

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-98**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan G. McKelvey
the Appellant, [text deleted], appeared in person together
with her husband, [text deleted]

HEARING DATE: January 16th, 1998

ISSUE: Whether Appellant's IRI and chiropractic benefits were
properly terminated for non-compliance.

RELEVANT SECTIONS: Sections 144(2) and 160 of the Manitoba Public Insurance
Corporation Act ('the 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 issue in this appeal and the facts related to that issue, are very simply stated:

1. the Appellant, [text deleted], was seriously injured in a motor vehicle accident on August 15th, 1994; she was awarded income replacement indemnity of \$731.98 bi-weekly (later increased to \$739.30 as a result of indexing) and, as well, MPIC undertook to pay the cost

of her continuing chiropractic care to the extent that it was not covered by Manitoba Health Services. [the Appellant] and her husband, for reasons that, even now, are not clear to this Commission, seem to have entertained a remarkable degree of hostility towards the insurer, almost from day one. However, that hostility did not develop into outright non-cooperation until, in February of 1996, she was referred by her general practitioner for a neurologic evaluation to [text deleted], a neurologist at the [hospital]. [Appellant's husband] and [the Appellant] appeared at the office of [Appellant's neurologist] but refused to wait because, they were apparently told, the waiting period might be as long as two hours. We have no quarrel with the decision of the Appellant and her husband to leave, under those circumstances, but the abuse levelled at MPIC's adjuster shortly thereafter was not conducive to the furthering of a good relationship between insured and insurer;

2. with a view to achieving an overall assessment of [the Appellant's] condition, MPIC made arrangements with [rehab consulting company #1] for [the Appellant] to attend at [rehab consulting company #1's] premises on Wednesday, the 8th of May, 1996 for assessment by their psychology, occupational therapy and physiotherapy departments. Notice was sent to [the Appellant], confirming that appointment, under date of April 24th, 1996; the appointment was for Wednesday, May 8th, and the written notice indicated that it was to be spread over a period from 10 o'clock in the morning until approximately 3 o'clock in the afternoon, presumably with a break for lunch;
3. [the Appellant] cancelled that appointment and indicated that she was unwilling to reschedule it. MPIC wrote to [the Appellant] on May 6th, to advise her that, since she had not kept her appointment with [Appellant's neurologist], they were arranging another

appointment with [text deleted], a neuropsychologist, for an initial assessment. [Appellant's neuropsychologist] herself wrote to [the Appellant] on June 24th, suggesting an appointment on July 8th, from 1 o'clock until 3 o'clock P.M. MPIC confirmed that appointment by way of a letter, dated June 27th, reminding [the Appellant] that failure to keep that appointment might well result in the suspension of her benefits;

4. on July 8th, [Appellant's neuropsychologist] reported that, although [the Appellant] and her husband did attend, the appointment that had been intended to last for about two hours was terminated in less than half an hour, by reason of the steady stream of profanities, derisive snorts, challenges to the integrity and independence of [Appellant's neuropsychologist] and criticisms of virtually all of the personnel involved in her rehabilitation to date. [Appellant's neuropsychologist] indicated that, once it became apparent that she could neither give nor receive information due to [the Appellant's] angry, challenging and uncooperative stance, she decided to terminate the interview. When [the Appellant] was briefly out of the office, [Appellant's husband] had apparently assured [Appellant's neuropsychologist] that the Appellant's personality and emotional style had not changed to any extent as a result of the accident, and we must therefore assume that the Appellant's conduct is not attributable to any damage sustained in that accident;
5. on July 10th of 1996 [the Appellant], who had arranged to meet with her adjuster that day, called to cancel her appointment because it was her grandson's birthday;
6. MPIC then apparently felt that, due to obvious (if, to the insurer, inexplicable) conflicts between [Appellant's husband] and [the Appellant], on the one hand, and MPIC on the other, it should retain an independent rehabilitation facility in order to complete an assessment of [the Appellant's] needs and to generate a proper rehabilitation plan for her.

To that end, [rehab consulting company #2] were retained and [the Appellant] was so advised on August 21st of 1996;

7. on September 25th, 1996, by prior arrangement, [Appellant's rehab consultant #1] of [rehab consulting company #2], accompanied by [Appellant's rehab consultant #2] from [rehab consulting company #1], met with [Appellant's husband] and [the Appellant] at the latter's home. Once again, the professionals who were attempting to assist [the Appellant] by arranging for a proper assessment of her needs and providing her with information as to possible treatment programs and services were met with a great deal of oral abuse from [the Appellant] and, to a slightly lesser extent, from her husband. Some written information was, therefore, left with the Appellant, [Appellant's rehab consultant #1] was told by the Appellant "Don't ever call me again" and [the Appellant] was invited to contact [Appellant's rehab consultant #2] if she required further information; [the Appellant] did, in fact, contact [Appellant's rehab consultant #2] on September 26th in order to arrange a meeting so that [the Appellant] could find out more about the Chronic Pain Management Program that was available for her. The meeting between [the Appellant] and [Appellant's rehab consultant #2] seems to have been conducted calmly and devoid of the earlier, outward hostility, although [the Appellant] expressed the view that [rehab consulting company #1] could do nothing to help her, that she would never be able to work again and that there was little point in attempting to help her get back to work;
8. despite the Appellant's sentiments to the contrary, representatives of MPIC and [rehab consulting company #1] jointly determined that it was, indeed, appropriate to continue their attempts at an initial assessment of the Appellant, in order to develop a rehabilitation plan. A letter therefore went forward to [the Appellant] on October 17th, suspending her

benefits for two weeks by reason of her non-cooperation, but setting a new appointment for October 30th at 11 o'clock A.M. for her to meet with representatives at [rehab consulting company #1];

9. [Appellant's husband] and [the Appellant] did, in fact, attend at the premises of [rehab consulting company #1] on October 30th, where they met with [Appellant's doctor] but did not stay for the physiotherapy and occupational therapy screening assessments since, they said, they had not realized that they would be expected to remain for the length of time that they were needed. [the Appellant] indicated to [Appellant's doctor] a willingness to return, in order to complete the multi-disciplinary assessment but, although an appointment was made with her for that purpose to re-attend on November 12th, 1996, and this was confirmed to [the Appellant] by letter on October 30th, she did not show up;
10. meanwhile, MPIC had reinstated [the Appellant's] income replacement indemnity as of November 4th, subject to her renewed cooperation with the program. However, [the Appellant's] failure to keep her November 12th appointment resulted in the further suspension of her benefits for another four weeks;
11. on December 20th, 1996, concurrently with that four weeks' suspension, yet another appointment was made for [the Appellant] to attend at the offices of [rehab consulting company #1] on January 24th, to meet with [independent chiropractor #1] for an independent chiropractic examination, to be followed by occupational therapy and physiotherapy assessments. [The Appellant] was told that the appointment would last approximately 3 ½ hours and was asked to wear comfortable, loose-fitting clothing and gym shoes. That appointment was confirmed by three separate letters, two from MPIC and one from [rehab consulting company #1] itself;

12. however, by telephone call on December 30th, 1996, [the Appellant] telephoned her adjuster to state very clearly that she would not be attending the assessment, would not be seen by [independent chiropractor #1], whom she described as a "weirdo" and expressed the wish that her adjuster would suffer a bad injury like her own so that he could have garbage like himself looking after his claim. [Appellant's husband] telephoned [independent chiropractor #1] and, in similarly abusive language, assured [independent chiropractor #1] that he would not be bringing his wife to the January 24th appointment;
13. MPIC, after waiting to see whether [the Appellant] did, in fact, keep her January 24th appointment, wrote to her on January 31st to terminate her income replacement indemnity benefits for non-compliance. In the context of ongoing chiropractic treatments, a new appointment was made for a chiropractic examination to be conducted by [independent chiropractor #2] on March 13th, 1997. [The Appellant] failed to appear for that appointment but, instead, forwarded an offensive but undated letter to MPIC. In consequence, the insurer discontinued any further payments for chiropractic care for [the Appellant].

Much of the Appellant's reluctance to cooperate with the insurer seems to stem from her twin convictions that every person to whom MPIC has referred her is far from independent but, rather, is merely a puppet who will do and say anything that the insurer dictates, and that, in any event, there is nothing that anyone can do to help her. The fact remains, of course, that MPIC has the statutory right to refer a victim to any practitioner of its own choosing for a report or an assessment, and has not only a right but, indeed, a duty to do all that it reasonably can to assist a victim towards a return to pre-accident status. The [Appellant and her husband] also have a fixed

belief that the insurer is maintaining constant surveillance in order to 'get' the Appellant - an allegation that MPIC strongly denies and for which there is not an iota of evidence.

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[The Appellant] sought an internal review of the twin decisions by MPIC to discontinue her income replacement indemnity and to terminate payments for chiropractic treatments. Not surprisingly, the internal review officer declined to reverse the adjuster's decisions, whereupon [the Appellant] appealed to this Commission. At the hearing of her appeal, [the Appellant] abandoned her claim for Income Replacement Indemnity, but maintained her claim for continuing chiropractic benefits.

THE ISSUE:

Were [the Appellant's] benefits properly terminated for non-compliance, pursuant to the provisions of Section 160 of the Act, or did she have some reasonable grounds for refusing to comply?

THE LAW:

The relevant Sections of the MPIC Act, being No.'s 144(2) and 160, are clear; copies of them are annexed to these Reasons.

DISPOSITION:

We recognize fully that [the Appellant] was seriously injured in the accident briefly referred to at the beginning of these Reasons. We recognize, also, that despite [Appellant's husband's] disclaimer, it is entirely possible that her injuries did result in some damage that, in turn, has adversely affected her personality. However, all of the evidence before us, as well as the demeanor of both [the Appellant] and her husband at the hearing of her appeal, persuades us that, despite the best efforts of Manitoba Public Insurance Corporation to arrange a full program of rehabilitation for the Appellant, she, with the vocal and forceful support of her husband, has steadfastly resisted almost every one of those efforts by the insurer. It would be hard to imagine a less cooperative victim or a situation in which the insurer was more justified in terminating benefits than that of [the Appellant].

We therefore have no hesitation in confirming the decision of MPIC's internal review officer and dismissing the present appeal.

Dated at Winnipeg this 22nd day of January 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED