

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by N.A.
AICAC File No.: AC-08-135**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Mr. Paul Johnston

APPEARANCES: The Appellant, N.A., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Cynthia Lau.

HEARING DATE: July 23, 2009

ISSUE(S): Whether Personal Injury Protection Plan ("PIPP") benefits
were properly terminated pursuant to Section 160(g) of The
Manitoba Public Insurance Corporation Act ("MPIC Act")

RELEVANT SECTIONS: Section 160(g) of the 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, N.A., is appealing the Internal Review Decision dated December 8, 2008 with respect to his entitlement to further PIPP benefits.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On February 19, 2008, the Appellant's vehicle was rear-ended while stopped in Winnipeg, Manitoba.
2. As a result of the accident, the Appellant applied for and received PIPP benefits, including income replacement indemnity ("IRI") benefits.

3. At the request of MPIC, Associated Rehabilitation Consultants of Canada Ltd. (“ARCC”) designed a rehabilitation program for the Appellant with a scheduled start date of September 12, 2008.
4. On September 12, 2008, the Appellant called ARCC and advised that he would not be attending on that day due to illness. The Appellant’s case manager attempted to contact the Appellant by telephone on that day, without success.
5. On September 15, 2008, ARCC reported that the Appellant had called them indicating that he would not be attending on that date due to illness. The Appellant’s case manager requested that ARCC advise the Appellant to contact her. MPIC’s case manager attempted to contact the Appellant by telephone again without any success.
6. On September 17, 2008, ARCC advised MPIC that the Appellant had again called and advised that he would not be in all that week due to a cold. ARCC reported that they advised the Appellant to contact his case manager. MPIC’s case manager attempted to contact the Appellant via telephone without any success and the Appellant did not contact her as ARCC had requested.
7. Letters were sent to the Appellant from MPIC’s case manager, dated September 12, 17 and 22, 2008, advising the Appellant of the rehabilitation program that he was scheduled to attend at ARCC and explaining that it was reasonable for the Appellant to attend ARCC for a re-examination if at any point he felt he could not attend due to illness or complaints. The letters also explained the consequences of not participating in a rehabilitation program made available by MPIC.
8. On September 26, 2008, the Appellant called his case manager and left a voicemail message indicating that he did not receive his IRI cheque and that he was going to comply with his rehabilitation program effective September 26, 2008. Since he was

advising that he was going to be complying with the rehabilitation program the Appellant further noted that he should be getting paid.

9. On September 26, 2008, the Appellant was advised by the case management supervisor, that, as he had been absent from the ARCC program and MPI had been unable to contact him, his benefits had been suspended. The Appellant indicated that he had seen Dr. Rusen a couple of days before about a cold and he was going to comply and attend ARCC that afternoon. The Appellant was advised that once it was confirmed with his doctor that he had attended his clinic for a cold and once he resumed ARCC with full compliance, his IRI would be processed.
10. The case manager contacted Dr. Rusen on September 26, 2008 and Dr. Rusen indicated that the reason for the Appellant's visit was further prescriptions and a note for his employer. Dr. Rusen advised that there was no evidence of the Appellant being ill or having a cold, nor was there any mention about a cold.
11. The case manager advised the Appellant that his IRI would resume once ARCC confirmed that he had fully complied with his rehabilitation program. However, the case manager advised that the Appellant would not receive any IRI between September 12, 2008 and September 25, 2008 as there was no valid reason for not contacting MPIC and not attending ARCC as there was no evidence of him being ill.
12. On September 29, 2008, ARCC reported that the Appellant had attended there on September 26, 2008, but only stayed for one hour. On September 29, 2008, the Appellant left the case manager a message that since he was not being paid for the days between September 12 and 25, 2008, he was not going to ARCC until that was settled. MPIC's case manager called the Appellant back and confirmed with him that if he did not comply with the rehabilitation program through ARCC, his PIPP benefits would be terminated completely.

13. A decision letter dated September 29, 2008 was sent to the Appellant, indicating that pursuant to Section 160(g) of the MPIC Act, his PIPP benefits were being terminated.
14. The Appellant sought an Internal Review of that decision. In a decision dated December 8, 2008, the Internal Review Officer dismissed the Appellant's application for review and confirmed the case manager's decision. The Internal Review Officer found that the termination of the Appellant's PIPP benefits was justified in the circumstances.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant's PIPP benefits were properly terminated pursuant to Section 160(g) of the MPIC Act.

Relevant Legislation:

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

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the corporation; or

Discussion:

At the appeal hearing, the Appellant insisted that he had a cold during the dates in question and therefore he was unable to attend the rehabilitation program at ARCC. The Appellant further indicated that he went to see Dr. Rusen regarding his cold but he never obtained a note from Dr. Rusen. The Appellant maintained that he was not aware that he was required to provide any confirmation from Dr. Rusen or any other medical personnel respecting his illness. At the appeal hearing, the Appellant further testified that he did attend ARCC on the relevant dates and spoke

with Nancy, who advised him to stay home if he was ill. The Appellant did not provide any written documentation from either Dr. Rusen or ARCC respecting his illness.

Counsel for MPIC submits that the Appellant has not provided a valid reason for refusing to participate in the rehabilitation program made available by MPIC. Counsel for MPIC argues that the termination of benefits was appropriate in the circumstances and that the Appellant received numerous warnings from the case manager. Accordingly, counsel for MPIC maintains that the appeal should be dismissed and the Internal Review Decision dated December 8, 2008 confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant's PIPP benefits were properly terminated pursuant to Section 160(g) of the MPIC Act.

Section 160(g) provides that MPIC may terminate an indemnity where the claimant, without valid reason, does not follow or participate in a rehabilitation program made available by the corporation. The Commission finds that the Appellant has not provided any valid reason regarding his refusal to participate in the ARCC rehabilitation program made available by MPIC. The Commission does not accept the Appellant's testimony that he was ill from September 12 to September 25, 2008. The Appellant could have established his illness during the time in question by providing a medical note from Dr. Rusen. However, the Appellant did not provide any confirmation from Dr. Rusen or any other medical professional respecting his illness during the relevant dates. Accordingly, the Commission finds that the Appellant has failed to establish,

on a balance of probabilities, that he had any valid reason for refusing to participate in the rehabilitation program at ARCC. As a result, the Commission finds that the termination of the Appellant's PIPP benefits was justified in the circumstances of this case.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated December 8, 2008 is confirmed.

Dated at Winnipeg this 31st day of July, 2009.

YVONNE TAVARES

DIANE BERESFORD

PAUL JOHNSTON