



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-164

PANEL: Mr. Mel Myers, Q.C., Chairman
Honourable Armand Dureault
Dr. Patrick Doyle

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Morley Hoffman.

HEARING DATE: June 15, 2005

ISSUE(S): Entitlement to Personal Injury Protection Plan ('PIPP')
benefits beyond July 22, 2003

RELEVANT SECTIONS: Section 160(f) and (g) of the Manitoba Public Insurance
Corporation Act ('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] was involved in a motor vehicle accident on June 29, 2000 and he sustained multiple bone fractures requiring skin and bone grafts, disruption of his right posterior interosseus nerve, and soft-tissue injuries to his lower back. At the time of the accident the Appellant had been employed as a helper/labourer with [text deleted] until two (2) weeks prior to the motor vehicle accident when his employment was terminated.

As a result of the injuries sustained in the motor vehicle accident the Appellant was unable to continue to work as a labourer. A Functional Capacity evaluation conducted by MPIC in September, 2001 confirmed this and found that the Appellant was only capable of performing sedentary or light employment. Unable to work, due to the motor vehicle accident, the Appellant was in receipt of PIPP benefits.

For the purpose of training the Appellant to perform sedentary or light employment, the Appellant was referred, by MPIC, to a rehabilitation program. Unfortunately, the Appellant due primarily to a drinking problem was unable to comply with the MPIC retraining program. As a result MPIC's case manager wrote to the Appellant on July 22, 2003 and after noting the failure of the Appellant, on a number of occasions, to comply with the rehabilitation program requirements, terminated his PIPP benefits as of July 22, 2003. In his letter, to the Appellant, the case manager stated:

By virtue of your own activities you have delayed your recovery and were not available for rehabilitation. Therefore, we are left with no choice but to terminate your benefits under the Personal Injury Protection Plan.

Internal Review Officer's Decision

The Appellant made an application for review of the Internal Review Officer's decision and the Internal Review Hearing was conducted by telephone on August 28, 2003. The Internal Review Officer wrote to the Appellant on October 3, 2003 confirming the case manager's decision to terminate the Appellant's PIPP benefits and dismissed his Application for Review.

The Internal Review Officer, in his decision, stated that the only issue in the review is whether or not the Appellant's PIPP benefits were properly terminated effective July 22, 2003 by Sections 160(f) and (g) of the Act which state:

The 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;

...

The Internal Review Officer reviewed, at length, the course of the Appellant's conduct which indicated that on numerous occasions the Appellant had failed to comply to participate in MPIC's retraining and/or rehabilitation program. The Internal Review Officer indicated that he was satisfied that the case manager was justified, long before July 22, 2003, in terminating the Appellant's PIPP benefits. As a result the Internal Review Officer rejected the Appellant's Application for Review and confirmed the case manager's decision.

Appeal

The Appellant filed a Notice of Appeal and the Commission heard this appeal on June 15, 2005.

The Appellant appeared on his own behalf and MPIC was represented by Mr. Morley Hoffman.

At this hearing the Appellant testified that:

1. as a result of an alcohol problem, he did not comply with the efforts by MPIC to assist him in obtaining the appropriate education to obtain employment involving sedentary or light duties.
2. he had been employed for a number of months at [text deleted], and provided documentation to the Commission which confirmed this.
3. unfortunately he had been laid off from this employment shortly before the appeal hearing.
4. he wished to obtain a Grade 12 diploma and then attend [text deleted] to either complete a program in computers or in the automobile field. The Appellant provided documentation to the Commission that he was enrolled at the [text deleted].
5. in order to attend at the [text deleted], on a full-time basis, for the purpose of obtaining a Grade 12 diploma, he could not at the same time be employed on a full-time basis and as a result required reinstatement of his PIPP benefits.
6. he had quit drinking, and for several months had been attending, on a regular basis, at AA meetings. In support of his position he called a witness, who was member of AA, who confirmed the Appellant's attendances at AA meetings on a regular basis.

MPIC's legal counsel reviewed the Internal Review Officer's decision, dated October 3, 2003, and submitted that:

1. MPIC had been justified in terminating the Appellant's PIPP benefits pursuant to Section 160(f) and (g) of the Act and requested that the Commission confirm the Internal Review Officer's decision and dismiss the Appellant's appeal.
2. there were numerous occasions in the Internal Review Officer's decision demonstrated the failure of the Appellant to comply with the requirements of the rehabilitation program.
3. the Appellant had been warned on several occasions that if he failed to comply with the requirements of the program it would be terminated.
4. notwithstanding these warnings the Appellant did not comply with the requirements of the rehabilitation program and as a result MPIC's legal counsel submitted that the Internal Review Officer decision was correct in dismissing the Appellant's Application for Review.

The Appellant, in his submission, did not deny his failure to comply with the requirements of the rehabilitation program, but asserted that he did not receive reasonable notice of the termination of his PIPP benefits by MPIC.

The Appellant also submitted that:

1. he had started a new life with his wife, he had quit drinking and he had worked steadily at [text deleted] for many months until he had been laid off because of a lack of work.
2. he wished to attend, at the [text deleted], in order to obtain a grade twelve (12) education and then proceed to [text deleted] to obtain a diploma in either the computer or automobile field in order that he may obtain full-time employment to support himself and his family.
3. in order to obtain his grade twelve (12) status, in a timely fashion, he would be required to attend the [text deleted] on a full-time basis and therefore, would be unable to be gainfully employed at the same time.
4. for this purpose MPIC should reinstate his PIPP benefits in order that he could attend these institutions in order to upgrade his education.

In reply MPIC's legal counsel submitted that:

1. the Appellant had not demonstrated that MPIC had erred in terminating his PIPP benefits and as a result the appeal should be dismissed. However, MPIC's legal counsel further submitted, that the Appellant may wish to request MPIC to reconsider its decision to reinstate his PIPP benefits pursuant to Section 171(1) of Act.

2. the Appellant's participation in the AA program and his desire to return to school to upgrade his education were decisions the Appellant made subsequent to the termination of the Appellant's PIPP benefits on July 22, 2003.
3. as a result neither the case manager nor the Internal Review Officer arriving at their decisions had an opportunity to consider the new information the Appellant had submitted to the Commission in respect of the changes in the direction of his life.
4. having regard to this new information the Appellant may wish to consider making an application to MPIC pursuant to Section 171(1) of the Act wherein he would request MPIC to reconsider their decision to terminate his PIPP benefits.

Decision

The Commission has reviewed all of the evidence, that was submitted before it, at the appeal hearing and upholds the decision of the Internal Review Officer dated October 3, 2003 to terminate the Appellant's PIPP benefits.

The Commission rejects the Appellant's appeal that he did not receive reasonable notice of MPIC's termination his PIPP benefits. The Commission noted that MPIC on several occasions warned the Appellant that if he failed to comply with the requirements of the rehabilitation program they would terminate his PIPP benefits.

The Commission further finds that for the reasons set out in the Internal Review decision, bearing date October 3, 2003 (a copy of which is attached hereto as SCHEDULE A and intended to form part of the Reasons for this Decision), MPIC had ample justification to terminate the Appellant's PIPP benefits pursuant to Section 160(f) and (g). The Commission therefore confirms the decision of the Internal Review Officer, dated October 3, 2003, and dismisses the Appellant's appeal. The Commission determines that the Appellant has failed to establish on balance of probabilities that MPIC erred when it terminated his PIPP benefits pursuant to Section 160(f) and (g) of the Act.

The Commission is however, impressed with the attempt of the Appellant to change the direction of his life. The Commission accepts the Appellant's explanation that his previous conduct was due primarily to alcohol and that he had now quit drinking and is regularly attending AA meetings. The Commission also believes that the Appellant at this time is sincere in obtaining the appropriate education in order to obtain employment of a light or sedentary nature.

The Commission accepts the suggestion of MPIC's legal counsel that since MPIC has never had the opportunity of considering this new information it would be appropriate for the Appellant to now submit this new information to MPIC for their assessment. The Commission therefore refers this matter back to MPIC with the request that they reconsider its decision pursuant to Section 171(1) of the Act in respect of the termination of the Appellant's PIPP benefits.

Dated at Winnipeg this 15th day of August, 2005.

MEL MYERS

ARMAND DUREAULT

PATRICK DOYLE