



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by B.S.
AICAC File No.: AC-03-188

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Paul Johnston
Mr. Wilson MacLennan

APPEARANCES: The Appellant, B.S., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: August 24, 2004

ISSUE(S): Whether Personal Injury Protection Plan benefits
appropriately suspended

RELEVANT SECTIONS: Sections 142 and 160(b) and (f) of The Manitoba Public
Insurance Corporation Act ('MPIC Act')

**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

The Appellant, B.S., was involved in a motor vehicle accident on October 25, 2000. As a result of the injuries which the Appellant sustained in this accident he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the decision of MPIC's Internal Review Officer dated November 28, 2003 with regards to the suspension of his PIPP benefits pursuant to ss. 160(b) of the MPIC Act.

In a decision dated November 7, 2003, MPIC's case manager advised the Appellant that his PIPP benefits will be suspended for a two week (14 day) period beginning November 10, 2003

because the Appellant had refused to properly complete release forms in respect of two doctors and failed to provide an authorization requested by MPIC from the Health Sciences Centre Psychiatric Health Unit.

In order to understand the issue in appeal it is necessary to describe the events leading up to the two week suspension.

On August 5, 2003 the case manager wrote to the Appellant and stated:

Please find enclosed with this correspondence an Employment Information Authorization form, Medical Information Authorization forms for doctors Toth and Smith, as well as the Health Sciences Centre, Psych Health Unit. This is required to replace expired authorization forms that are on file, as well as update new sources of information.

I request that you please sign these forms, including the signature of a witness and the date on which they were signed, and then return them in the postage paid envelope provided.

This request is being made in conjunction with the Manitoba Public Insurance Corporation Act 142, attached for your reference.

On September 25, 2003 the case manager again wrote to the Appellant indicating he had not received a response from the Appellant in respect of his August 5, 2003 letter. The case manager further stated:

It was explained in the letter that these forms were needed to replace the expired forms currently on file, and update a new source of information. These forms are necessary to ensure you receive benefits that are appropriate for you, and meet your needs as outlined in the Personal Injury Protection Plan (PIPP). A postage paid envelope was provided to assist you in the return of these authorization forms.

To date, these authorization forms have not been received. Section 142 of the Manitoba Public Insurance Corporation Act states;

Corporation to be provided with information

142 A claimant or a person who receives compensation under this Part shall provide any information, and any authorization necessary to obtain information, requested by the corporation for the purpose of this Part.

The case manager enclosed new copies of the authorization forms with his letter of September 25, 2003 together with a postage paid envelope for the Appellant's convenience, as well as a fifth authorization form for a psychiatrist at the Psych-Health Unit that attended upon the Appellant during his admission to that ward. The case manager also stated:

You are required to sign and return these forms to Manitoba Public Insurance on or before October 10, 2003. Failure to comply with this request will result in the suspension or termination of your Manitoba Public Insurance benefits under Section 160(b) and (f) of the Manitoba Public Insurance Corporation Act, which states: (underlining added)

Corporation may refuse or termination 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

....

(b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;

....

(f) without valid reason, prevents or delays recovery by his or her activities;

The Appellant replied to the case manager in a letter dated October 7, 2003 and provided authorizations that he executed in respect of Dr. Roy W. Smith and Dr. John Toth, and in respect of an authorization relating to his employment, but did not provide the authorization in respect of the Psych-Health Unit as requested by the case manager.

The case manager replied in a letter to the Appellant dated October 15, 2003:

I acknowledge receipt of your letter dated October 7, 2003.

It is our sole intention to provide you with the rehabilitation necessary to maximize your

recovery. For you to succeed in this regard your full cooperation is required.

The authorizations that you have signed and forwarded by e-mail were not witnessed. We are unable to proceed until **all** of the authorizations forwarded to you have been witnessed and executed. If it is your choice to deny us access to the information we deem necessary to assist in your rehabilitation and manage your claim, we will have no alternative but to suspend or terminate your benefits as outlined in section 160 of the Manitoba Public Insurance Corporation Act, previously forwarded to you. As outlined in our letter of October 10, 2003 (copy enclosed), we have extended the deadline for you to provide this information to us to October 17, 2003. We are not prepared to further extend the deadline. (underlining added)

The Appellant in a letter dated October 16, 2003 replied to the case manager's letter of September 25, 2003. In this letter he viewed the correspondence of September 25, 2003 as a threatening letter and indicated that over the past three years MPIC has continually abused its power and acted in bad faith towards him and provided a number of examples in this letter in respect of his complaints. He further stated that he would sign only three of the documents that had been requested be signed and would not sign the two other documents requested be signed until there was an investigation of his complaints against MPIC.

On November 4, 2003 the Appellant again wrote to MPIC and stated that he did not intend to comply with MPIC's request for the release of medical information and further set out ten conditions that MPIC must adhere to in order to gain access to information they deemed necessary to manage his claim.

The case manager replied to the Appellant by letter dated November 7, 2003 and indicated that MPIC was unable to negotiate the conditions that the Appellant was seeking to impose upon MPIC. The case manager asserted that the deadline for providing the appropriate authorizations had been extended from October 10th to October 17th and the Appellant had failed to meet that deadline. The case manager further stated:

Your choice to consistently refuse to cooperate is deemed a purposeful delay of your own rehabilitation. As a consequence of your choice, all PIPP benefits will be suspended for a two week (14 day) period beginning November 10, 2003. If, at the end of this suspension period, you remain noncompliant, we will have no alternative but to terminate your claim. (underlining added)

Internal Review Decision

The Appellant sought an internal review of that decision. In a letter dated November 28, 2003 the Internal Review Officer wrote to the Appellant, confirmed the case manager's decision, dismissed the Appellant's Application for Review and stated:

Notwithstanding the concerns you raise in your correspondence, Manitoba Public Insurance, is in my view, entitled to receive the specific Release of Information Authorizations from you duly signed and completed which they have requested. Your failure to provide those forms entitle the Corporation to temporarily suspend your benefits for a period of ten days pursuant to Sections 160(b) and (f) of The Manitoba Public Insurance Act. Accordingly, I am upholding Mr. Beck's decision of November 7, 2003 and dismissing your Application for Review.

Appeal

The Appellant filed a Notice of Appeal dated December 3, 2003 to the Commission. The appeal hearing took place on August 24, 2004. The Appellant appeared on his own behalf and Mr. Mark O'Neill appeared on behalf of MPIC.

The relevant provisions of the MPIC Act relating to this appeal are Sections 160(b) and (f), which are 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

- (b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;
- (f) without valid reason, prevents or delays recovery by his or her activities;

At the appeal hearing the Appellant made a number of arguments in respect of the interpretation and application relating to Section 142 of the MPIC Act which provides:

Corporation to be provided with information

142 A claimant or a person who receives compensation under this Part shall provide any information, and any authorization necessary to obtain information, requested by the corporation for the purpose of this Part.

In his submission the Appellant asserted that:

1. MPIC had abused a previously authorized access to information that he had provided to them.
2. MPIC had a history of ignoring evidence and withholding information from him.
3. he did not wish MPIC to obtain any medical information on his behalf.
4. in order to have the same information that MPIC has in their possession he desired to obtain and provide his medical information to MPIC directly without any intervention by MPIC.
5. MPIC had refused to agree to this process of receiving medical information in respect of the Appellant.
6. as a result, MPIC was in violation of Section 142 of the MPIC Act.

The Appellant further asserted that:

1. since he was prepared to provide the information requested by MPIC then, pursuant to Section 142 of the MPIC Act, MPIC was not entitled to obtain an authorization from the Appellant in order to obtain this information.
2. there are two independent methods under Section 142 by which medical information can be provided to MPIC.
3. the first method is by the Appellant providing the information, and the second method is by the Appellant consenting to MPIC obtaining that information.
4. it is only when the Appellant refuses to provide medical information to MPIC, that MPIC is entitled to obtain a written authorization from the Appellant to obtain this

medical information.

The Appellant, in his submission, referred to his letter to MPIC dated November 4, 2003 wherein he had set out ten conditions under which MPIC could obtain information it wanted through the Appellant but MPIC refused to accept these conditions.

The Appellant, in support of his position, provided a written statement setting out a portion of a telephone discussion he purportedly had with the case manager on December 19, 2001 which he had recorded. The Appellant also referred to a letter that the case manager had written to him on that date which stated in part:

As I had suggested, in order to obtain this medical information, you may attend Dr. Smith and the Misericordia Urgent Care Centre and request copies of their information to submit to me. Any charges associated with these requests will be reimbursed to you. I also suggested that you contact your insurance company and request a copy of the medical information on your file and submit this to me as well.

Another option, is that I can request the required information from the appropriate individuals and agencies. I will need a written authorization from you in order to request this information. I have enclosed a blank authorization form for you to sign should you choose this option.

The Appellant submitted that:

1. the purported telephone discussion that he had with the case manager, together with the case manager's comments in her letter of December 19, 2001, supported the Appellant's submission that he was entitled to provide the medical information to MPIC without providing a written authorization for MPIC to obtain this information.
2. the case manager's telephone discussion with him on December 19, 2001 established an oral contract between them pursuant to Section 20(1)(c) of the MPIC Act.
3. this purported contract bound MPIC to permit the Appellant to provide MPIC with medical information directly without requiring the Appellant to provide a written

authorization to MPIC.

4. when MPIC failed to comply with this purported contract MPIC violated the unfair business practice provisions of the Business Practices Act.
5. having regard to certain provisions of the MPIC Act, the purported undertaking given to him by the case manager was binding on MPIC.

The Appellant concluded his submissions by arguing that MPIC maliciously terminated his benefits without allowing him due process and that MPIC chose to terminate these benefits just prior to Christmas in order to extort authorizations from the Appellant and to take advantage of the Appellant.

In response, MPIC's legal counsel submitted that the Appellant has misinterpreted the provisions of Section 142 of the MPIC Act and, as a result, this interpretation should be rejected by the Commission.

The Commission agrees with MPIC's legal counsel that the provisions of Section 142 do not support the Appellant's interpretation and, as a result, the Commission rejects the Appellant's submission in this respect. The Commission determines that:

1. the Appellant's obligations under Section 142 of the MPIC Act were not mutually exclusive.
2. this section does not state that an Appellant shall either:
 - (a) provide information requested by the Corporation; or
 - (b) any authorization necessary to obtain information requested by the Commission.
3. Section 142 does not provide that when an Appellant obtains medical information

from his medical practitioner and MPIC is provided with this information, that MPIC is prevented from requiring the Appellant to provide the appropriate written authorization pursuant to Section 142 of the MPIC Act.

4. Section 142 of the MPIC Act requires the Appellant, who is receiving compensation from MPIC under Part 2 of the Act, to:
 - (a) not only provide any information requested by the Corporation; but also
 - (b) provide any authorization necessary for MPIC to obtain information requested by the Corporation.
5. Section 142 of the MPIC Act provides MPIC with the requisite authority to obtain any authorization it deems necessary in order to obtain information for the purposes of Part 2 of the MPIC Act whether or not the Appellant wishes to or does obtain information and provide same to MPIC.

If the Commission adopted the interpretation asserted by the Appellant in respect of Section 142, MPIC would be severely restricted in the manner it was able to obtain the necessary information to carry out its obligations under the MPIC Act. Under the provision of Section 142, MPIC has a wide authority to obtain relevant information in respect of an Appellant's claim, either personally from the Appellant or by written authorization from the Appellant. A copy of any information obtained by MPIC from the Appellant's medical caregivers must be provided to the claimant in order that the claimant has the opportunity to ensure that the information is correct and to take the necessary steps to challenge the information when it is incorrect or irrelevant.

Pursuant to Section 142 of the MPIC Act the case manager was entitled to request that the Appellant provide up-to-date authorizations in order to obtain medical information necessary to continue to manage the Appellant's claim. The Appellant unreasonably refused to sign the

authorizations provided by MPIC and, as well, sought to impose unreasonable conditions upon MPIC in order for MPIC to obtain these written authorizations. MPIC did not violate Section 142 of the MPIC Act by refusing to accept the unreasonable conditions that the Appellant wished MPIC to adopt in order for MPIC to receive medical information from the Appellant's medical practitioners.

MPIC, in order to properly manage the Appellant's claim, is entitled, independent of the Appellant, to obtain relevant medical information from the Appellant's medical practitioners and relevant medical information from the Psych-Health Unit as it relates to the mental status of the Appellant. By direct communication with the medical practitioners MPIC is assured that there will be no interference by any claimant in respect of relevant medical information that is provided by his medical practitioners, or the Psych-Health Unit. The Appellant is entitled to receive a copy of any medical information that his medical practitioners or the Psych-Health Unit provided to MPIC and would therefore have an opportunity of challenging or correcting any portion of these reports that he considers incorrect or irrelevant.

The Appellant, as a claimant of MPIC, is required to provide any relevant information or authorization requested by MPIC in order to allow the corporation to carry out an appropriate investigation and assessment of a claim, pursuant to s. 142 of the MPIC Act. Undoubtedly, this requirement is rooted in the principle of "*utmost good faith*" between an insured and insurer. A necessary basis of the contract of insurance involves full and complete disclosure on the part of an insured. This requirement cannot be dismissed or waived by an insured.

The Commission finds that the Appellant was required to properly execute the authorizations requested by MPIC pursuant to Section 142 of the MPIC Act and he failed to do so.

MPIC's legal counsel further submitted that:

1. in order for the Commission to consider and give any weight to the purported taped telephone discussion between the Appellant and the case manager, the Appellant should have provided the Commission and MPIC with a copy of the unedited tape of the entire telephone discussion between these two parties.
2. it was inappropriate for the Appellant to select certain portions of a telephone discussion that the Appellant purported he had with the case manager on December 19, 2001 in support of his position that there was a contract between the Appellant and the case manager.
3. as a result, the Commission should reject the Appellant's submission in this respect.

The Commission determines that MPIC did not have an opportunity of reviewing the entire recorded telephone discussion between the case manager and the Appellant in order to determine its accuracy and in order to prepare an appropriate response. As a result, the Commission finds that it cannot give any weight to this evidence.

The Commission also agrees with MPIC's legal counsel's submission that the Appellant has failed to establish that there was a legal contract between the Appellant and the case manager because there was no consideration for this purported contract between them.

The Commission also finds that the Appellant has failed to establish, on a balance of probabilities, that there was a consensus ad idem between the Appellant and the case manager in order to establish a contract binding upon MPIC. The Commission determines that the comments of the case manager, in a letter to the Appellant dated December 19, 2001, does not support the Appellant's position that there was a contract between the case manager and the

Appellant. The Commission finds that the case manager never intended by her written comments to agree with the Appellant's position which would result in prohibiting MPIC from obtaining a written authorization from the Appellant to provide medical information.

The Commission further agrees with MPIC's legal counsel's submission that since there was no undertaking given by the case manager to the Appellant, MPIC could not have committed any unfair business practices under the Business Practices Act. The Commission further finds that the provisions of the Business Practices Act has no application to discussions between the Appellant and the case manager in respect of a claim under the MPIC Act.

The Commission determines that since the case manager did not enter into any legal contract with the Appellant, nor did the case manager agree with the Appellant's position in respect of the manner in which the Appellant could obtain medical information, the case manager and MPIC were not bound to adopt the Appellant's position in respect of obtaining medical information under Section 142 of the MPIC Act.

The Commission also finds that the Appellant failed to establish, on a balance of probabilities, that MPIC acted in a malicious fashion when they terminated his benefits or that MPIC extorted written authorizations from him.

The Commission determines that the case manager acted in a careful and prudent manner in attempting to obtain valid and current authorizations from the Appellant in order to properly manage the Appellant's claims to avoid delays in obtaining the appropriate medical and employment information and also to ensure that MPIC did not violate the Appellant's rights under PHIA by obtaining his express consent to the release of personal health information.

Clearly, the case manager required to obtain new authorizations in order to carry out any relevant investigations MPIC needed to appropriately manage the Appellant's claim.

The Commission finds that MPIC was justified in suspending the Appellant's PIPP benefits for a period of ten days pursuant to ss. 160(b) of the MPIC Act due to the failure of the Appellant to sign and provide MPIC with the required written authorizations. MPIC gave notice to the Appellant that failure to comply with their request would result in either a suspension or termination of the Appellant's PIPP benefits and granted an extension of time to the Appellant when he failed to comply with their request. The Appellant acted unreasonably in refusing to respond to MPIC's request and, in the circumstances, the Commission finds that MPIC was entitled to invoke Section 160(b) of the MPIC Act and suspend the Appellant's PIPP benefits for a period of ten days. We also find that, in the circumstances, the suspension of the PIPP benefits for a ten day period was not excessive or inappropriate.

For these reasons, as set out herein, we find the Appellant's appeal should be dismissed and the Internal Review decision dated November 28, 2003 be, therefore, confirmed.

Dated at Winnipeg this 8th day of October, 2004.

MEL MYERS, Q.C.

PAUL JOHNSTON

WILSON MACLENNAN