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Indexed as:  
C.L. (Re)

IN THE MATTER OF an appeal by C.L.  
AICAC File No.: AC-99-37

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[2000] M.A.I.C.A.C.D. No. 18

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), F.L. Cox, and  
L. Diamond  
Heard: May 15, 2000.  
Decision: June 6, 2000.  
(14 paras.)

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Issues(s):  
Suspension of benefits for non-compliance--whether  
justified.

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Relevant Sections:  
Section 160 of the MPIC Act.

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Appearances:  
Manitoba Public Insurance Corporation ('MPIC') was represented  
by Tom Strutt.  
The appellant, C.L., appeared on her own behalf, accompanied  
by her husband, R.A.L.

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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] The Appellant sustained injuries while a passenger  
in an automobile on PTH #3 in Manitoba on June 7th, 1997, when  
that vehicle struck a deer.

[para2] The Appellant's injuries were exacerbated by a  
second motor vehicle accident (MVA) on February 21st, 1998.

[para3] In light of some apparent personality conflicts  
between R.A.L. and C.L., on the one hand, and MPIC's adjuster,

Mr. Doug Yarish, on the other, MPIC retained the services of an independent case manager in July of 1998, namely Mr. John Pike of the Redboine Institute and D. B. Hanson & Associates Inc. Mr. Pike arranged for three independent assessments of C.L. in order to formulate a rehabilitation plan: one was to be a psychological assessment on August 20th, 1998; the second, a chiropractic examination on August 26th; the third, a physiotherapy assessment on August 27th.

[para4] The Appellant signed a contract with the Redboine Institute, setting out the terms of her rehabilitation program. That contract contained a clause that provided "Attendance is compulsory except under exceptional circumstances." Shortly thereafter, C.L. telephoned Mr. Pike and, without any difficulty, changed her August 20th assessment to August 27th, 1998 (the same date as the physiotherapy assessment).

[para5] The Appellant attended the chiropractic examination of August 26th, 1998, but did not attend on August 27th, 1998, for assessment by a physiotherapist and a psychologist respectively. In consequence, she received a letter from her original MPIC adjuster, Mr. Doug Yarish, dated August 27th, 1998, telling her that her IRI benefits would be suspended "until such time as you comply with your rehabilitation program, as you agreed to when you signed your therapeutic contract with the Redboine Institute." That letter erroneously accuses her of having missed appointments on August 20th, 26th, and 27th, 1998, and adds that "we have been advised that your husband spoke with John Pike on August 26th, 1998, and he confirmed that you would not be attending any of the above appointments. John Pike stressed the importance of your attendance at these appointments and you have chosen not to attend, despite John Pike's advising the necessity of your attendance."

[para6] Mr. Yarish, when deciding to suspend C.L.'s IRI benefits, relied upon Section 160 of the MPIC Act, which reads, in part, as follows:

Corporation may refuse or terminate compensation

160 The Corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person...

- (d) without valid reason, neglects or refuses to undergo a medical examination, or interferes with a medical examination, requested by the Corporation;...
- (g) without valid reason, does not follow or participate in a rehabilitation program made available by the Corporation.

The evidence of R.A.L. was that neither he nor his wife had ever been warned by MPIC personnel, nor by Mr. Pike, that a suspension of benefits would follow by virtue of Section 160 of the Act if she failed to keep her appointments; their first inkling of that penalty was their receipt of Mr. Yarish's August 27th, 1998, suspension letter. R.A.L. pointed out that he had re-arranged prior meetings and appointments for his wife, and no one had warned nor threatened them.

[para7] R.A.L. notes that, when Mr. Pike called him on August 26th, 1998, to remind him of that day's appointment for his wife, he (R.A.L.) had replied that he would first have to deal with the replacement of a hot water tank that had burst the night before and that, if that could be done quickly enough, his wife would keep the August 26th, appointment. In fact, she did so, contrary to one of the allegations made by Mr. Yarish.

[para8] R.A.L. also testified that he had told Mr. Pike, on August 26th, 1998, that the Appellant would not be able to attend the August 27th, 1998, appointment because of stress, and that she was taking a four-day vacation at a lake cottage some distance from Winnipeg and that, if MPIC had a problem with that decision, they could contact him. His evidence was that he was never contacted by MPIC nor by anyone else thereafter, until, on September 1st, 1998, he and his wife received the August 27th suspension letter.

[para9] The evidence clearly establishes a pattern of non-cooperation on the part of C.L. although, it must be said, it was her husband who appeared to be the controlling influence and spokesperson most of the time. Many of the explanations offered by R.A.L. for not returning telephone messages and failing to pick up the family's mail on a timely fashion did not impress this Commission favourably; the family's decision to go to their cottage 'to relieve stress' rather than attend the August 27th appointments was cavalier and disrespectful of professional care-givers who had set aside time for the Appellant-time that became wasted due to C.L.'s absence.

[para10] Despite that obvious lack of cooperation by the Appellant and her husband, however, there is no clear evidence that either of them fully understood the consequences of their actions and their effect upon the Appellant's IRI benefit claim.

[para11] We are of the view that the decision to suspend C.L.'s IRI benefits amounted to a rush to judgment, given the unusual lack of an explicit warning. When an MPIC case manager is dealing with an uncooperative claimant, the proper

procedure (normally followed) is to issue a polite reminder of the importance of full cooperation-which was done in this case by Mr. Pike-to be followed, if necessary, by a clear warning that, if further failure occurs, Section 160 may be invoked. The concept of progressive warnings, well known to practitioners of employment law, is even more appropriate when invoking the penalty provisions of the MPIC Act, given the emotional turbulence experienced and the new procedural territory encountered by many MVA victims.

[para12] At the hearing of his wife's appeal, R.A.L. referred to Section 150 of the MPIC Act which requires MPIC to "advise and assist" a claimant. While we agree that the Appellant should have been advised explicitly of the potential effects of Section 160 before a suspension was applied, we also agree with the submission of counsel for the insurer that a victim has a corresponding duty to extend all practicable cooperation to MPIC and to his/her care-givers. Common courtesy, no less than the statute itself, requires that.

[para13] Now that the Appellant and her husband have full knowledge of the import of Section 160, they will be more aware that a lack of cooperation without valid reason in this continuing matter could well result in another suspension or termination of benefits which this Commission, upon proper cause being shown, would uphold.

[para14] C.L.'s IRI will be reinstated for the period from August 24th, 1998, to September 27th, 1998, both inclusive, with interest at the statutory rate from September 27th, 1998, to the date of actual payment.

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