AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-33

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 McKelvey;** **[Text deleted], the Appellant**
HEARING DATE:	**June 12th, 1997**
ISSUE:	**Termination of Income Replacement Indemnity benefits ('IRI') - whether justified**
RELEVANT SECTIONS:	**Section 160 Subsections (c), (e), and (g) 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

THE FACTS:

[The Appellant], who was then a fork-lift operator in the employ of, [text deleted], was involved in a motor vehicle accident on May 9th, 1996. His family practitioner at the [text deleted] Medical Clinic, [text deleted], diagnosed right and left paraspinal and trapezius muscle strain. He received income replacement indemnity payments and physiotherapy benefits from May 17th until August 8th of 1996, upon which latter date MPIC terminated those benefits by reason of [the Appellant's] non-compliance with the physiotherapy and graduated return to work

programs that had been prescribed for him and to which he had agreed. It is from that decision that [the Appellant] now appeals.

In addressing the issue of whether or not the termination of [the Appellant's] benefits was justified, it is necessary to examine, firstly, the bases upon which MPIC arrived at the conclusion that he had failed to comply with the programs and, secondly, the reasons underlying [the Appellant's] non-compliance.

MPIC based its decision, in part, upon [the Appellant's] past pattern of sporadic compliance, which had resulted in a warning letter being sent from MPIC to [the Appellant] on July 11th of 1996 reminding him that the continuance of his benefits would be jeopardized if he failed to comply with the prescribed program. There is no doubt that that warning letter was justified; [the Appellant's] attitude towards his rehabilitation, at least up to the beginning of July, seems to have been somewhat cavalier.

[The Appellant] did, however, commence his gradual return to work program on July 2nd, as scheduled, and continued doing so for the next two days, working for two hours per day. At the end of his shift on July 4th, he says, he experienced increased back pain which he tried to report to his foreman and to the nursing station at his place of employment. He testified that, being unable to find anyone to whom to report, he went directly to the [text deleted] Medical Clinic where, in the absence of [Appellant's doctor #1], he was seen by [Appellant's doctor #2]. [Appellant's doctor #2] authorized him to remain off work until he could be assessed by [Appellant's doctor #1] on her return from vacation on July 7th. On the latter date, [Appellant's doctor #1] reported that [the Appellant] "...was complaining of new onset of right lower quadrant pain radiating to the umbilicus with an umbilical hernia which had not been present in the past".

[Appellant's doctor #1] therefore authorized another two weeks absence from work until July 22nd. Since [text deleted's] plant was closed for summer vacation from July 18th to August 9th of 1996, the result was that the earliest date upon which [the Appellant] could have returned to work was Monday, August 12th, 1996.

[The Appellant] returned to [Appellant's doctor #2] on July 25th, regarding his continuing abdominal pain. [Appellant's doctor #2] made arrangements for a CT Scan, which was scheduled for October 17th of 1996, and appears to have authorized [the Appellant] to discontinue all physiotherapy from July 25th until October 17th. [The Appellant] testified that he understood [Appellant's doctor #2] to be telling him that he did not have to return to work until after the CT Scan - advice which [the Appellant] seems to have been quite happy to accept.

[The Appellant] had asked [Appellant's doctor #2] for a formal report that he could give to his adjuster, but says that he was told that the report had to be requisitioned by MPIC. In fact, [Appellant's doctor #2] did not forward a medical report to MPIC, nor did the insurer request one, to clarify the medical status of [the Appellant].

As a result, and in the bona fide belief that [the Appellant] had discontinued his physiotherapy and had also quit his graduated return to work program, both without good reason, MPIC notified [the Appellant] by letter of August 6th, 1996 that his benefits would be terminated, effective on August 8th.

[The Appellant] attempted to challenge that termination but, despite his efforts to obtain confirmation that [Appellant's doctor #2] had authorized him to quit physiotherapy

temporarily, it was not until the 31st of January 1997, after filing a formal complaint with the College of Physicians and Surgeons, that [the Appellant] was able to obtain any kind of confirmation of the advice given him by [Appellant's doctor #2] on July 25th of the previous year.

By the same token, [text deleted] was not willing to re-admit [the Appellant] to a graduated work program without the continued involvement of, and contribution from, MPIC; since the insurer had already terminated [the Appellant's] benefits by August 12th - the earliest date upon which [the Appellant] could have returned to work in any event - he could neither return to work nor, upon the advice of [Appellant's doctor #2], renew his physiotherapy treatments.

It is not necessary for us to make a finding as to whether [the Appellant's] interpretation of the advice given him by [Appellant's doctor #2] was rational or whether it was mere wishful thinking. The fact is that, even if [Appellant's doctor #2] had made it clear that [the Appellant] could return to work on August 12th, by that time it would have been too late; MPIC had already discontinued the benefits.

[Appellant's doctor #1], in a report prepared for this Commission under date of June 10th, 1997, tells us that the natural history for complete resolution of an injury of the kind caused to [the Appellant] by his motor vehicle accident would have been from six to twelve weeks. We find that, if [the Appellant] had recommenced his program after the extended rest time from July 4th to the plant opening date of August 12th, the strong probability is that he would have reached pre-accident status and would have been able to return to work on a full-time basis within the period indicated by [Appellant's doctor #1].

Since a large part of [the Appellant's] problem stems from the failure of [Appellant's doctor #2] to respond in a timely fashion or, indeed, at all, to requests for confirmation of his advice to the Appellant, equity dictates that [the Appellant] should be allowed his IRI benefits for the seven weeks that would have been involved in his graduated return to work program, had he received that supporting medical evidence and been allowed to return in a timely fashion to his graduated return to work program.

DISPOSITION:

We therefore rescind the decision of the Internal Review Officer of March 7th, 1997 and find [the Appellant] to be entitled to the continuance of his income replacement indemnity from August 9th up to and including September 27th, 1996.

[Appellant's doctor #1]'s fee of $125.00 for her report of June 10th, 1997 will be for the account of the insurer.

Dated at Winnipeg this 27th day of June 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED