

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-08-106**

PANEL: Ms Laura Diamond, Chairperson
Ms Jacqueline Freedman
Mr. Neil Cohen

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Ken Kaltornyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: January 8, 2014 and February 20, 2014

ISSUE(S): Whether the Appellant's Personal Injury Protection Plan benefits were properly suspended as of May 12, 2008.

RELEVANT SECTIONS: Section 150 and 160(g) 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 was injured in a motor vehicle accident on April 29, 2007. At the time of the accident, she was working as a health care aide.

The Appellant was in receipt of Income Replacement Indemnity ("IRI") benefits from MPIC, as well as treatment. She was scheduled to begin a reconditioning/work hardening program. After some delay, the Appellant attended at [Rehabilitation (Rehab) Clinic] to begin the program.

However, on February 25, 2008, her case manager, citing Section 160 of the MPIC Act, suspended the Appellant's benefits because of a failure to participate and attend the rehabilitation program.

The Appellant then went back to the rehabilitation program, but following absences in April and May 2008, her benefits were again *suspended*, pursuant to a letter from her case manager dated May 13, 2008.

On June 15, 2008, the Appellant filed an Application for Review of the case manager's decision.

Then, on June 19, 2008, her case manager wrote to her again confirming that her entitlement to benefits was *terminated* effective June 19, 2008 in accordance with Section 160 of the MPIC Act.

The Appellant's Application for Review was considered by an Internal Review Officer for MPIC who provided a decision on August 22, 2008. The Internal Review Decision found that despite the Appellant's reported inability to attend rehab, there had been absolutely no objective medical information indicating that she was incapable of attending and participating in a rehabilitation program. Due to the number of absences and vagueness of her illnesses, she agreed with the case manager's assessment that the Appellant had, without valid reason, failed to follow or participate in the rehabilitation program made available.

Although the Internal Review Officer was considering the Appellant's *suspension* of May 15, 2008, she then went on to conclude she agreed with the decision of the Appellant's case manager to *terminate* her benefits.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Preliminary Matters:

Prior to the commencement of the hearing, counsel for the Appellant and MPIC addressed the apparent contradiction in the Internal Review Decision, which purported to deal with the Appellant's suspension of May 15, 2008, while also upholding the later termination of June 2008. Following some discussion, the parties agreed that although this created some confusion, the fairest approach would be to treat the Internal Review decision as covering both the Appellant's suspension and termination and to infer that the Appellant, in her Notice of Appeal dated October 20, 2008, intended to appeal both the suspension and the termination. The parties agreed to proceed in this manner.

Evidence and Submission for the Appellant:

The Appellant:

The Appellant testified at the hearing. She described the motor vehicle accident and the injuries which she developed as a result. These were neck and back injuries, as well as tremors which she had never suffered from before. She described her treatment at the hospital, by [Appellant's Doctor], and by [Appellant's Neurologist #1].

The Appellant acknowledged that she had suffered from an anxiety disorder in the past, which had been treated prior to the motor vehicle accident. This had arisen after issues she had with [text deleted].

However, following that period, she worked full-time as a health care aide at the [text deleted] Hospital. She described the tasks which she performed in her job, which included taking care of elderly bed-ridden patients. This job included feeding, bathing, lifting and assisting with transfers for the patients.

The Appellant explained that as a result of the tremors and balance problems that she had suffered since the motor vehicle accident, she would not now feel safe doing that job. She also did not feel that she could be reliable enough, since she could not reliably work an eight hour shift. Every day is different and she cannot work when she is having bad days.

The Appellant described the difficulties that she had during the work hardening program that she underwent through MPIC. She was having difficulty sleeping, and then found mornings to be difficult. She had problems with dizziness and with her balance. She described problems with even such small tasks as feeding herself, putting her makeup on, etc. The more difficulty she experienced from the tremors, the more stressed she became, which resulted in her feeling sick and humiliated. She felt depressed and stressed and just wanted it all to go away so that she could get back to how she had been before. She experienced cognitive difficulties, which she also described.

The Appellant explained that she did miss some sessions in her rehabilitation program but these were always supported by a doctor's note. She described difficulties that she was having with her family doctor at the time, [Appellant's Doctor]. Sometimes she had difficulty getting in to see him to obtain a doctor's note on the days when she was not feeling well. Eventually, when she once called him for an appointment she was told that he didn't work there anymore and she has not seen him since.

When the Appellant was at her rehabilitation at [Rehab Clinic] she had difficulties with her tremors and her balance, and even cognitive difficulty with counting the exercises she was supposed to do. When she reported these problems to [Rehab Clinic's Doctor], he told her to go see her doctor for an anti-depressant.

One day, the Appellant was feeling so ill that [Rehab Clinic's Doctor], after checking her blood pressure, sent her to the [text deleted] Hospital suggesting that she have a stress test. [Appellant's Doctor] then said he would arrange it, although he never did. The Appellant noted that this day was listed among the list of her absences from the [Rehab Clinic] program.

The Appellant explained that the work she was doing at [Rehab Clinic] increased her tremors because it made her feel stressed, since she was afraid of climbing and falling. She said that she wanted to fix her back and that the exercises at [Rehab Clinic] did help with that, however, she still had a lot of trouble with her balance and with the tremors.

She attended for cognitive behavioural therapy sessions, and pursued treatment with neurologists. The neurologists tried cutting down other medications that she was on, which

caused withdrawal symptoms, including headaches and emotional feelings. However, this did not help to decrease her tremors. She continues to experience cognitive problems with getting words out and communicating. She described her life as having good days and bad days, although she could not be sure what caused the bad days. She still has trouble not just with tremors, but also with her balance.

Both on her direct examination and cross-examination, the Appellant maintained that she tried to cooperate with the [Rehab Clinic] program. However, in spite of her requests for help and the difficulties and stress she suffered (particularly with her tremors and balance issues) she did not feel that she was getting the assistance she needed, could not attend all of the rehabilitation sessions, and did not feel that she was yet capable of returning to her job.

[Appellant's Neurologist #2]:

The panel also heard evidence from [Appellant's Neurologist #2], [text deleted]. [Appellant's Neurologist #2] also provided the Commission with narrative medical reports dated October 6, 2011 and April 16, 2012.

[Appellant's Neurologist #2] is a neurologist with the [text deleted]. He explained the Appellant's diagnosis of a functional movement disorder as:

“Abnormality of movement for which there is no objective finding of a structural problem in the nervous system as determined by standard investigations such as MRI, etc.”

He explained the clinical diagnosis of this condition and the various treatment approaches. He indicated that historically, the prognosis is generally quite poor. He characterized the disorder as

a functional or somatoform disorder and not a factitious disorder (where the patient voluntarily manufactures the symptoms) or malingering.

[Appellant's Neurologist #2] indicated that while he is not familiar with the day to day requirements of a work hardening program, he had not seen any evidence that a work hardening program is effective in alleviating functional movement disorders. He sees a lot of patients with this disorder and he has never referred any to a work hardening program.

He explained how the Appellant's condition would prevent her from working, as manual tasks are hampered by the tremor, impaired coordination, imbalance and cognitive dysfunction. He emphasized that these are not voluntary symptoms, but that they are very real to the Appellant and would impair her from working.

[Appellant's Neurologist #2] reviewed the tasks of a Health Care Aide and concluded that he did not think that the Appellant could perform these tasks.

It was also [Appellant's Neurologist #2's] opinion that the Appellant's condition was related to the motor vehicle accident. This was based on the temporal relationship, as she did not have this condition prior to the motor vehicle accident and it arose right after the accident. He said that functional movement disorders can arise abruptly in response to a traumatic event, even without a traumatic change.

[Appellant's Neurologist #2] also explained that following his residency in neurology, he did additional fellowship training in movement disorders as a sub-speciality. Other neurologists in the City [text deleted] refer patients with functional movement disorders to him.

[Appellant's Neurologist #2] was clear that in his opinion in May of 2008, the Appellant was impaired by her symptoms and these symptoms would have affected her ability to participate in a work hardening program.

Other Evidence and Submissions for the Appellant:

Counsel for the Appellant also provided medical reports from the [Appellant's Neurologist #1], and reports and chart notes from [text deleted].

Counsel noted that it was clear from the medical evidence on the Appellant's file that she suffered from a major depressive disorder and anxiety between the periods from December 2007 to May 2008, as well as a somatoform disorder diagnosed by psychologists, and diagnosed by [Appellant's Neurologist #2] as a functional movement disorder. [Appellant's Neurologist #2] was clear that the Appellant did not have a factitious disorder and was not malingering. The evidence established that the tremors associated with this disorder began immediately following the motor vehicle accident and have persisted to this day. There is no evidence of any pre-existing tremor disorder prior to the motor vehicle accident. [Appellant's Neurologist #2] found a clear temporal relationship between the accident and the tremors and testified that it was not unusual for a functional movement disorder to develop after a traumatic event.

[Appellant's Neurologist #1's] evidence supported the legitimacy of the Appellant's tremor symptoms, and counsel for the Appellant submitted that his evidence, and in particular the evidence of [Appellant's Neurologist #2], should be given considerable weight, given their expertise on the subject.

The Appellant's case manager, it was submitted, failed to deal properly with the Appellant's issues. Given the difficulty encountered with [Appellant's Doctor's] refusal to comply with requests for information, MPIC failed to obtain proper medical information or to give due consideration to the Appellant's health problems arising from the motor vehicle accident and their effect on her ability to attend at [Rehab Clinic]. The case manager's statements that the Appellant's IRI benefits remain suspended "due to non-compliance with treatment/rehab in relation to her car accident injuries" and that she kept missing rehab due to "non-MVA related issues" show that the case manager attempted to provide a medical diagnosis on her own which (in view of [Appellant's Neurologist #2's] subsequent diagnosis and evidence) was clearly incorrect. The case manager also showed insensitivity to the Appellant's psychological conditions arising out of the motor vehicle accident even though the [Rehab Clinic] psychologist recommended 10 sessions of cognitive behaviour therapy and [Rehab Clinic's Doctor] was sufficiently concerned about the Appellant's depression to write to her family doctor recommending that she go on anti-depressants. The case manager also should have been aware that the Appellant suffered from a serious upper respiratory condition throughout late January and most of February in 2008. In spite of all of this, she chose to issue a suspension of benefits after trying to force the Appellant into a work hardening program regardless of her physical and mental health problems. This coercion served to compound the problem.

The case manager erred again when she advised the Appellant that MPIC would not pay benefits from February 25, 2008 to March 18, 2008 because the tremors which were interfering with her participation in the program were due, not to the motor vehicle accident, but due to anti-depressant medication. Then in May 2008, the case manager advised the Appellant that her IRI benefits were again suspended due to non-participation in the [Rehab Clinic] program. This led to the cessation of the necessary cognitive behaviour sessions as well.

There was a difference of opinion between [Appellant's Neurologist #2] and [Rehab Clinic's Doctor] regarding the effectiveness of the work hardening program on the Appellant's tremor condition and symptoms. [Rehab Clinic's Doctor], it was submitted, failed to address the larger issue of whether or not his program could be expected to reduce or eliminate the Appellant's tremors. [Appellant's Neurologist #2] is an expert in the field of movement disorders and it was his opinion that there is no scientific literature indicating that work hardening programs are useful in addressing the problems of a movement disorder, although it could help other problems such as reconditioning.

In fact, [Appellant's Neurologist #2] opined that there was no reasonable chance of the Appellant returning to any form of gainful employment, let alone returning to her pre-accident employment as a health care aide.

This was echoed in opinions provided by [Appellant's Neurologist #1] who stated on April 14, 2008:

"I believe that her problems are legitimate in all respects. If they continue as they are now, there is no way this lady can return to working as a health care aide where she is involved in the care of the elderly individuals. She would be disabled from that by virtue of the physical

incapacity for sustained muscular effort in lifting and by virtue of poor coordination and poor brain-limb interaction as described”

Counsel submitted that the case manager should have taken into consideration that the Appellant’s condition was a result of the accident, that a work hardening program would not be useful, and that the Appellant was not fit to return to any form of gainful employment. At that time, a proper decision could have been made in regard to whether a residual capacity determination was in order or if the Appellant required some other form of therapy to assist her with her problems. In accordance with [Appellant’s Neurologist #2’s] testimony that the longer a functional movement disorder persists, the less likely it is to ever be resolved, by cutting the Appellant off from assistance through the suspension and termination of her benefits, the case manager helped to ensure that the Appellant’s functional movement disorder would become chronic. As a result, the Appellant is now effectively unemployable and counsel for the Appellant requested that the panel overturn the decision of MPIC’s Internal Review Officer and reinstate the Appellant’s PIPP benefits retroactively to May 12, 2008 and ongoing.

Evidence and Submission for MPIC:

MPIC submitted attendance reports and records from the [Rehab Clinic] work hardening program, as well as the multi-disciplinary assessment and other reports provided by [Rehab Clinic’s Doctor] and other caregivers at [Rehab Clinic]. Counsel also reviewed the paramedic report which followed the motor vehicle accident, as well as reports from [Appellant’s Neurologist #1].

Evidence of [Rehab Clinic's Doctor]:

The panel also heard evidence from [Rehab Clinic's Doctor], who was qualified as a psychiatrist with experience in forensic reviews. [Rehab Clinic's Doctor] explained the scope of his practice in psychiatry and rehabilitation, as well as the difference in his focus from that of a neurologist.

[Rehab Clinic's Doctor] then reviewed the medical evidence in connection with the Appellant's motor vehicle accident, noting that she did not suffer a loss of consciousness as a result of the trauma. Although tremors were noted in the emergency report from the [text deleted] Hospital, he noted that it was first necessary to establish that these were not caused by medications which the Appellant might be using due to a past history of depression or anxiety.

[Rehab Clinic's Doctor] then reviewed the role of the professionals at [Rehab Clinic] in evaluating the Appellant and planning a rehabilitation plan for her. They concluded that the Appellant was suitable for a work hardening program and a plan was developed.

[Rehab Clinic's Doctor] explained that he was not of the view that, based upon the nature of the motor vehicle accident and the initial observations of the emergency personnel, the Appellant suffered an injury that would result in tremors. It was his view that the tremors were not motor vehicle accident related but were connected with pre-existing issues.

A psychological assessment was also conducted at the time of the [Rehab Clinic] intake assessment.

[Rehab Clinic's Doctor] then explained the process in place at [Rehab Clinic] for recording absences from the program. He also discussed modifications to the program which could be made if necessary, for example due to child care needs, or if a patient such as the Appellant required particular accommodations. He explained that the program was tailored to each person's unique needs regarding their diagnosis and the job which they would need to return to.

On cross examination, [Appellant's Neurologist #2's] reports were reviewed with [Rehab Clinic's Doctor]. In regard to [Appellant's Neurologist #2's] view that the Appellant suffered not from a somatoform disorder as diagnosed by the psychologist, but rather from a functional movement disorder, [Rehab Clinic's Doctor] indicated that he would defer to the psychologists and disagree with [Appellant's Neurologist #2's] description. However, he also confirmed that the Appellant was able to attend only 4 sessions of cognitive behavioural therapy before her benefits were suspended.

[Rehab Clinic's Doctor] also took the position, on cross examination, that he did not necessarily agree with [Appellant's Neurologist #2] that the Appellant's tremors and cognitive difficulties could endanger elderly clients at her job, stating that people with varying degrees of tremors are able to do many different things. However, he did acknowledge that he did not have experience in treating movement disorders. His main experience is in treating soft tissue disorders of the neck and back and he does not routinely see movement disorders in his practice, nor does he have specialized training in functional movement disorders.

[Rehab Clinic's Doctor] took the position that the [Rehab Clinic] program was doing the same thing as [Appellant's Neurologist #2's] specialized movement disorder program, and confirmed

that in his view, tremors can be part of an anxiety manifestation, so that as the Appellant gets better from her injuries, she would feel less anxiety related symptoms and feel better.

Submission for MPIC:

Counsel for MPIC submitted that the issue under section 160(g) of the MPIC Act is whether MPIC suspended or terminated the Appellant by failing to follow or participate in the rehabilitation program without valid reason. First it must be established whether the Appellant cooperated and secondly, whether or not, if she did not cooperate, a valid reason was provided.

Counsel submitted that it was indisputable that the Appellant had failed to attend many [Rehab Clinic] sessions which had been set up for her. She delayed the start of the program, was often late, left early, and ultimately the program was terminated due to a lack of attendance. In support of this position, counsel referred to the attendance forms and the discharge report from [Rehab Clinic].

[Rehab Clinic's Doctor's] evidence supported this conclusion, when he explained the mechanism of how attendances were recorded, and counsel submitted that the Appellant's attendance record was accurate.

In considering whether the Appellant had a valid reason for failing to cooperate with the program, counsel submitted that the case manager had all of the medical evidence including reports from [Rehab Clinic's Doctor]. Although the panel queried the absence of any report from MPIC's Health Care Services Team, counsel submitted that there was no need for Health

Care Services to be involved since [Rehab Clinic's Doctor] had the opportunity to review the medical information on the Appellant's file and provide his comments.

Counsel also noted that while the Appellant complained about failure to receive all of the behavioural therapy sessions which had been approved, the Appellant had failed to provide any psychologist report indicating that she could not attend her rehabilitation sessions.

Counsel for MPIC also noted that the Appellant had not been knocked out in the motor vehicle accident. Any depression she suffered from was mild and no brain abnormalities were shown in the MRI requested by [Appellant's Neurologist #1]. Thus, no psychological factors would have precluded her from attending her program at [Rehab Clinic].

[Rehab Clinic's Doctor's] view, it was submitted, established that the Appellant's tremors were not motor vehicle related but rather were pre-existing. The evidence established that the Appellant had suffered from some anxiety, and this, combined with the temporary effects of the motor vehicle accident, could result in shaking.

Although, [Appellant's Neurologist #2] reported that the tremors started the day after the motor vehicle accident and were related to the motor vehicle accident, counsel noted that [Appellant's Neurologist #2] did not see the Appellant until October of 2011, and so had to rely to a certain extent on the history which the Appellant provided to him.

Counsel further noted that [Appellant's Neurologist #2's] evidence admitted that it can take months for tremors to stop after [text deleted], one of the Appellant's medications, is out of the

system and she submitted that there was a possibility that the Appellant's tremors may have been caused by [text deleted].

In any event, counsel submitted that the Commission does not have to make a finding of fact regarding the actual cause of the Appellant's tremors. The question is whether due to the tremors and other issues, the Appellant could not attend the rehabilitation program. MPIC's position was that the evidence shows that she could have attended the program and did not have a valid reason for failing to do so. She was fully aware of the expectations upon her and signed documents provided by [Rehab Clinic] on her intake that show these expectations were clear. Her program was revised to suit her unique circumstances. Further, the Appellant was aware at all material times that she could jeopardize her benefits if she failed to comply with the [Rehab Clinic] program.

[Rehab Clinic's Doctor's] testimony established that he thought the plan was suitable for the Appellant's needs, and that the success of the program would depend on active participation by the Appellant. His testimony established that although the Appellant's tremors may have been aggravating, they would not necessarily prevent her from doing rehabilitation activities.

Counsel submitted that the Appellant had a duty to fully cooperate with the program. [Rehab Clinic's Doctor's] expertise was with soft tissue injuries, from which the Appellant suffered. She had been provided with a specially designed work hardening program which could be beneficial for this injury.

[Appellant's Neurologist #2] did not say that in 2008 the Appellant could not have done the program or that the tremors would have precluded her from participating. Therefore, there was no valid reason for her lack of cooperation. MPIC's position does not depend on whether the [Rehab Clinic] program would have cured the Appellant. Rather, counsel submitted that it was a reasonable program with which the Appellant failed to cooperate, based on her poor attendance, without valid reason. She asked that the appeal be dismissed and that the Appellant's termination of PIPP benefits pursuant to s. 160(g) of the MPIC Act be upheld, effective May 12, 2008.

Discussion:

The MPIC Act provides:

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;

The onus is on the Appellant, to show, on a balance of probabilities, that the decision of the Internal Review Officer dated August 22, 2008 upholding the Appellant's suspension of PIPP benefits as of May 12, 2008 and the resulting termination of her benefits should not be upheld.

Both parties agreed that there were numerous absences from the Appellant's rehabilitation program, as were documented on her indexed file. Both parties provided detail regarding these absences and the reasons put forward in connection with them.

Accordingly, in that regard, the panel finds that the Appellant was absent from the rehabilitation program as set out for the Appellant by MPIC and [Rehab Clinic].

Section 160(g) then directs a consideration of whether this lack of cooperation was with or without valid reason.

Out of 17 absences reviewed, four absences were not accompanied by a statement of reasons, while 13 were. Various problems such as illness, trips to the doctor, food poisoning etc were provided by the Appellant.

The Commission then considered why the Appellant experienced many of these problems. The evidence established that the Appellant was ill and suffered from stress, due to major physical and psychosocial underlying problems. These problems primarily related to the tremors she was experiencing, as well as balance issues and cognitive issues. We find that these were not properly accommodated by the [Rehab Clinic] program.

In spite of [Rehab Clinic's Doctor's] testimony and the position of counsel for MPIC that programs could be and were modified for the "unique" circumstances of particular claimants, we find on the evidence that any changes to the Appellant's program were minor and directed primarily towards scheduling and child care issues. However, the Appellant's evidence, which was unchallenged providing the day to day details of programming, showed that her more significant physical and mental health challenges were not addressed through modification to the program.

[Appellant's Neurologist #1] was involved in assessing the Appellant's tremors in 2007 and 2008. His report of April 14, 2008 made it clear that the Appellant continued to have a significant problem with tremor and problems with her balance.

“...In summary this lady has problems with tremor and other neurologic function which has arisen following her recent accident. I cannot explain it on the basis of the accident. MR scanning does not show any injury to brain which would result in problems of this type.

I believe her problems are legitimate in all respects. If they continue as they are now, there is no way this lady can return to working as a health care aide where she is involved in the care of elderly individuals. She would be disabled from that by virtue of the physical incapacity for sustained muscular effort in lifting and by virtue of poor coordination and poor brain-limb interaction as described.

I need to follow this over time to make a more clear diagnosis....”

[Appellant's Neurologist #1's] evidence was quite clear that the Appellant's problems were legitimate and that she suffered from a significant impairment.

Later in time, [Appellant's Neurologist #2], who has more specific expertise in the area, provided his opinion and his testimony regarding the Appellant's impairment. [Appellant's Neurologist #2's] evidence was clear that his diagnosis of the Appellant was of a functional movement disorder caused by the trauma of the motor vehicle accident. On April 16, 2012,

[Appellant's Neurologist #2] stated:

“It is my medical opinion that her current neurological condition is indeed related to the motor vehicle accident of April 29, 2007. My rationale is as follows:

- a. Her symptoms started after the accident of April 29, 2007. They are temporally related to the accident.
- b. Functional Movement Disorders are known to be triggered by minor trauma [see below].

There is medical literature that supports that Functional Movement Disorders are associated with trauma...”

Further, [Appellant's Neurologist #2] stated:

“It is my opinion that [the Appellant’s] symptoms prevent her from returning to work at this time.

I do not feel that [the Appellant] would benefit from participating in a work hardening program. I am unaware of evidence in the medical literature that work hardening programs improve Functional Movement Disorders.

I do not feel that [the Appellant] is capable of participating is (sic) any gainful employment at this time. I would like the opportunity to have her receive treatment prior to assessing her ability to return to work .”

[Appellant’s Neurologist #2] went on to recommend a specialized physical therapy rehabilitation protocol to address functional movement disorders.

Based upon this expert evidence, the Panel finds, on a balance of probabilities, that the Appellant’s condition of a functional movement disorder and the symptoms which resulted, including tremors, balance, cognitive difficulties and issues with migraines and psychological difficulties with anxiety and depression, constituted valid reasons, caused by the motor vehicle accident, for the Appellant’s failure to attend and fully participate in the [Rehab Clinic] rehabilitation program.

The MPIC Act provides:

Corporation to advise and assist claimants

150 The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

[Appellant’s Neurologist #2’s] evidence before the panel was clear that the [Rehab Clinic] program was the wrong program for the Appellant and that while it might help her soft tissue

injuries, it would not be helpful in addressing her functional movement disorder. He recommended a different program.

[Rehab Clinic's Doctor] acknowledged that his experience was with soft tissue injuries and that unlike [Appellant's Neurologist #2], he had no experience with the treatment of functional movement disorders.

Counsel for the Appellant argued that there was a failure by the case manager to properly manage the Appellant's file. He expressed concern over the lack of even a Health Care Services opinion or any involvement by Health Care Services on this file. Counsel for MPIC argued that there was no need for this, as MPIC relied on [Rehab Clinic's Doctor]. Clearly however, [Rehab Clinic's Doctor's] expertise in this area, by his own admission, is limited.

The evidence heard by the panel, particularly from [Appellant's Neurologist #2], established that the Appellant suffers from a significant, serious underlying condition resulting from the motor vehicle accident that MPIC, through the case management process, has ignored and failed to properly address.

Further, it was the evidence of [Appellant's Neurologist #2], which counsel for the Appellant emphasized, that the longer a functional movement disorder persists the less likely it is to ever be resolved. MPIC compounded this problem when it withdrew, through the suspension and termination of benefits, the cognitive behavioural therapy which had been recommended for the Appellant by the [Rehab Clinic] psychologist and was the one therapy being provided by [Rehab Clinic] which might have assisted in the treatment of the functional movement disorder.

Section 150 of the MPIC Act imposes a duty upon MPIC to advise and assist claimants and endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled. The panel finds that the evidence presented in connection with this appeal established that MPIC has failed in its duty to the Appellant under section 150 of The Act.

As a result, the Appellant's appeal is allowed and the suspension and termination of benefits which were upheld by the Internal Review Officer will not be upheld by the Commission.

The panel notes that the discharge summary provided by [Rehab Clinic] dated June 3, 2008 indicates that the Appellant was fit to return to modified employment. On the contrary, the evidence before the panel established that the Appellant was not fit to return to gainful employment. The evidence from [Appellant's Neurologist #2] and [Appellant's Neurologist #1] established that there was little reasonable chance of the Appellant being able to return to her former employment or possibly any type of work, as a result of injuries sustained in the motor vehicle accident.

Accordingly, the Appellant's appeal is allowed, and the Appellant's PIPP benefits, including her IRI benefits, shall be reinstated effective May 12, 2008.

Dated at Winnipeg this 31st day of March, 2014.

LAURA DIAMOND

JACQUELINE FREEDMAN

NEIL COHEN