



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-74

PANEL: Ms. Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms. Deborah Stewart

APPEARANCES: The Appellant, [text deleted], was represented by [Appellant's representative]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: October 21, 2003.

ISSUE(S): Whether benefits were properly terminated pursuant to Section 160(a) of The Manitoba Public Insurance Corporation Act.

RELEVANT SECTIONS: Subsection 160(a) 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 two separate motor vehicle accidents, on January 17, 1996 and on July 8, 1996. As a result of these accidents, the Appellant became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act, due to the injuries which she sustained in those accidents.

On January 29, 1996, the Appellant attended at the offices of MPIC and completed an Application for Compensation. On the claim form, the Appellant indicated that she had been injured in a motor vehicle accident on January 17, 1996, in mid-afternoon, when she had been hit from behind by a vehicle driven by [text deleted]. The Appellant also indicated that at the time of the accident, she sustained a sore left shoulder, back, neck and right hip. The Application form also indicates that the Appellant was prevented from carrying out domestic activities because she could not lift and occupational activities because she could not use her left hand. The Appellant further indicated that she was self-employed, on a full-time basis, with her own company [text deleted], and had been so employed since November 1, 1998. She indicated that she was involved in word processing and bookkeeping, but was unable to perform those duties because of the injuries sustained in the motor vehicle accident.

The Appellant was advised that in order to process her claim for benefits, she would have to provide a copy of her income tax returns for the previous three years and a statement of revenue and expenditures for the 52 weeks preceding the accident. At that time, the Appellant advised MPIC that she had not filed an income tax return for the 1993, 1994 and 1995 taxation years and was in a dispute with Revenue Canada. However, in support of her claim for Income Replacement Indemnity ('IRI') benefits, the Appellant provided copies of her 1995 invoices to clients. On February 21, 1996, the Appellant faxed to her case manager copies of invoices for work performed for [text deleted] and [text deleted], covering the following dates:

Invoice No. 1091	December 5, 1995 – January 16, 1996 – [text deleted]
Invoice No. 1092	February 5, 1996 – February 17, 1996 – [text deleted]
Invoice No. 1093	October 1995 – January 1996 – [text deleted]

Invoice No. 1091 billed to [text deleted] was for 135 hours for the period December 5, 1995 to January 16, 1996. It details the number of hours worked on each day, the hourly rate and the

total owed for the date. The lines after January 16th are blank, although the hourly rate is set out in the column for that purpose, with an indication of \$0.00 owed for that day. The total due upon receipt of the invoice was \$1,407.05.

On March 6, 1996, MPIC commenced making bi-weekly IRI payments to the Appellant. Payments covered a period of disability commencing seven days after the January 17, 1996 accident. During the next few months, in conversations with her case manager, the Appellant continued to advise him of her status and her inability to regain her health. She also complained of her inability to perform typing, word processing and bookkeeping functions due to the inability to use her left arm. By the end of June 1996, the Appellant was recovering from her injuries and was returning to her employment duties on a gradual basis.

On July 8, 1996, the Appellant was involved in another motor vehicle accident when she was rear-ended by another vehicle. She advised her case manager that the accident had aggravated her injuries and that she was experiencing significant pain which prevented her from resuming her complete work duties. Once again, the case manager accepted the Appellant's claim and payment of IRI benefits was authorized. IRI benefits were based on the Appellant's determined employment in accordance with Schedule C of Manitoba Regulation 39/94.

On December 6, 1996, MPIC's case manager contacted [text deleted]. The case manager requested copies of the original invoices which the Appellant had submitted to [text deleted] since January 1996. He received a total of five invoices for the period from December 5, 1995 to September 11, 1996.

Upon review of the invoices, the case manager noticed a discrepancy between the invoices provided by the Appellant and those he obtained directly from [text deleted]. The invoice for the month of December 1995 and January 1996 showed charges for services performed on January 17, 1996 and January 18 – 21, 1996. Additionally, the hours for some of the days between December 5, 1995 and January 16, 1996 were not the same as on the invoice that the Appellant had submitted for that time period to MPIC. While the total number of hours submitted for the entire period were the same, this was because the hours worked on certain days prior to January 17, 1996 were increased substantially. For example, the invoice submitted to MPIC indicated that the accused had worked from 3:00 p.m. to 5:00 a.m. on December 5, 1995, for a total of 13.5 hours. This compared with the invoice submitted to [text deleted], which indicates that on that date, she had worked three hours, from 3:00 p.m. to 6:00 p.m. The corresponding daily amount due was also changed to reflect the increased daily hours on the invoices submitted to MPIC.

MPIC subsequently conducted an investigation into the discrepancies. By letter dated August 12, 1997, MPIC's case manager advised the Appellant that as of July 31, 1997, the Appellant's PIPP benefits were terminated pursuant to Section 160(a) of the MPIC Act, which provides that:

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;

After the investigation, the Appellant was also charged with fraud and uttering a forged document. The Appellant was found guilty, after trial, of fraud in excess of \$5,000.00.

On October 1, 1997 the Appellant filed an Application for Review of the case manager's decision dated August 12, 1997, which had terminated her benefits. The Appellant's Internal Review Application was held in abeyance pending disposition of the criminal charges.

Following the criminal trial and conviction, the Appellant's internal review application was revived. The Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. In his decision dated March 22, 2001 the Internal Review Officer found that:

Notwithstanding your inability to offer an explanation for why the document was altered I do not view it to be an insignificant act. Its effect on handling of your claim is particularly relevant when one considers the relatively minor nature of the collision as well as the subjective nature of your complaints. In that regard I have read the medical evidence which contains numerous references to your inability to work after the date of the accident.

Under these circumstances I find your falsification of the invoice and misstatement of the nature and extent of your injuries to be of a material nature which was certainly capable of causing the Corporation to manage your file differently. Even if these matters were not of a material nature (and I believe they were), I am certainly unable to conclude that your actions were so inconsequential that a resultant denial of benefits would work an (*in*)equity in this case.

During the course of the Internal Review Hearing you indicated that the termination of benefits should not apply with respect to any entitlement to benefits arising out of the subsequent accident of July 8, 1996. Under these circumstances, I am prepared to reject that argument given the short period of time between the accidents, the questionable evidence with respect to the occurrence of the second accident and the inter-relationship between any potential injuries arising out of the two accidents to each other.

The Appellant has now appealed from the Internal Review decision to this Commission. The issue which requires determination in this appeal is whether the Appellant's PIPP benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.

Counsel for the Appellant submits that the conviction for fraud related only to the first accident and therefore the Appellant's benefits were improperly terminated on July 31, 1997, since at that time she was collecting benefits in relation to the July 8, 1996 motor vehicle accident. He submits that the forgery of the invoice should have no bearing on the second claim and compensation under it. He contends that the initial fraudulent act cannot apply to a subsequent claim, since to suggest that the fraud applies to all subsequent claims would necessarily render

the Appellant uninsurable.

Counsel for the Appellant also submits that the effect of the invoice did not cause MPIC to manage the Appellant's claim any differently, since it did not affect the amount of IRI benefits that the Appellant received. He maintains that the fact that the Appellant worked an extra four days (January 17 – 21, 1996) did not affect her level of injury and therefore she was properly entitled to PIPP benefits. As a result, counsel for the Appellant submits that the Appellant's benefits should be reinstated effective August 1, 1997.

Counsel for MPIC submits that the false invoice provided by the Appellant to MPIC not only affected the first claim relating to the January 17, 1996 accident, but continued to play a role throughout the second claim arising from the July 8, 1996 accident. He maintains that benefits continued after the second motor vehicle accident based on the original invoices provided by the Appellant. The determination of IRI benefits after the second accident was based upon the determination of IRI benefits undertaken after the first accident. Therefore, he contends that the fraud applies to both claims.

Counsel for the Appellant also relies upon the following passage from Insurance Law in Canada, Volume 1, by Craig Brown, LL.D., Canada: Thomson Canada Limited, 2002, at page 9 – 22, which states that:

Where the fraud that is proved relates only to part of the claim (and where statutory or policy provisions state that only the claim and not the whole policy is avoided), the entire claim is vitiated. For example, where both buildings and contents are covered and separate claims are made for each, one made fraudulently and the other not, both claims are forfeited.

Counsel for MPIC submits that the fraud perpetrated by the Appellant vitiates both claims, under

the January 17, 1996 motor vehicle accident and the July 8, 1996 accident. As a result, counsel for MPIC submits that the appeal should be dismissed, and the Internal Review decision dated March 22, 2001 confirmed.

Discussion:

With respect to the termination of the Appellant's benefits arising out of the January 17, 1996 accident, the Commission confirms that aspect of the Internal Review Officer's decision dated March 22, 2001. We find that the criminal conviction of fraud over \$5,000.00, which in this case included the lesser offence of uttering a forged document, since the Appellant was found guilty of the fraud by reason of the use of the document, is determinative of the issue as it relates to the January 17, 1996 motor vehicle accident. We note the findings of [text deleted] in his reasons for the conviction dated [text deleted] wherein he found that:

[39] In summary, I have considered the accused's evidence as to the counts in the indictment. Having no explanation for the invoice in issue, her evidence cannot raise a reasonable doubt. After considering all the other evidence, I have concluded, beyond a reasonable doubt, that the invoice submitted to M.P.I. on February 21, 1996 for the purposes of advancing her claim was false and that the accused knew so. I also found that she knew that the invoice would be used to assess whether or not she was entitled to benefits. I therefore find that the Crown has proven, beyond a reasonable doubt, that the accused is guilty of the offence of fraud as set out in count no. 1 of the indictment.

We therefore find that the Appellant knowingly provided false and inaccurate information to MPIC within the meaning of Subsection 160(a) of the MPIC Act with respect to the accident of January 17, 1996.

However, this determination as it relates to the January 17, 1996 accident, is not determinative of the entire issue before this Commission. We must also consider the effect of the forged document on the claim relating to the July 8, 1996 accident.

The evidence presented at the hearing of this appeal established that the claim file relating to the January 17, 1996 motor vehicle accident was closed once the claim file for the July 8, 1996 accident was opened. We find that these were two separate claims, and as such, two separate contracts. Although fraud vitiated the first claim/contract, relating to the January 17, 1996 accident, we find that a new claim/contract was created after the July 8, 1996 motor vehicle accident, which was not tainted by the forged document.

While the altered invoice may have been provided to MPIC for the purposes of inducing MPIC to believe that the Appellant had been immediately disabled after the date of the January 17, 1996 accident, we find that the forged document did not materially impact the claim made after the July 8, 1996 motor vehicle accident. The false invoice was not relevant or germane to MPIC's investigation of the second accident. It did not affect the nature and extent of her injuries; and it did not affect the determination of her IRI benefits.

When the Appellant reported the July 8, 1996 accident to MPIC, she was required to complete a new Application for Compensation and a fresh investigation was undertaken by MPIC's case manager with respect to this claim. Since the circumstances surrounding this accident were questionable, the claim was investigated thoroughly by the case manager. After a significant investigation, the case manager accepted the Appellant's claim. We find that even if the case manager had known of the previously altered document, his claim's investigation would have been just as thorough. The dubious circumstances of the July 8, 1996 accident had raised his suspicions and resulted in a considerable exploration of the Appellant's claim as it related to this accident. We find therefore that the forged invoice did not affect MPIC's handling of the Appellant's second claim.

We also find that the misstatement of the hours worked after the January 17, 1996 motor vehicle accident, did not affect the nature and extent of the Appellant's injuries after the July 8, 1996 accident. While the evidence that the Appellant continued to work after her first accident may have been material to the first claim, especially in light of the subjective nature of her injuries, this fact did not influence the injuries she continued to report after the second accident. After the July 8, 1996 accident, the Appellant developed a chronic pain syndrome as diagnosed by [text deleted], a clinical psychologist. [Appellant's psychologist] had met with the Appellant and reviewed reports prepared by other treating health care providers. [Appellant's psychologist] reached the conclusion that the Appellant suffered from a chronic pain syndrome. [Appellant's psychologist] was of the view that the Appellant had adopted a variety of behaviour patterns, serving to perpetuate or exacerbate her physical discomfort and pain. She found that the Appellant viewed herself as a person who was very seriously injured as a result of these accidents. We therefore find that after the July 8, 1996 accident, there was a psychological basis for the Appellant's continuing disability, which developed as a result of the July 8, 1996 accident. The nature and extent of this disability was not affected by the forged invoice.

The Commission also concludes that the altered document did not impact upon the determination of the Appellant's IRI benefits. Her IRI benefits were based upon her determined employment pursuant to Schedule C of Manitoba Regulation 39/94, since that figure provided the greatest gross yearly employment income. The altered document did not affect this determination.

For the foregoing reasons, we are unable to find that the Appellant knowingly provided false or inaccurate information to MPIC in regards to the July 8, 1996 motor vehicle accident. As a result, we find that the Appellant's PIPP benefits should be reinstated effective August 1, 1997 until such time as MPIC determines that she no longer qualifies for PIPP benefits. The Internal

Review decision dated March 22, 2001 is therefore varied accordingly.

Dated at Winnipeg this 9th day of December, 2003.

YVONNE TAVARES

DR. PATRICK DOYLE

DEBORAH STEWART