Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-83

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mrs. Lila Goodspeed** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by** **Mr. Keith Addison** **the Appellant, [text deleted], represented by [Appellant's representative]**
HEARING DATE:	**October 21st, 1997**
ISSUE(S):	**(a) Whether benefits properly terminated for non-cooperation;** **(b) Whether victim suitable candidate for resumption of assessment and treatment.**
RELEVANT SECTIONS:	**Sections 160 and 184 of 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

This is an appeal from a decision of MPIC, whereby the Appellant's income replacement indemnity ('IRI') benefits were terminated on the ground that he had failed to cooperate with the insurer in its attempts to rehabilitate him. The insurer relies upon Section 160 of the Act, of which a copy is annexed to these Reasons. The Appellant, for his part, maintains

that he has done everything asked of him, that his statements and conduct have been misunderstood and that both his IRI and his rehabilitation program should be reinstated from the date of termination.

[Text deleted], The Appellant, was [text deleted] years of age when, on March 8th, 1994, his [text deleted] truck was in collision with another, similar but older vehicle which, in turn, had been pushed into its path by a third vehicle that ran through a red light at [text deleted].

The Appellant sustained soft tissue injuries to the cervical and lower lumbar areas of his spine, with no discerned skeletal damage that might have resulted in spinal instability or root entrapment, nor any abnormal neurological signs. He also complained of injury to his left knee, but that does not appear to have been clinically documented by any of his caregivers. The discomfort in his lower back does, however, radiate down his left leg from time to time, particularly with prolonged walking.

At the time of his motor vehicle accident, [the Appellant] was employed by [text deleted]; he had been there since 1986, officially classified as a plastics technician but, in fact, actually working as a fork-lift operator - he had developed a serious allergy to the resins with which he was working, necessitating Workers' Compensation benefits from February 1st, 1991, for a total of 203 days. It was upon his return to work from that involuntary absence that, by arrangement between his employer and his Union, he had been relocated within the plant as a fork-lift operator.

[The Appellant's] work history prior to his motor vehicle accident seems to reflect a hard- working, conscientious employee. He had worked on his father's poultry farm from ages [text deleted] to [text deleted], having left school after completing Grade [text deleted]; this was followed by 19 years at [text deleted], initially as a iron melter at the furnace and later as a stock-room shipper and fork-lift operator. When [text deleted] closed, [the Appellant] worked for a couple of years as a labourer for [text deleted] on road and sewer construction and maintenance. He then returned to farming for about four years before signing on with [text deleted] in 1986. None of those jobs speaks of a man who is afraid of hard work, and [the Appellant's] length of service with [text deleted]and with [text deleted] indicates, at least on its face, an apparent loyalty between employee and employer. This is reinforced by the fact that [the Appellant] returned to work at the [text deleted] plant almost immediately after his motor vehicle accident, remaining at work until January of 1995 when, he says, the pains resulting from that accident had become so intense that, on the oft-repeated advice of his chiropractor, [text deleted], and with the concurrence of his insurance adjuster at MPIC, he arranged for sick leave from [text deleted], commencing on January 24th, 1995.

MPIC, which had been paying for [the Appellant's] chiropractic treatments from the time of his first post-accident treatment, as well as his travelling costs between his home at [text deleted] and [Appellant's chiropractor #1's] office plus certain medications, now commenced paying him income replacement indemnity ('IRI') of $1,310.48 bi-weekly. Those benefits continued until February 5th, 1997, when MPIC discontinued them for reasons that will appear below.

Between March 8th, 1994 (the date of the accident) and February 5th, 1997, MPIC had disbursed the following amounts to or on behalf of [the Appellant] (the figures are approximate only, total accuracy in this limited context being unnecessary): some $11,000.00 for 385 chiropractic treatments; about $5,300.00 for travel expenses; $800.00, more or less, for drugs; roughly $1,000.00 for home improvements to facilitate [the Appellant's] movements around his house; $2,000.00 for reports from rehabilitation specialists; slightly under $11,000.00 for direct counselling for [the Appellant] by occupational therapists, physiotherapists and a clinical psychologist (all, with one lamentable and quickly corrected exception, either [text deleted] or with an interpreter present); plus $69,410.11 of IRI. That totals something in excess of $100,000.00. It is mentioned here, not so much by way of a criticism of either party - the insurer has to take victims as it finds them and, if one is genuinely disabled by a motor vehicle accident, so be it; the benefits are prescribed by statute and the victim is entitled to them no matter what the cost. We refer to the amount of money laid out by the insurer to date merely to emphasize that we do not share [the Appellant's] apparent view of MPIC as an uncaring monolith whose minions were, for some reason, out to deprive him of his rights.

What else did MPIC do in its attempts to help [the Appellant]? The question, and its answers, are vital when we come to define the issues that fuel this appeal.

First, after consultation with [text deleted], the Appellant's physician, and at the suggestion of [Appellant's chiropractor #1], the Appellant's adjuster, [text deleted], made an appointment for [the Appellant] to attend at the [rehab clinic #1] on February 1st, 1995. The purpose of that referral was to obtain an assessment, to determine the victim's source(s) of

mechanical pain, to identify any impediments to a restoration of the victim's full function, and to provide treatment recommendations. The [rehab clinic #1's] assessment of [the Appellant] indicated minimal objective signs of serious injury but, rather, a pain-focussed conviction on [the Appellant's] part that his injuries were much more serious and permanent than was, in fact, the case. He was discharged from the [rehab clinic #1] program on March 20th, 1995, 11 days prior to its scheduled end, but in the possibly mistaken belief on the part of his [rehab clinic #1] therapist that he was "100% capable of performing his previous occupation at [text deleted]." (It is not clear what job description [rehab clinic #1] was using.) Despite his pessimism, [the Appellant] was found by [rehab clinic #1] to be pleasant and cooperative.

Neither [the Appellant's] caregivers nor MPIC were prepared to accept [rehab clinic #1's] assessment of his readiness to return to work; they accepted [the Appellant's] self-assessment of serious disability although there were few, if any, objective signs to support that self-assessment other than the degenerative spinal condition that undoubtedly pre-dates his motor vehicle accident and was in all likelihood exacerbated by that accident.

By April 20th, 1995, [Appellant's chiropractor #2] was "seriously questioning whether or not [the Appellant] will ever be able to return to work". It is shortly after this time that the idea starts to take root in the Appellant's psyche that he has, as he puts it, 'an incurable bone disease', that he is never going to get better, that he is, in effect, permanently retired and is inevitably destined for a wheel-chair. Whether that idea has been implanted, knowingly or unwittingly, by his chiropractor or other persons, is not possible for us to determine. It does seem clear that [the Appellant's] attitude toward those who were trying to assess, and to provide for, his

vocational and functional needs started, during the ensuing 12 to 18 months, to fluctuate between the marginally cooperative and the downright hostile.

On June 19th, 1995, the Appellant had the first of many meetings with [vocational rehabilitation consulting company] to whom he had been referred by MPIC for a vocational evaluation in order to see whether he was capable of returning to his former employment on a gradual basis or of seeking alternative employment for which he might be reasonably suited. [vocational rehabilitation consulting company] found him to be seriously pain focussed and unmotivated; they recommended

(a) a psychological assessment, to identify any barriers to [the Appellant's] participation in his own recovery process;

(b) contact with the employer, to set up an appointment with [text deleted]'s own medical examiner for [the Appellant] - a prerequisite to any graduated return to work program but one to which, for no apparent reason, [the Appellant] took exception;

(c) continued, regular contact with the Appellant in order to maintain encouragement of his participation in rehabilitation efforts; and

(d) the resumption of physiotherapy at a new locale.

Following the acceptance by MPIC of [vocational rehabilitation consulting company's] recommendations, arrangements were made by [vocational rehabilitation consulting company] for [the Appellant] to meet with [text deleted], a [text deleted] psychologist, on October 5th, 1995, the first date when [Appellant's psychologist] could be available. He reported [the Appellant] as being bright, alert and forthcoming, but convinced that he would never be able to

return to any gainful employment. [Appellant's psychologist], who met with the Appellant for two, one-hour sessions in addition to meeting twice with [Appellant's chiropractor #1], expressed the view that 'if [the Appellant] is expected to return to the work place I expect he will need substantial psychological support', and that he felt [the Appellant] would 'respond fairly negatively' if expected to go back to work. [Appellant's psychologist] felt, on the other hand, that if the Appellant's retirement became an accepted fact, he would be able to complete that transition with minimal psychological support.

MPIC decided to continue its efforts to return [the Appellant] to the work force - efforts which in our view, it had both a statutory and moral obligation to exert if it seemed probable that his absence from the work force was due to his motor vehicle accident. (We voice that opinion here in light of the submission by counsel for the Appellant that MPIC was attempting improperly or unfairly to force [the Appellant] back to work.) But a return to work could only be accomplished by a combination of

(i) a professional assessment of the Appellant's functional capabilities and needs,

(ii) an active program of rehabilitation, and

(iii) most important of all, the maximum possible cooperation on the part of the victim.

A meeting was therefore held on January 19th, 1996 at the offices of MPIC, involving [the Appellant], [Appellant's psychologist], the Appellant's MPIC adjuster [text deleted] and [text deleted], also of MPIC. At that meeting, MPIC's representatives emphasized to [the Appellant] the vital importance of his active participation in any professionally designed rehabilitation program, so that he might become able to return to work. [The Appellant] is

reported as having expressed total agreement with that concept, provided that it did not involve his return to the [rehab clinic #1] with whose ministrations he had been less than happy. He also appeared to be expecting to receive a lump sum cash settlement for his alleged pain and suffering, until it was fully explained to him that this was not an option. [Appellant's psychologist] undertook to continue treating the Appellant, if only on a comparatively short-term basis.

During the weeks that followed, [Appellant's MPIC adjuster] contacted the Appellant's new physician, [text deleted], who undertook on February 13th, 1996, to refer [the Appellant] to a specialist in rehabilitative medicine - a step that appears never, in fact, to have been taken. [Appellant's MPIC adjuster] also kept in touch with the Appellant's senior rehabilitation consultant at [vocational rehabilitation consulting company] who had been trying, unsuccessfully, to contact [Appellant's chiropractor #2] in order to set up a conditioning and strengthening program for the Appellant that they had discussed in December of 1995. By February 13th of 1996 [Appellant's chiropractor #2] had still not returned any of her telephone messages. That approach was eventually abandoned, having borne no fruit, although the Appellant was continuing to see [Appellant's chiropractor #2] three times each week.

By the end of May, MPIC authorized NRCS to arrange for [the Appellant] to undergo what was described as a 'final multi-disciplinary assessment to ensure all efforts have been pursued to assist in your rehabilitation process'. An appointment was made for him to attend at the [rehab clinic #2] on June 17th, 1996 for occupational therapy, physiotherapy and psychological evaluations. Meanwhile, [Appellant's doctor #2] had referred the Appellant to [text deleted], an orthopaedic specialist who had examined the Appellant on an earlier occasion,

and whose brief report of June 12th, 1996, merely confirms the presence of cervical and lumbar degenerative disc disease, 'ongoing problems from musculoligamentous strain, cervical and lower lumbar area', but no evidence of spinal instability nor any root entrapment, and no suggested course of treatment.

The comprehensive, initial report from [rehab clinic #2] bears date June 19th, 1996, and contains the first really serious descriptions of a determinedly uncooperative client. For example: (from the Occupational Therapy report) "minimally cooperative throughout.....pain focussed with extensive pain behaviours.....no wasting of forearm muscles to correlate with weakness of this magnitude (ll lbs. right hand and 6.6 lbs. left hand grip strength compared to age-adjusted norms of 101.1 lbs. and 83.2 lbs. respectively).....dramatic pain behaviour.....inconsistency of reporting by client.....client self-limited the majority of test components.....There are no objective signs to correlate with client's subjective complaints.....individual is poorly motivated to improve his functional abilities in a rehabilitational environment.....".

(From the Physiotherapy report) ".....turning his head away when the therapist attempted to gesture or demonstrate test manoeuvres or postures.....Range of motion testing and strength testing of the back and lower extremities were self-limited more than what the client was noted to do functionally, and such that an accurate picture of his physical abilities and limitations was not possible.....there is no physiological reason why he should not be able to attain improved physical fitness with (a physical reconditioning) program. However, due to psychological barriers it is not recommended that he engage in such a program at this time".

(From the Psychological assessment) "......declined to have his blood pressure checked....throughout the interview, [the Appellant] was uncooperative answering questions, providing ambiguous responses or telling me that certain questions were 'crazy'.....says he experiences pain "every minute".....presented with dramatic pain behaviour.....".

In summary, the assessment that [rehab clinic #2's] specialists were trying to perform could not be completed, due to [the Appellant's] lack of cooperation, manifested principally by gross exaggerations of his pain and disability, by his lack of candour and by his unwillingness to make even reasonable efforts to perform most of the simple tests asked of him. [Rehab clinic #2's] conclusion on June 19th, 1996, was that, in the absence of a change in [the Appellant's] attitude, a program of rehabilitation could not usefully be recommended.

It should be noted that [the Appellant] has insisted, throughout, that all communications between him and MPIC or its consultants be conducted in [text deleted]. That is his right and MPIC appears to have complied with that wish almost completely. We say 'almost', in that there was no interpreter present at the first physiotherapy assessment by [rehab clinic #2] who believed (erroneously, as later appeared) that [the Appellant] would be able and willing to respond to gestures and demonstrated examples. He was also much angered by the fact that he had received letters in English from both [rehab clinic #2] and [vocational rehabilitation consulting company]; rather than seeking assistance as to their meaning, he elected to throw them out but, fortunately, they appear to have been merely confirmatory of appointments of which he had, in any event, been advised orally in [text deleted]. The fact is that [the Appellant] has a much greater

understanding of English than he cares to acknowledge - he has, after all, been employed for many years surrounded by, and communicating with, anglophone co-workers at a plant where, his employer says, he manages quite well; at least two of MPIC's independent consultants noted that he would often respond in [text deleted] to a question posed in English before the question had been translated; when his francophone adjuster was on holiday he managed to converse perfectly well with her anglophone colleague. His right to insist upon the use of [text deleted] at all times is unquestioned; it certainly does not indicate a lack of cooperation and cannot be criticized. However, his exaggeration of his language problem does show an underlying lack of candour, an attitude that concerns us, since his position throughout has been that his English comprehension is minimal.

Despite the largely negative report received from [rehab clinic #2] under date of June 19th, 1997, and a further report of June 21st from [vocational rehabilitation consulting company] that speaks of the Appellant's inconsistencies, pain-focussed behaviour, defensiveness and lack of receptiveness to rehabilitation, MPIC sought further, up-dated reports from [Appellant's doctor #2] and [Appellant's orthopaedic specialist] and concurrently arranged for a new assessment by [rehab clinic #2] and an occupational therapy home assessment by [vocational rehabilitation consulting company]. These new efforts met with a much more positive and cooperative spirit on the part of [the Appellant]. [Rehab clinic #2's] report concludes that the Appellant would certainly benefit from improving his physical abilities and from developing a better understanding of pain and pain management. [Rehab clinic #2] identified certain barriers to success, namely [the Appellant's] significant pain focus, his age, his conviction as to his disability and what [Rehab clinic #2] calls his 'lack of psychological mindedness' - a phrase

whose meaning is, to say the least, opaque. Their recommendations boiled down to a team approach, with further input from the Appellant's medical and chiropractic practitioners to clarify their views of his condition and, with their concurrence and that of [the Appellant] himself, a trial period of physical reconditioning.

The Occupational Therapy Home Assessment was also satisfactorily completed, as appears from [vocational rehabilitation consulting company's] report of September 6th, 1996. With the installation of some 'grab bars' to facilitate entry to and exit from the bath, plus some railings to ensure safe movement on the staircase (recommended by [vocational rehabilitation consulting company] and authorized by MPIC) the report of [vocational rehabilitation consulting company] concludes that [the Appellant's] participation in home management activities does not seem to be markedly different from that which prevailed before his motor vehicle accident. It should, however, be noted that even when appearing to cooperate [the Appellant] displayed several inconsistencies - e.g. he was able to raise each arm separately to its full height above his head, whereas he could only raise them to shoulder height bilaterally; he reported that, if he walks too much, he 'feels a punching sensation', his back gives out and he falls, whereas in earlier assessments he had denied any falling and no objective musculoskeletal nor any neurological defects had been mentioned of the kind that might have induced such falling; he still viewed himself as seriously disabled.

The reports of [rehab clinic #2] and [vocational rehabilitation consulting company] appear to have been shared with [Appellant's doctor #2], whose narrative report of October 3rd, 1996, reconfirms the earlier diagnoses of significant degenerative disc diseases of the cervical

spine at the C5 to C7 levels and of the lumbar spine, with large lateral osteophytes (i.e. bony spurs or outgrowths) from L2 to L5 levels, accompanied by disc space narrowing. Those findings, adds [Appellant's doctor #2], are consistent with cervical and lumbar spondylosis, which is a growing together of two or more segments of the spine. None of these signs can rationally be attributed to his motor vehicle accident; they all appear to pre-date that event.

[Appellant's doctor #2], after further consultation with [Appellant's orthopaedic specialist], concurs in the recommendations of [rehab clinic #2] that [the Appellant] should be encouraged to pursue rehabilitation services and should enter a reconditioning trial as soon as possible in order to improve his quality of life. "I do not believe" said [Appellant's doctor #2], "that moderate activity is harmful to [the Appellant's] health or would precipitate his deterioration." [Appellant's doctor #2] added his belief that the Appellant, with such a rehabilitation program, would eventually be able to return to work, albeit not as a forklift operator which was his previous occupation but, rather, in a more sedentary occupation.

On October 21st, 1996 a further meeting was held at the [text deleted] plant, attended by representatives of the employer, the Union, [vocational rehabilitation consulting company] and MPIC. After reviewing recent data, that group decided to do their best to restore [the Appellant] to his old job, but taking into account his apparent limitations.

Following further discussions between [vocational rehabilitation consulting company] and [Appellant's doctor #2], another meeting was held at the [text deleted] work site on December 12th, 1996, comprising two representatives from each of [text deleted] and [vocational

rehabilitation consulting company], one from each of MPIC and the Union, and [the Appellant]. There were several declared purposes of that meeting:

- to assess [the Appellant's] position as a plastic technician, by observing others performing the tasks described in his job description;
- to assess [the Appellant's] history and present status in the context of his work duties;
- to identify key physical elements within the position and its environment that might be or create ergonomic risks or problems;
- to identify risks specific to [the Appellant] that might preclude his successful return to this job; and
- to develop a priorized list of steps or activities in which [the Appellant], MPIC and [text deleted] might fruitfully cooperate with the mutual objective of his rehabilitation.

Unfortunately [the Appellant], having arrived about an hour late for that meeting and having given theatrically excessive displays of pain and difficulty in walking, did not attend the work-site tour and left before its completion. He initially explained both the tardiness of his arrival and the extreme pain from which he was suffering by testifying that he had had to clear the snow from his driveway, a task that left him no power in his back. On cross-examination he denied having testified of the need to clear snow and asserted, instead, that his son had made tracks in the snow for him with his 4x4, that he ([the Appellant]) had nevertheless become stuck, and that his family had pulled him out - all of which, he said, took about an hour.

[The Appellant] explains his disappearance in mid-meeting by stating that, having been scolded by [vocational rehabilitation consulting company] (his MPIC adjuster) for being late, he was asked to accompany the group downstairs so that he could be observed at his regular work station. At that juncture, he said, the occupational health nurse at [text deleted]7, interjected that

he seemed to be more a case for a hospital than for working, whereupon [Appellant's MPIC adjuster] allegedly told him to go home ('va t'on chez vous!') and that she did not want to see him any more. Whether or not that evidence is credible, the Work Site Assessment was completed without him. It is noteworthy that the Appellant, having entered the plant in apparently severe pain, only able to walk with assistance, unable to explain what was wrong, dropping down to sit on the front steps and then, with more help, sitting on a chair in the lobby with his head in his hands, was then observed leaving the building at a faster pace, favouring his left leg but climbing into his truck with no apparent difficulty and placing his full weight on that allegedly disabled left leg.

Despite [the Appellant's] apparent inability to participate in the Work Site Assessment, the group that did attend decided to set up for him a conditioning program at [rehab clinic #3], in order to prepare him for a gradual return to work program. NRCS then made the appropriate arrangements and advised [the Appellant] on December 23rd, 1996 that an appointment had been made for him to attend at [rehab clinic #3] at 1:00 P.M. on January 9th and at 10:00 A.M. on January 10th, along with an interpreter.

A Functional Restoration Intake Assessment, which was intended to be the first step in the conditioning program, took place at the premises of [rehab clinic #3] on January 9th and 10th, 1997. Due to a major lack of cooperation by [the Appellant], accompanied by much patent exaggeration (e.g. if his self-assessed pain level were valid, he should have been able neither to walk nor to carry on an animated discussion, whereas he was, in fact, perfectly capable of doing both; his reports of his physical capabilities in various other areas, such as standing, walking and travelling, differ dramatically from what he has actually been observed doing) this

assessment was incomplete and inaccurate. The occupational and physiological therapists at [rehab clinic #3] recommended

(a) that [the Appellant's] physician and chiropractor be contacted to see whether either of them had actually told his patient that his 'incurable bone disease' would preclude, for ever, any return to work and would inevitably lead to a wheel chair, since this is what [the Appellant] purports to believe;

(b) that if [the Appellant's] physician and chiropractor do not share that belief, they should be urgently requested to tell him so and to encourage a changed attitude and his participation in a reconditioning program; and

(c) active psychological training and education, in [text deleted], to help [the Appellant] address his pain issues and coping mechanisms.

MPIC, being less than satisfied that [the Appellant's] complaints were genuine, had also instituted some surveillance through the services of an outside investigation firm. While the results of that surveillance are only marginally helpful, they indicate clearly that, when [the Appellant] is unaware that he is being watched, he is much more active, strong and capable, with much greater stamina, than he admits to any of his care-givers or to his insurer.

There are numerous examples of this, but a couple may suffice:

- on Friday, November 7th, 1996, the Appellant telephoned MPIC to indicate that he was too ill to go there to pick up a cheque, asking for the cheque to be mailed to him;

  that same morning, he prevailed upon [Appellant's chiropractor #2] to telephone MPIC with his advice that he was very concerned about the Appellant's injuries, that the

> Appellant was in very bad shape and was going home for bed-rest and convalescence upon leaving [Appellant's chiropractor #2's] office.
>
> What, in fact, did [the Appellant] then do? He went browsing through the [text deleted] store and the [text deleted] for slightly under an hour, then via a [text deleted] restaurant to the large [text deleted] store in the [text deleted]. He and the young lady who was with him (presumably his daughter) completed a grocery shopping trip in which the Appellant himself handled the merchandise, lifting, loading and unloading almost everything, including a 50 lb. bag of potatoes which, while not of itself especially significant, does indicate that the Appellant's ability is often dictated by his will. The exercises noted above consumed over 1.5 hours with no apparent distress on the part of [the Appellant].

- although [the Appellant], when attending at MPIC's premises, has exhibited great difficulty in walking and in getting in and out of a chair, has no difficulty getting in and out of his truck and walks around for an hour-and-a-half with only minimal difficulty.

[The Appellant] is reported by the physiotherapist at [rehab clinic #3] to have said that he was not prepared to attend any exercise program after his two-day assessment there.

As a result of [the Appellant's] conduct during this attendances at [rehab clinic #3] on January 9th and 10th of this year, the Functional Restoration Intake Assessment could not be adequately completed and there the entire matter of his rehabilitation remains stalled. [Vocational rehab consulting company], [rehab clinic #2] and [rehab clinic #3] have all expressed the view, each in its own way, that before any serious attempt at [the Appellant's] physical

rehabilitation can be undertaken with any hope of success, he needs to develop a new mind-set that can only be acquired after reassurance from [Appellant's doctor #2] and, perhaps, from [Appellant's chiropractor #2], with concurrent psychological counselling from [Appellant's psychologist].

[The Appellant] does, indeed, have an incurable bone disease, in the form of osteoporosis plus some degree of disc degeneration with osteoarthritic changes, but he had those conditions before his motor vehicle accident. He must somehow be persuaded that those problems were not caused by his accident, need not be as totally disabling as he purports to believe, and, while not 'curable', can be overcome to a substantial extent if he is truly willing to work with, rather than against, those who are genuinely trying to help him return to some form of gainful employment.

DISPOSITION:

A. We find that [the Appellant's] IRI was properly terminated by MPIC pursuant to Subsection (f) and (g) of Section 160 of the MPIC Act, for the reasons noted above. He had been warned of the consequences of non-compliance and had even been given a copy of Section 160, in [text deleted].

B. We find, further, that MPIC's decision to discontinue paying for [the Appellant's] chiropractic treatments was not only justified but long overdue; all of the reliable chiropractic literature tells us that, in cases such as [the Appellant's], if spinal manipulation three times per

week for a period of six to twelve months has produced no discernible improvement in the patient's condition, then the treatments should be discontinued or varied, or the patient should be referred to another discipline. [The Appellant's] chiropractic treatments continued until April 25th, 1997, some 385 adjustments over a period of roughly three years, and the Appellant himself testified that, while these treatments would give him some measure of comfort for about one half a day, his overall condition was no better - indeed, as he tells it, substantially worse.

C. A more difficult question posed to us at the hearing of [the Appellant's] appeal was whether, in light of his newly declared willingness to cooperate in any rehabilitative program arranged for him by MPIC, it would be both fair and practicable to require MPIC to reinstate such a program (for example, at [rehab clinic #3]) and give him yet another opportunity to become reintegrated into the work force. It is the unanimous view of all those who have tried to assess [the Appellant's] functional abilities and restorative needs that the primary barrier to his rehabilitation is a psychological one. The likelihood of giving back to the Appellant a better sense of physical well-being is largely dependent upon his ability to accept the realities of his condition and to exert efforts of his own to return to work.

Since [the Appellant's] earlier employment history, his return to work following his motor vehicle accident, his reportedly good (if pessimistic) attitude until at least early 1996 and his sporadic periods of cooperation since then persuade us that he should be given the one further opportunity that he seeks and that [Appellant's doctor #2] recommends. This will entail:

(i) a course of counselling from [Appellant's psychologist], to be arranged by [the Appellant's] adjuster (preferably through the office of [Appellant's doctor #2]) after

[Appellant's psychologist] has indicated the anticipated length and frequency of the course that he proposes;

(ii) the completion of the [rehab clinic #3] assessment as soon as [Appellant's psychologist] can advise MPIC, through [Appellant's doctor #2], that in his view [the Appellant] is ready to work with [rehab clinic #3];

(iii) the commencement and completion of such reconditioning program as [rehab clinic #3] may recommend and as MPIC may approve. We assume that [Appellant's psychologist]'s counselling and the [rehab clinic #3] program will need to overlap, at least in the early stages of the latter program.

Because we find that [the Appellant's] IRI was properly terminated, we are not prepared to reinstate it from the date of that termination. Because we are not persuaded that [the Appellant's] psychological problems have their genesis in his motor vehicle accident, we are not prepared to reinstate his IRI benefits while he is working his way through those problems with [Appellant's psychologist's] help. Because he needs that help in order to reach the point of readiness to re-enter the [rehab clinic #3] conditioning program, we are prepared to say that the cost of his psychological counselling, and of his attendant travelling expenses, should be paid by MPIC, and that his IRI should be reinstated from the time that he returns to the [rehab clinic #3] program until the termination of that program.

Since this appeal is concerned only with the questions whether [the Appellant's] benefits were properly terminated and whether they should be reinstated, numerous questions remain to be addressed, some of which are:

- whether the Appellant's current physical problems were actually caused by his accident of

March 8th, 1994;

- whether he has, in any event, been restored to his pre-accident status, estimated at about 80-85% of his pre-1993-motor vehicle accident by [Appellant's chiropractor #2] who had been treating him since the fall of 1993 for injuries sustained in that earlier incident;
- whether the work in the lay-up area at [text deleted] to which he might have returned would, in fact, have involved his exposure to the same resins to which he had developed the earlier allergy and whether, therefore, his apparent inability to operate a fork-lift completely precluded a return to that lay-up area;
- whether there is still work for him at [text deleted] in any capacity.

In summary, then, if [the Appellant] is prepared to follow a program of counselling to be prepared for him by [Appellant's psychologist] and a program of physical rehabilitation to be prepared for him, after reassessment, by [rehab clinic #3], the professional fees and travel expenses related to those programs are to be for the account of MPIC, and his IRI will be reinstated during the period of his active participation in the [rehab clinic #3] program. If [Appellant's psychologist] is not able to give his opinion, within the time-frame that he estimates to be reasonable, that [the Appellant] is ready for physical re-assessment and a reconditioning program, then in our view MPIC will have fulfilled its obligations to [the Appellant]. Similarly, if [the Appellant] again fails to do his best to cooperate in that rehabilitative effort, MPIC will be justified in terminating the program and closing its file.

Dated at Winnipeg this 17th day of November 1997.

J. F. REEH TAYLOR, Q.C.

LILA J. GOODSPEED

F. LES COX