

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-156**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Trevor Anderson
Mr. Neil Margolis

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: November 19, 2014

ISSUE(S): 1. Whether the Appellant's benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.
2. Whether MPIC is entitled to recover overpayment of Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Sections 160(a) and 189(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC 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, [text deleted], is appealing the Internal Review decision dated September 25, 2013, with respect to the termination of her Personal Injury Protection Plan ("PIPP") benefits pursuant to Section 160(a) of the MPIC Act. The appeal hearing was held on November 19, 2014 commencing at 9:30 a.m. The Appellant did not attend the hearing or provide any written submissions to the Commission in support of her appeal.

At the outset of the hearing, it was determined that the Appellant had received notice of the hearing in accordance with Section 184.1 of the MPIC Act. Section 184.1 provides as follows:

How notices and orders may be given to appellant

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

The Commission determined that the Notice of Hearing was sent by regular lettermail to the address provided by the Appellant on the Notice of Appeal. As a result, the Commission determined that the Appellant had received notice of the hearing in accordance with Section 184.1 and proceeded with the hearing of the appeal.

Submissions of MPIC:

Counsel for MPIC began his submission by noting that the Appellant had chosen not to appear at the appeal hearing. As the onus is on the Appellant to establish the merits of her appeal, counsel for MPIC suggested that an adverse inference should be drawn by her failure to attend and prosecute her appeal. He argued that the Appellant has not made herself available either for direct or cross-examination and therefore has essentially not presented her case to the Commission. Counsel for MPIC also noted that the Appellant has been unresponsive to the

Commission from the outset of filing her Notice of Appeal and has not provided any evidence to discredit the videotape evidence submitted by MPIC. Therefore, counsel for MPIC submitted that the Appellant's appeal should be dismissed as the Appellant has failed to meet the onus of proof in the circumstances.

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

(a) knowingly provides false or inaccurate information to the corporation;

Corporation to be reimbursed for excess payment

[189\(1\)](#) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

Decision:

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for MPIC, the Commission finds that the Appellant's PIPP benefits were properly terminated pursuant to Section 160(a) of the MPIC Act as of September 11, 2012.

Reasons for Decision:

Section 160(a) of the MPIC Act provides that the Corporation may terminate an indemnity, where a person knowingly provides false or inaccurate information to the Corporation. Upon a consideration of the totality of the evidence, the Commission finds that the termination of the

Appellant's claim for providing false and inaccurate information to MPIC was appropriate. The Commission notes that the Appellant has presented no evidence in support of her appeal and accordingly has not met the onus of proof required in the circumstances to establish that the Internal Review decision was incorrect. The Commission finds that the evidence before it demonstrates that the Appellant provided false and inaccurate information to MPIC regarding her ability to function. Accordingly, the Commission finds that MPIC appropriately terminated the Appellant's benefits pursuant to Section 160(a) of the MPIC Act.

Additionally, the Commission finds that the Appellant received an overpayment of IRI benefits after March 28, 2012 and that the Appellant has received a benefit to which she was not entitled. Accordingly, pursuant to the provisions of Section 189(1) of the MPIC Act, MPIC is entitled to reimbursement from the Appellant for the amount of the overpayment.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated September 25, 2013 is therefore confirmed.

Dated at Winnipeg this 11th day of December, 2014.

YVONNE TAVARES

TREVOR ANDERSON

NEIL MARGOLIS