



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-105**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Bill Joyce
Ms. Barbara Miller

APPEARANCES: The Appellant, [text deleted], was represented by [Appellant's legal counsel]; Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Mark O'Neill.

HEARING DATE: May 10, 2004

ISSUE(S): Whether Income Replacement Indemnity benefits properly terminated.

RELEVANT SECTIONS: Subsections 160(f) and (g) 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 July 20, 1998, wherein she sustained several fractures to her right tibia and right fibula. 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.

At the time of the motor vehicle accident, the Appellant was employed at two different jobs. She worked on a full-time basis as a cake filler at [text deleted] and on a part-time basis as a cashier with [text deleted]. Due to the injuries which the Appellant sustained in the motor vehicle accident, she was unable to continue with her employment duties, and as a result, she qualified for income replacement indemnity ('IRI') benefits.

In a letter dated February 22, 2001, MPIC's case manager advised the Appellant that her entitlement to IRI benefits and all other PIPP benefits would cease as of February 25, 2001, due to her lack of co-operation and full participation with her rehabilitation program. The case manager's letter outlining the circumstances which led to the termination of the Appellant's PIPP benefits is attached hereto as Appendix A.

The Appellant sought an internal review of that decision. In his decision dated June 26, 2001, the Internal Review Officer confirmed the case manager's decision of February 22, 2001 and dismissed the Appellant's Application for Review. The Internal Review Officer concluded that ". . . there was an overwhelming preponderance of evidence to support the conclusion that [the Appellant] was simply not complying with her obligations under Section 160 of the *Act* and that, in light of the past history of the claim, there was not much likelihood of her ever complying (in spite of her stated intentions to the contrary)".

The Appellant has now appealed the termination of her PIPP benefits, pursuant to ss. 160(f) and (g) of the MPIC Act, to this Commission.

At the appeal hearing, counsel for the Appellant submitted that the case manager's decision to terminate the Appellant's PIPP benefits was based on limited facts. He argues that there was

insufficient evidence that the Appellant was self-limiting, or refusing to participate in the rehabilitation program, to the extent that her benefits should be terminated.

Counsel for the Appellant submits that the Appellant had a valid reason for her diminished capacity to participate in the gradual return to work program. He maintains that the Appellant was in severe pain throughout the gradual return to work program, due to the injuries which she sustained in the motor vehicle accident. He insists that the Appellant was co-operating with her rehabilitation program - she attended the workplace as required and tried her best to carry out the assigned duties. However, her pain limited her ability to participate in the gradual return to work program to the level expected by the rehabilitation consultant and the pre-determined return to work schedule.

Counsel for the Appellant argues that the Appellant's reduced capacity was not so serious that she was jeopardizing the gradual return to work program and her PIPP benefits should not have been terminated. He concludes that her IRI benefits should be reinstated and a work hardening program should be implemented to assist with the Appellant's transition back to the workplace.

Counsel for MPIC submits that the Appellant's self-limiting behaviour was evident. He argues that she put forth minimal effort throughout her gradual return to work program and that this behaviour was consistent with her uncooperative attitude throughout the entire claim file. He maintains that based upon her performance in January and February 2001, the Appellant simply was not putting forth the effort required to be successful at the gradual return to work program. Counsel for MPIC notes that despite clearance from her caregivers to participate in the gradual return to work program, and the Appellant's ability to cook meals, go shopping, do housework

and take care of her family, she would not work for more than thirty minutes at [text deleted], without taking a break.

Counsel for MPIC submits that the unreasonableness of the Appellant's refusal to increase her work hours is indicative of her uncooperative attitude throughout the claim file. He notes this unacceptable attitude is further evidenced by the circumstances set out by the case manager in her decision letter of February 22, 2001. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision dated June 26, 2001 confirmed.

The relevant sections of the MPIC Act 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

- (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.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the termination of the Appellant's PIPP benefits as of February 25, 2001, pursuant to ss. 160(f) and (g) of the MPIC Act, was appropriate.

Upon our objective assessment of the Appellant's gradual return to work program, we find that she was not putting forward a reasonable attempt, nor a genuine effort, to comply with the back to work program. Her efforts to reintegrate into the workplace were weak and inadequate. Given the Appellant's ability to function at home and outside the workplace, no valid reason was

provided for her ability to sustain her work-related duties for only thirty minutes and her inability to progress beyond that phase.

Additionally, we are not satisfied, on a balance of probabilities, that her subjective complaints of pain prevented her successful return to work or provided a valid reason for her refusal to follow the gradual return to work program. Rather, we find that the Appellant purposely self-limited her activity, to the extent that she prevented or delayed her recovery. We also find that she knowingly and without a valid reason did not follow and participate in the gradual return to work program arranged for her by MPIC. As a result, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer dated June 26, 2001.

Dated at Winnipeg this 12th day of July, 2004.

YVONNE TAVARES

BILL JOYCE

BARBARA MILLER