, he 'feels a punching sensation', his back gives out and he falls, whereas in earlier assessments he had denied any falling and no objective musculoskeletal nor any neurological defects had been mentioned of the kind that might have induced such falling; he still viewed himself as seriously disabled.

[para25] The reports of Orgom and NRCS appear to have been shared with Dr. de Moissac, whose narrative report of October 3rd, 1996, reconfirms the earlier diagnoses of significant degenerative disc diseases of the cervical spine at the C5 to C7 levels and of the lumbar spine, with large lateral osteophytes (i.e. bony spurs or outgrowths) from L2 to L5 levels, accompanied by disc space narrowing. Those findings, adds Dr. de Moissac, are consistent with cervical and lumbar spondylosis, which is a growing together of two or more segments of the spine. None of these signs can rationally be attributed to his motor vehicle accident; they all appear to

pre-date that event.

[para26] Dr. de Moissac, after further consultation with Dr. Birt, concurs in the recommendations of Orgom that L.G. should be encouraged to pursue rehabilitation services and should enter a reconditioning trial as soon as possible in order to improve his quality of life. "I do not believe" said Dr. de Moissac, "that moderate activity is harmful to L.G.'s health or would precipitate his deterioration." Dr. de Moissac added his belief that the Appellant, with such a rehabilitation program, would eventually be able to return to work, albeit not as a forklift operator which was his previous occupation but, rather, in a more sedentary occupation.

[para27] On October 21st, 1996 a further meeting was held at the [text deleted] plant, attended by representatives of the employer, the Union, NRCS and MPIC. After reviewing recent data, that group decided to do their best to restore L.G. to his old job, but taking into account his apparent limitations.

[para28] Following further discussions between NRCS and Dr. de Moissac, another meeting was held at the [text de;eted] work site on December 12th, 1996, comprising two representatives from each of [text deleted] and NRCS, one from each of MPIC and the Union, and L.G. There were several declared purposes of that meeting:

- to assess L.G.'s position as a plastic technician, by observing others performing the tasks described in his job description;
- to assess L.G.'s history and present status in the context of his work duties;
- to identify key physical elements within the position and its environment that might be or create ergonomic risks or problems;
- to identify risks specific to L.G. that might preclude his successful return to this job; and
- to develop a prioritized list of steps or activities in which L.G., MPIC and [text deleted] might fruitfully cooperate with the mutual objective of his rehabilitation.

Unfortunately L.G., having arrived about an hour late for that meeting and having given theatrically excessive displays of pain and difficulty in walking, did not attend the work-site tour and left before its completion. He initially explained both the tardiness of his arrival and the extreme pain from which he was suffering by testifying that he had had

to clear the snow from his driveway, a task that left him no power in his back. On cross-examination he denied having testified of the need to clear snow and asserted, instead, that his son had made tracks in the snow for him with his 4x4, that he (L.G.) had nevertheless become stuck, and that his family had pulled him out - all of which, he said, took about an hour.

[para29] L.G. explains his disappearance in mid-meeting by stating that, having been scolded by Lynn Nixon (his MPIC adjuster) for being late, he was asked to accompany the group downstairs so that he could be observed at his regular work station. At that juncture, he said, the occupational health nurse at [text deleted], D.G., interjected that he seemed to be more a case for a hospital than for working, whereupon Ms Nixon allegedly told him to go home ('va t'on chez vous!') and that she did not want to see him any more. Whether or not that evidence is credible, the Work Site Assessment was completed without him. It is noteworthy that the Appellant, having entered the plant in apparently severe pain, only able to walk with assistance, unable to explain what was wrong, dropping down to sit on the front steps and then, with more help, sitting on a chair in the lobby with his head in his hands, was then observed leaving the building at a faster pace, favouring his left leg but climbing into his truck with no apparent difficulty and placing his full weight on that allegedly disabled left leg.

[para30] Despite L.G.'s apparent inability to participate in the Work Site Assessment, the group that did attend decided to set up for him a conditioning program at PAR Health Services, in order to prepare him for a gradual return to work program. NRCS then made the appropriate arrangements and advised L.G. on December 23rd, 1996 that an appointment had been made for him to attend at PAR Health Services at 1:00 P.M. on January 9th and at 10:00 A.M. on January 10th, along with an interpreter.

[para31] A Functional Restoration Intake Assessment, which was intended to be the first step in the conditioning program, took place at the premises of PAR Health Services on January 9th and 10th, 1997. Due to a major lack of cooperation by L.G., accompanied by much patent exaggeration (e.g. if his self-assessed pain level were valid, he should have been able neither to walk nor to carry on an animated discussion, whereas he was, in fact, perfectly capable of doing both; his reports of his physical capabilities in various other areas, such as standing, walking and travelling, differ dramatically from what he has actually been observed doing) this assessment was incomplete and inaccurate. The occupational and physiological therapists at PAR Health Services recommended

- (a) that L.G.'s physician and chiropractor be contacted to see whether either of them had actually told his patient that his 'incurable bone disease' would preclude, for ever, any return to work and would inevitably lead to a wheel chair, since this is what L.G. purports to believe;
- (b) that if L.G.'s physician and chiropractor do not share that belief, they should be urgently requested to tell him so and to encourage a changed attitude and his participation in a reconditioning program; and
- (c) active psychological training and education, in French, to help L.G. address his pain issues and coping mechanisms.

[para32] MPIC, being less than satisfied that L.G.'s complaints were genuine, had also instituted some surveillance through the services of an outside investigation firm. While the results of that surveillance are only marginally helpful, they indicate clearly that, when L.G. is unaware that he is being watched, he is much more active, strong and capable, with much greater stamina, than he admits to any of his care-givers or to his insurer.

[para33] There are numerous examples of this, but a couple may suffice:

- on Friday, November 7th, 1996, the Appellant telephoned MPIC to indicate that he was too ill to go there to pick up a cheque, asking for the cheque to be mailed to him;

that same morning, he prevailed upon Dr. Bohemier to telephone MPIC with his advice that he was very concerned about the Appellant's injuries, that the Appellant was in very bad shape and was going home for bed-rest and convalescence upon leaving Dr. Bohemier's office.

What, in fact, did L.G. then do? He went browsing through the Walmart store and the Red Apple Clearance Centre in Transcona for slightly under an hour, then via a Salisbury House restaurant to the large Safeway store in the Southdale Shopping Centre. He and the young lady who was with him (presumably his daughter) completed a grocery shopping trip in which the Appellant himself handled the merchandise, lifting, loading and unloading almost everything, including a 50 lb. bag of potatoes which, while not of itself especially significant, does indicate that the Appellant's

ability is often dictated by his will. The exercises noted above consumed over 1.5 hours with no apparent distress on the part of L.G.

- although L.G., when attending at MPIC's premises, has exhibited great difficulty in walking and in getting in and out of a chair, has no difficulty getting in and out of his truck and walks around for an hour-and-a-half with only minimal difficulty.

[para34] L.G. is reported by the physiotherapist at PAR Health Services to have said that he was not prepared to attend any exercise program after his two-day assessment there.

[para35] As a result of L.G.'s conduct during this attendances at PAR Health Services on January 9th and 10th of this year, the Functional Restoration Intake Assessment could not be adequately completed and there the entire matter of his rehabilitation remains stalled. NRCS, Orgom and PAR Health Services have all expressed the view, each in its own way, that before any serious attempt at L.G.'s physical rehabilitation can be undertaken with any hope of success, he needs to develop a new mind-set that can only be acquired after reassurance from Dr. de Moissac and, perhaps, from Dr. Bohemier, with concurrent psychological counselling from Dr. Quesnel.

[para36] L.G. does, indeed, have an incurable bone disease, in the form of osteoporosis plus some degree of disc degeneration with osteoarthritic changes, but he had those conditions before his motor vehicle accident. He must somehow be persuaded that those problems were not caused by his accident, need not be as totally disabling as he purports to believe, and, while not 'curable', can be overcome to a substantial extent if he is truly willing to work with, rather than against, those who are genuinely trying to help him return to some form of gainful employment.

DISPOSITION:

[para37] A. We find that L.G.'s IRI was properly terminated by MPIC pursuant to Subsection (f) and (g) of Section 160 of the MPIC Act, for the reasons noted above. He had been warned of the consequences of non-compliance and had even been given a copy of Section 160, in French.

[para38] B. We find, further, that MPIC's decision to discontinue paying for L.G.'s chiropractic treatments was not only justified but long overdue; all of the reliable chiropractic literature tells us that, in cases such as L.G.'s, if spinal manipulation three times per week for a

period of six to twelve months has produced no discernible improvement in the patient's condition, then the treatments should be discontinued or varied, or the patient should be referred to another discipline. L.G.'s chiropractic treatments continued until April 25th, 1997, some 385 adjustments over a period of roughly three years, and the Appellant himself testified that, while these treatments would give him some measure of comfort for about one half a day, his overall condition was no better - indeed, as he tells it, substantially worse.

[para39] C. A more difficult question posed to us at the hearing of L.G.'s appeal was whether, in light of his newly declared willingness to cooperate in any rehabilitative program arranged for him by MPIC, it would be both fair and practicable to require MPIC to reinstate such a program (for example, at PAR Health Services) and give him yet another opportunity to become reintegrated into the work force. It is the unanimous view of all those who have tried to assess L.G.'s functional abilities and restorative needs that the primary barrier to his rehabilitation is a psychological one. The likelihood of giving back to the Appellant a better sense of physical well-being is largely dependent upon his ability to accept the realities of his condition and to exert efforts of his own to return to work.

[para40] Since L.G.'s earlier employment history, his return to work following his motor vehicle accident, his reportedly good (if pessimistic) attitude until at least early 1996 and his sporadic periods of cooperation since then persuade us that he should be given the one further opportunity that he seeks and that Dr. de Moissac recommends. This will entail:

- (i) a course of counselling from Dr. Quesnel, to be arranged by L.G.'s adjuster (preferably through the office of Dr. de Moissac) after Dr. Quesnel has indicated the anticipated length and frequency of the course that he proposes;
- (ii) the completion of the PAR assessment as soon as Dr. Quesnel can advise MPIC, through Dr. de Moissac, that in his view L.G. is ready to work with PAR;
- (iii) the commencement and completion of such reconditioning program as PAR Health Services may recommend and as MPIC may approve. We assume that Dr. Quesnel's counselling and the PAR program will need to overlap, at least in the early stages of the latter program.

Because we find that L.G.'s IRI was properly terminated,

we are not prepared to reinstate it from the date of that termination. Because we are not persuaded that L.G.'s psychological problems have their genesis in his motor vehicle accident, we are not prepared to reinstate his IRI benefits while he is working his way through those problems with Dr. Quesnel's help. Because he needs that help in order to reach the point of readiness to re-enter the PAR conditioning program, we are prepared to say that the cost of his psychological counselling, and of his attendant travelling expenses, should be paid by MPIC, and that his IRI should be reinstated from the time that he returns to the PAR program until the termination of that program.

[para41] Since this appeal is concerned only with the questions whether L.G.'s benefits were properly terminated and whether they should be reinstated, numerous questions remain to be addressed, some of which are:

- whether the Appellant's current physical problems were actually caused by his accident of March 8th, 1994;
- whether he has, in any event, been restored to his pre-accident status, estimated at about 80-85% of his pre-1993-motor vehicle accident by Dr. Bohemier who had been treating him since the fall of 1993 for injuries sustained in that earlier incident;
- whether the work in the lay-up area at [text deleted] to which he might have returned would, in fact, have involved his exposure to the same resins to which he had developed the earlier allergy and whether, therefore, his apparent inability to operate a fork-lift completely precluded a return to that lay-up area;
- whether there is still work for him at [text deleted] in any capacity.

In summary, then, if L.G. is prepared to follow a program of counselling to be prepared for him by Dr. Quesnel and a program of physical rehabilitation to be prepared for him, after reassessment, by PAR Health Services, the professional fees and travel expenses related to those programs are to be for the account of MPIC, and his IRI will be reinstated during the period of his active participation in the PAR program. If Dr. Quesnel is not able to give his opinion, within the time-frame that he estimates to be reasonable, that L.G. is ready for physical re-assessment and a reconditioning program, then in our view MPIC will have fulfilled its obligations to L.G. Similarly, if L.G. again fails to do his best to cooperate in that rehabilitative effort, MPIC will be

justified in terminating the program and closing its file.

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MVRT

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