

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by B.M.W.
AICAC File No.: AC-05-14**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms Mary Lynn Brooks
Ms Carole Wylie

APPEARANCES: The Appellant, B.M.W., appeared on her own behalf via
teleconference;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Dianne Pemkowski.

HEARING DATE: August 11, 2006

ISSUE(S): Termination of chiropractic treatments

RELEVANT SECTIONS: Sections 142 and 160(b)&(d) of The Manitoba Public
Insurance Corporation Act (the '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

B.M.W. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on February 4, 2004 and suffered injuries, as a result of which she was in receipt of chiropractic treatments from Dr. Bailey, which treatments were funded by MPIC. MPIC's case manager, in a letter to the Appellant dated July 27, 2004, advised her that her entitlement to have the chiropractic treatments funded by MPIC was terminated effective July 23, 2004 since the

Appellant failed to attend for a third party examination requested by MPIC. As a result, the Appellant applied to have this decision reviewed by an MPIC Internal Review Officer.

In a decision dated October 27, 2004 the Internal Review Officer confirmed the decision of the case manager and rejected the Appellant's Application for Review.

In her decision, the Internal Review Officer stated:

You do not agree with the decision issued and your Application including 17 pages of documentation, explicitly clarifies your objections. To summarize your submission, you did not complete the required Application for Payment because the location of the accident was incorrectly documented. You did not sign the Medical Information Authorization because your name was misspelled on the forms. There is no explanation as to why you have not provided your file with consent to access your previous injury claim. You did not attend the two scheduled third party examinations because "I feel I've made and am continuing to make progress with Dr. Bailey's Treatment".

...

The case manager had ample basis for invoking Sections 160(b) and (d) of the Act, and has provided you with ample written and verbal warnings of her intentions to do so.

Under the circumstances, a continued refusal to cooperate with the attendance of a third party examination after appropriate written warnings have been given, or a continued refusal to authorize access to the necessary medical information will justify a suspension or termination of benefits pursuant to Sections 160(b) or (d) of the Act. You were provided with written and verbal warnings that your actions would jeopardize your entitlement to PIPP benefits. Your lack of cooperation continued notwithstanding those warnings.

Should you choose to attend a third party examination in the future, please contact your case manager for further appointment scheduling information. Should coverage be reinstated, it will not be retroactive from the date coverage was suspended. Prior to any future reinstatement consideration, all claims administration and authorization forms must be accurately completed and returned to your injury claim file.

Upon receipt of the Internal Review decision the Appellant filed a Notice of Appeal dated January 14, 2004 (sic).

Appeal

The relevant provisions of the Act in respect of this appeal are:

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.

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;

...

(d) without valid reason, neglects or refuses to undergo a medical examination, or interferes with a medical examination, requested by the corporation;

The appeal hearing took place on August 11, 2006 at the Commission office in Winnipeg. The Appellant, who resides in the [text deleted], participated by teleconference. Ms Dianne Pemkowski attended the hearing as legal counsel on behalf of MPIC.

At the appeal hearing the Appellant was given an opportunity to explain why she did not sign medical information authorizations permitting MPIC to obtain medical information. The Appellant advised the Commission panel that because her name had been misspelled on the forms she did not complete them. When the Commission panel asked the Appellant why she did not correct this error she indicated that she had no obligation to do so. The Commission panel advised the Appellant that MPIC did forward to the Appellant a correctly spelled medical

authorization for release of health information on September 7, 2004 but these forms had not been completed and returned by the Appellant to MPIC. The Appellant did not provide any explanation for failing to return these forms, duly completed, to MPIC. The Commission advised the Appellant that since she had failed to comply with Section 160(b) of the Act, MPIC was entitled to terminate funding of her chiropractic treatments.

The Commission further noted that the Appellant had been requested to provide an authorization for MPIC to access her previous MPIC injury claim file in order for MPIC to assess her entitlement to benefits under her current claim and that the Appellant had failed to comply with this request. The Appellant's explanation for failing to comply with this request was that any information in respect of the Appellant's previous injury claim was not relevant to her entitlement to benefits under her current claim. In response, MPIC's legal counsel submitted that under Section 142 and Section 160(b) of the Act, MPIC was entitled to examine the Appellant's previous injury claim file in order to determine whether any information on that file was relevant in order for MPIC to properly assess the Appellant's present claim for benefits. The Appellant rejected MPIC's submission and maintained her position that the information MPIC decided was not relevant. The Commission advised the Appellant that the Commission agreed with MPIC's submission that since the Appellant had failed to comply with Sections 142 and 160(b) of the Act, MPIC was entitled to terminate funding of her chiropractic treatments.

In respect of the third party examination, the Appellant did not dispute that she had refused to attend two (2) third party examinations requested by MPIC scheduled with Dr. Rothman on June 29, 2004 and July 22, 2004. As well, the Appellant acknowledged that she had been notified, both in writing and verbally, as to these two (2) appointments and chose not to attend.

The Appellant's explanation to the Commission panel for failing to attend these two (2) examinations was that her chiropractor, Dr. Bailey, was a very competent chiropractor who was providing her with excellent chiropractic treatments and that there was no need for any third party assessment by MPIC. The Appellant further submitted that MPIC was not entitled to challenge the chiropractic opinion of Dr. Bailey and that MPIC was obligated to accept Dr. Bailey's chiropractic opinion without obtaining a third party assessment by another chiropractor.

The Commission panel pointed out to the Appellant that, under Section 160(d) of the Act, the Appellant was not entitled to refuse to undergo a medical examination without a valid reason or to neglect or refuse to undergo such an examination. The Commission advised the Appellant that she had not provided a valid reason for neglecting or refusing to undergo the examinations by Dr. Rothman and, as a result, MPIC was entitled to terminate funding in respect of her chiropractic treatments.

Decision

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that pursuant to Sections 142 and 160(b)&(d) of the Act, MPIC was not justified in terminating the funding of chiropractic treatment for the Appellant effective July 23, 2004. The Commission further finds that:

1. MPIC provided ample written and verbal warnings to the Appellant that chiropractic treatments would be terminated if she unreasonably failed to comply with MPIC's request for the appropriate authorizations and for her attendance at the chiropractic examination.
2. the Appellant refused and neglected to provide the appropriate authorizations requested by MPIC in writing, contrary to Sections 142 and 160(b) of the Act.

3. without valid reasons, the Appellant refused to undergo a chiropractic examination on two (2) occasions with Dr. Rothman as requested by the Corporation, contrary to Sections 142 and 160(d) of the Act.

For these reasons, and for the reasons set forth in the decision of MPIC's Internal Review Officer dated October 27, 2004 (a copy of which is attached hereto and intended to form part of this decision), the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated October 27, 2004.

Dated at Winnipeg this 24th day of August, 2006.

MEL MYERS, Q.C.

MARY LYNN BROOKS

CAROLE WYLIE