



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-77

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Les Marks
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: July 3, 2003

ISSUE(S): Termination of benefits pursuant to Section 160 of The
Manitoba Public Insurance Corporation Act.

RELEVANT SECTIONS: Section 160 of The Manitoba Public Insurance Corporation
Act (the "MPIC Act").

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on October 27, 1999. As a result of the injuries which the Appellant sustained in that accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing the decision of the Internal Review Officer dated June 10, 2002, which dismissed her Application for Review and confirmed the case manager's decision dated

March 12, 2002. At issue in this appeal is whether the termination of the Appellant's PIPP benefits, pursuant to subsections 160(b), (d), (e), (f) and (g) of the MPIC Act was appropriate.

Subsections 160(b), (d), (e), (f) and (g) of the MPIC Act provide 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;

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

(e) without valid reason, refuses, does not follow, or is not available for, medical treatment recommended by a medical practitioner and the corporation;

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

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

Termination Pursuant to Subsection 160(b) of the MPIC Act

In regards to the termination of PIPP benefits pursuant to subsection 160(b) of the MPIC Act, the Appellant had not authorized her family physician, [text deleted], to release her chart notes and unrelated investigative tests to MPIC. Additionally, the Appellant had modified the authorization to the [hospital] Physiotherapy Department, regarding release of their clinical notes and the results of investigative tests, to read "*notes prior to October 17, 2000 are not to be released*".

The issue before the Internal Review Officer therefore was whether the Appellant had refused to produce information, or provide an authorization to MPIC to enable it to obtain the information, after receiving a written request from MPIC. The Internal Review Officer, in his decision dated June 10, 2002, noted that:

Dealing with the second issue first, I am cognizant of the right vested in individuals to control the dissemination of their personal health information. That right is curtailed somewhat when an individual makes a claim for benefits under PIPP, the entitlement to which hinges on the relationship, if any, between the allegedly disabling medical conditions and the motor vehicle accident in question. In cases such as this, a complete medical history is essential to a fair and proper assessment of entitlement.

By authorizing only partial releases of information, you are hindering the ability of the case manager to fulfill her obligations under the *Act*. This perhaps explains why subsection 160(b) is not modified by the “without valid reason” preamble.

I am satisfied that subsection 160(b) has been breached, and that you received sufficient warning of the potential consequences of the breach. While I would have been inclined to suspend your benefits for so long as the non-compliance continued, the case manager elected to terminate your benefits, and that decision is certainly supportable based upon the totality of the evidence.

The Appellant, in her submission to the Commission, contended that since the assessment of her shoulder problem, which was related to the accident, took place on October 17, 2000 at the [hospital] Physiotherapy Department, she thought that MPIC would only need the notes from that date forward. The Appellant also maintains that information relating to her prior medical conditions, was not relevant to the issues before MPIC, and therefore she did not want that personal health information released to MPIC.

Counsel for MPIC submitted that the Appellant’s benefits were appropriately terminated pursuant to subsection 160(b) of the MPIC Act. He maintains that the restrictions imposed by the Appellant, on the release of medical information, amounted to a refusal to provide MPIC with all of the necessary medical information required to manage her claim properly.

Additionally, counsel for MPIC contends that the letter dated January 25, 2002, to the Appellant from her case manager, constituted a written request by the corporation for the information, in accordance with subsection 160(b) of the MPIC Act. The letter dated January 25, 2002 set out the following:

The purpose of this letter is to advise you of the effect of your failure to attend and comply with the rehabilitation plan as discussed and agreed upon.

- [Appellant's doctor #1's] March 9, 2000 report states that your chart notes and unrelated investigative tests will not be made available at this time. Please advise whether you instructed [Appellant's doctor #1] to withhold this information.
- On November 1, 2000 I attended at your residence to secure from you a detailed statement concerning your level of function and at that time you refused to sign the statement.
- On December 5, 2000 we wrote to [hospital] Physiotherapy department requesting copies of your clinical notes and the results of all investigative tests that were performed. You modified their authorization to read "notes prior to October 17, 2000 are not to be released".

Accordingly, counsel for MPIC submits that the appeal should be dismissed and the decision of the Internal Review Officer, dated June 10, 2002, should be confirmed.

The totality of the evidence before us does not persuade the Commission that MPIC requested that the Appellant produce information or provide an authorization to obtain information, in writing, in accordance with subsection 160(b) of the MPIC Act. Specifically, we find that the letter dated January 25, 2002 from MPIC's case manager to the Appellant did not constitute a written request pursuant to subsection 160(b) of the MPIC Act. We therefore rescind the termination of benefits pursuant to subsection 160(b) of the MPIC Act.

Termination Pursuant to Subsections 160(d) and (e) of the MPIC Act

In order to assist the Appellant with her rehabilitation, a referral to [rehab clinic] was recommended by MPIC. As part of that referral, the Appellant underwent a rehabilitation assessment by [text deleted], a specialist in physical medicine and rehabilitation. Based upon the results of that rehabilitation assessment, it was determined that the Appellant was a suitable candidate for the rehab program and an intake assessment was arranged.

One of the recommendations of the intake assessment was that the Appellant undergo a psychological assessment by [text deleted], a clinical psychologist. The Appellant refused to undergo the psychological assessment or partake in individual counseling with [Appellant's psychologist], but did participate in [Appellant's psychologist's] chronic pain workshop and relaxation classes in a group setting. The Internal Review decision confirmed the case manager's decision to invoke subsections 160(d) and (e) terminating the Appellant's PIPP benefits, on the basis that the Appellant refused to undergo the psychological assessment or undertake psychological counselling.

At the hearing of this appeal, the Appellant explained that she felt that she did not require a psychological assessment in order to treat her motor vehicle accident related injuries. She also advised that when she questioned her case manager at [rehab clinic] regarding her diagnosis of "*situational depression*", he was of no assistance. Further, she wanted her family physician, [text deleted], consulted with regards to the rehab process at [rehab clinic] and specifically with regards to the requirement for psychological counselling. She testified that [Appellant's doctor #1] did not agree that she was depressed. Lastly, the Appellant maintained that she had spoken with [text deleted], a case manager at MPIC, who advised her that she did not need to undergo

the individual psychological assessment with [Appellant's psychologist]. She also maintained that since she attended the group sessions with [Appellant's psychologist], this should suffice.

Counsel for MPIC submits that the termination of benefits in accordance with subsections 160(d) and (e) of the MPIC Act was justified. He notes that the Appellant was diagnosed with situational depression by [Appellant's rehab specialist] in his rehabilitation assessment. During the intake assessment by [rehab clinic], the depression was identified as a barrier to recovery for the Appellant. As a result, counsel for MPIC contends that the psychological counselling was an integral part of the supervised rehabilitation program, in order to address all of the obstacles to the Appellant's recovery. Since the Appellant refused to undergo the psychological assessment, [rehab clinic] was not able to offer her a proper rehabilitation program to successfully address all of the issues preventing her from reintegrating into the workplace. Counsel for MPIC therefore concludes that the refusal by the Appellant to undergo a psychological assessment and counselling properly invoked the termination of her benefits pursuant to subsections 160(d) and (e) by MPIC.

Upon a careful review of the totality of the evidence before it, the Commission finds that the Appellant had a valid reason for refusing to undergo the psychological assessment with [Appellant's psychologist]. Based upon the Appellant's conversation with [text deleted], we find that she genuinely believed that she did not have to partake in the psychological assessment with [Appellant's psychologist]. We find that she was also relying upon the advice of her own family physician, [text deleted], with regard to the requirement for psychological counselling. Accordingly, we find that the Appellant had a valid reason for refusing to undergo the psychological assessment and counselling with [Appellant's psychologist]. We therefore rescind the termination of benefits pursuant to subsections 160(d) and (e) of the MPIC Act.

Termination Pursuant to Subsections 160(f) and (g) of the MPIC Act

An additional recommendation of the intake assessment conducted at [rehab clinic] was that the Appellant participate in an eight-week work hardening program. The Appellant commenced the work hardening program on or about the last week of August 2001 and regularly attended and progressed through the program until October 4, 2001. On October 4, 2001, the Appellant withdrew from the work hardening program at [rehab clinic] and refused to return. On the basis of the Appellant's continued refusal to attend and comply with the rehabilitation program, MPIC's case manager terminated her PIPP benefits on March 12, 2002.

The Internal Review Officer in his decision dated June 10, 2002, confirmed the case manager's decision to terminate benefits and dismissed the Appellant's Application for Review, on the basis that the Appellant had not provided a valid reason for refusing to continue with the [rehab clinic] rehabilitation program.

In her submission at the appeal hearing, the Appellant explained that her refusal to continue with the [rehab clinic] program was based upon her deteriorating condition as she continued with the rehab program. She maintained that she could not continue to participate in the rehabilitation program, as she could no longer tolerate the pain. The Appellant maintained that she was in total pain all of the time, living on pain killers and just simply could not tolerate the work hardening program any longer. She felt that her condition was getting worse, rather than improving, as she continued with the rigorous exercises and she was concerned that she was causing further injury to her knees. Since she could no longer bear the ongoing pain in her knees, and she did not feel that her concerns were being appropriately addressed at [rehab clinic], she decided to quit the rehab program.

Counsel for MPIC submits that the Appellant chose not to cooperate with the rehabilitation program and exhibited a pattern of non-cooperation throughout the entire claims process. He notes that neither her general practitioner, [text deleted], nor [Appellant's doctor #2] advised her to stop the rehab program at [rehab clinic]. He maintains that she was warned of the consequences of her continued refusal to participate in the program, yet she knowingly chose not to return to the rehabilitation program at [rehab clinic]. Accordingly, counsel for MPIC submits that the decision of the Internal Review Officer should be confirmed, and the Appellant's appeal dismissed.

Upon a careful review of all of the oral and documentary evidence before it, including the Appellant's own testimony at the appeal hearing, the Commission finds that the Appellant did not have a valid reason for refusing to continue with the [rehab clinic] program as of October 4, 2001.

The Appellant's refusal to return to the program was not based upon medical advice received from either [Appellant's doctor #1] or [Appellant's doctor #2], her physicians at the time. There was no medical evidence at the time of her refusal to return to the program, to validate her concerns of harm regarding her knee. Moreover, the evidence submitted to the Commission, including [Appellant's doctor #2's] letter dated March 18, 2003, which we found to be contradictory, failed to establish any medical basis for the refusal to continue with the rehab program. Although [Appellant's doctor #3's] report of December 12, 2001, expresses his view that the Appellant's pain complaints were sufficient to preclude her participation in the [rehab clinic] program, he was alone in that view. Neither [Appellant's doctor #2] nor [Appellant's doctor #1] indicated that the Appellant should discontinue the [rehab clinic] program.

We find that despite the Appellant's criticisms, her pain complaints were being addressed by the therapists at [rehab clinic], as noted in the reports summarizing her progress through the work hardening program. She was attending a supervised rehabilitation program and was being closely monitored in her progress. If she had concerns regarding the program at [rehab clinic], she should have addressed those concerns directly with the personnel at [rehab clinic], rather than quitting the program all together and jeopardizing her recovery. Without a valid basis for her refusal to continue with the [rehab clinic] program, we therefore find that the termination of the Appellant's benefits pursuant to subsections 160(f) and (g) was appropriate in the circumstances of this case.

As a result, for these reasons, the Commission dismisses the Appellant's appeal and varies the decision of MPIC's Internal Review Officer bearing date June 10, 2002, by confirming the termination of the Appellant's benefits on the basis of subsections 160(f) and (g) of the MPIC Act and rescinding the termination of the Appellant's benefits on the basis of subsections 160(b), (d) and (e) of the MPIC Act.

Dated at Winnipeg this 31st day of July, 2003.

YVONNE TAVARES

LES MARKS

PAUL JOHNSTON