Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-11

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mrs. Lila Goodspeed** **Mr.F.Leslie Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('M.P.I.C.') represented by Mr. Tom Strutt** **The Appellant, [text deleted], appeared in person.**
HEARING DATE:	**July 7, 1997**
ISSUE:	**Alleged non-compliance by appellant with rehabilitation programs - whether termination of benefits justified.**
RELEVANT SECTIONS:	**Sub-sections 160 (f) and (g) 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 FACTS:

[The Appellant] was involved in a motor vehicle accident on September 16, 1994 from which he sustained injuries to his neck, upper shoulder and lower back as well as pain where his chest struck the steering wheel. [The Appellant], having been examined briefly at [hospital #1] and sent home without treatment or medication, was first examined by his family physician, [text deleted], three days later. His X-Rays were normal, but he was given a prescription for non-steroid anti- inflammatory drugs and was referred to a physiotherapist for assessment and treatment of his musculoskeletal injuries. The report received by this Commission from [Appellant's doctor],

which has been shared with both [the Appellant] and M.P.I.C., gives such a clear and complete chronology of [the Appellant's] medical history following his MVA that we can do no better than to append a copy of it to these reasons, of which it will then form part.

[The Appellant] received payments of Income Replacement Indemnity ('IRI') from September 23rd, 1994, until March 11th, 1996, upon which latter date the insurer decided to terminate [the Appellant's] benefits by reason of his apparent non-compliance with the rehabilitative programs that had been arranged for him. That decision was upheld by M.P.I.C.'s Internal Review Officer, from whose decision [the Appellant] now appeals to this Commission.

THE ISSUE.

At the conclusion of the hearing of this appeal, counsel for M.P.I.C. submitted that the symptoms and pain allegedly experienced by [the Appellant] were not the issues before us, nor was the question of [the Appellant's] employability. The sole issue for us to decide, he said, was whether [the Appellant] had, in fact, failed to co-operate in the programs arranged for him by the insurer. We agree.

THE LAW.

M.P.I.C., in deciding to terminate [the Appellant's] benefits, relies upon the following, two subsections of the Act:

"160. The corporation may refuse to pay compensation to a person or may reduce the amount an indemnity or suspend or terminate the indemnity, where the person.....

(f) without valid reason, prevents or delays recovery by his or her activities;

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the corporation;....."

M.P.I.C. had made two separate rehabilitation programs available to [the Appellant]: at the [rehab clinic] and at [hospital #2]. An analysis of [the Appellant's] history at each of those institutions reveals the following patterns of conduct on his part:

[Rehab clinic]

Having been referred there by M.P.I.C., [the Appellant] attended at the [rehab clinic] for assessment on December 14th, 1995. The gist of their assessment was that, "if the behavioral component is addressed and he is put onto a functional rehabilitation program", his symptoms should resolve.

It was emphasized that his behavior would retard the process of his symptoms resolving, but that he would benefit from a course of rehabilitation focussing on restoration of his functional abilities. A 4 - 6 week daily rehabilitation program for 3 - 4 hours per day was recommended and embarked upon. He was re-assessed on January 16th, 1996, when he actually started the program at the [rehab clinic], and a return-to-work date of February 22nd was agreed to as a reasonable objective.

That date was re-scheduled for March 6th, due to a week's absence on the part of [the Appellant].The [rehab clinic] had started to complain, as early as February 7th, about his non-attendance and generally poor attitude, but he did appear on February 10th and agreed to re-enter the program.

However, having attended at the [rehab clinic] for only six appointments over the course of one month of treatment, having cancelled appointments for January 19th and January 23rd to 27th (ostensibly for health-related reasons) and having missed some further appointments, he resumed treatment on February 13th, 1995. That was the last time he showed up at the [rehab clinic]; he simply 'phoned the [rehab clinic] on Februry 15th, 1995, to tell them that he did not think that the program was helping him and would therefore not be coming in any more. The [rehab clinic] found that "[the Appellant] is not appropriate for active treatment because of his poor attendance and apparent lack of motivation" and, in consequence, formally discharged him - a somewhat redundant step, since he appears already to have discharged himself.

[The Appellant], when giving his evidence, testified that he had quit that program because both [Appellant's doctor] and [text deleted] (the orthopaedic specialist to whom [Appellant's doctor] had referred him) had advised him to do so. But that testimony is not borne out by the reports of the two doctors: [Appellant's doctor] says clearly that, when told by [the Appellant] of the latter's intention to quit the program, "....patient was informed that discontinuance of attendance at [rehab clinic] was at his discretion and **not at our recommendation.....as we could not enforce his further attendance**"; [Appellant's orthopaedic specialist's] records, together with the admission of [the Appellant] himself when questioned by this Commission, indicate clearly that **he had never even seen [Appellant's orthopaedic specialist] until February 23rd, 1995**, by which time he had already quit the program on Februry 15th.

M.P.I.C. then retained the services of [vocational rehab consulting company] to co-ordinate the medical aspects of [the Appellant's] claim and attempt to restore him to employable status. Two of [vocational rehab consulting company's] medical consultants, having met with [the Appellant] and his wife at their home on May 26th, 1995, for the purpose of an initial assessment and having

met with his physiotherapist, his physician, his former employer and with representatives of M.P.I.C., recommended that a Functional Capacity Evaluation be completed in order to determine [the Appellant's] current physical abilities, and that he be introduced to a graduated return to work schedule with input from the employer.

[Vocational rehab consulting company] was obliged to place [the Appellant's] file 'on hold' in June, since he had been found guilty of a criminal offence in Ontario on June 16th and had been sentenced to nine months in gaol. He served only three months of that sentence and was released on September 18th. In the ensuing weeks, he alleged that he had fallen several times due to 'dizzy spells' related to his motor vehicle accident, but all medical reports and neurological tests negate the likelihood of that cause and effect so long after the MVA. There are, indeed, few if any objective signs of MVA-related causes giving rise to the continuing, intense pains and serious disabilities of which [the Appellant] complains. More specifically, [vocational rehab consulting company] and [text deleted] (neurologist) reported that the nerve conduction studies that had been performed showed no cervical radiculopathy nor any nerve root irritation that might, if present, have caused the pain of which [the Appellant] was complaining; his X-rays were normal, and no surgical intervention was indicated.

[HOSPITAL #2]

Following further meetings with [the Appellant], with his agreement and with the approval of his medical advisors, [vocational rehab consulting company] then arranged for him to commence a work hardening program at [hospital #2], where he attended an orientation session on December 14, 1995, and commenced the actual program with a series of physical and

psychological assessments in January of 1996. It is, perhaps, noteworthy that [vocational rehab consulting company], the attending psychologist, expressed some concern at 'his apparent contentment to stay home' and wondered whether this would pose problems as time for a gradual return to work drew near. Nonetheless, the team at [hospital #2] recommended a certain course of physiotherapy and a graduated return to work re-entry.

He was to start the rehabilitation program, following the foregoing assessment, on February 22nd. He appeared that day, only to announce that he had fallen the night before and was therefore unable to participate and would be going straight home. The occupational therapist encouraged him to remain and be re-assessed, but he was not willing to do so. He re-attended on February 26th, and participated on a half-day basis until February 28th, when he 'phoned in to say that he was 'having problems with my right leg and having chest pains' and would not be in the next day because he wanted to see his physician. He attended again on March 1st, 1996, when he met with his occupational therapist and his physiotherapist, complaining of increased pain and parasthesia in his right quadricep; he felt that he was being pushed past his physical limits. As a result, the program was modified to fit the nature of his subjective complaints, although objective assessment revealed no discernible cause for those complaints.

On March 15th the team at [hospital #2] advised [vocational rehab consulting company] that [the Appellant] appeared deliberately to be attempting to cause problems with his rehabilitation, resisting several aspects of the program, exhibiting excessive pain behaviour and being disruptive. They reported, further, that [the Appellant] was displaying marked inconsistencies, alleging that certain procedures were impossible for him and then, when he believed that no-one was observing him, becoming quite able to perform them. He had also missed his March 11th and 12th appointments, ostensibly due to a death in the family, although he had not

mentioned this to anyone at M.P.I.C. or at [vocational rehab consulting company] when they met with him a day or so later.

In a more detailed report of March 18th, 1996, [hospital #2] Work Hardening Program recommended that [the Appellant] be discharged from the program. In addition to the problems noted above, that letter of recommendation for discharge commented that [the Appellant]

(i) was very pain focussed,

(ii) felt that the educational groups which he attended on pain management and anxiety were 'stupid',

(iii) felt that three and one-half hours per day was too long a period in which to expect his participation five days a week,

(iv) recorded on his progress sheet the completion of some activities that he had not, in fact, completed,

(v) spent a significant amount of time wandering the room and halls, talking with other clients or gazing out of the window,

(vi) demonstrated disruptive actions or comments during educational group and within work simulation time,

(vii) consistently demonstrated exaggerated pain behaviour, especially when aware that he was being observed by his therapist or by another client, and

(viii) demonstrated a frequent tendency to vacate the room in which a therapist was supervising, in order to complete his activities elsewhere.

In consequence, [the Appellant] was discharged from the program at [hospital #2] and he was referred for a Functional Capacity Evaluation to [vocational rehab consulting company], whose formal report was sent to [vocational rehab consulting company]. under date of May 2nd,

1996. However, M.P.I.C. decided that, based upon [the Appellant's] history of non-cooperation and non-compliance that we have summarized above, [the Appellant] was not a fit candidate for further rehabilitation measures and discontinued his benefits.

DISPOSITION

While [the Appellant] takes issue with some of the allegations made by the team at [hospital #2] and [vocational rehab consulting company], he does not suggest any good reason why they might wish to fabricate those allegations. We do not find [the Appellant] to be a very credible witness, being so wrapped up in the certainty and inevitability of his pain that his evidence, passing through that prism, can become refracted.

We find that the decision of the insurer to terminate [the Appellant's] benefits was justified, in light of the history described above, and we agree with the opinion expressed by [vocational rehab consulting company], M.P.I.C.'s medical consultant, that, on a balance of probabilities, an individual sustaining the injuries that [the Appellant] did and receiving the appropriate, conservative treatment that he did receive for those injuries should have almost fully recovered by the time the decision had been made to discontinue his benefits. We therefore confirm the decision of the Internal Review Officer.

Dated at Winnipeg this 10th day of July, 1997.

J.F.R.TAYLOR, Q.C.

LILA GOODSPEED

F.LESLIE COX.