Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-96-54

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 Mr. Keith Addison;** **[Text deleted], the appellant, appeared in person assisted by her husband [text deleted].**
HEARING DATE:	**December 22, 1997**
ISSUE:	**Whether the Appellant's benefits were properly terminated for non compliance.**
RELEVANT SECTIONS:	**Section 160 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 was struck by an automobile, on June 23, 1994, while riding her bicycle. She was able to walk her bicycle home but was later taken by ambulance to [hospital] where she received x-rays and was released that same day. She sustained injuries to her neck and back and to the left side of her body, specifically her hand, foot and shoulder.

On June 29, 1994 [the Appellant] was examined by her family practitioner, [text deleted] who noted moderate parathoracic tenderness and prescribed Naproxin and a physiotherapy program.

At the time of the accident, [the Appellant] was employed at [text deleted]. She was employed as a Dietary Aide on a permanent part-time basis working an average of 50.5 hours bi-weekly. Because of difficulty with bending, lifting and extended standing, the Appellant was not able to return to her demanding work after the accident.

The Appellant filed a claim with MPIC, who commenced income replacement indemnity (IRI) benefits and a medical program to assist with her rehabilitation. On March 10, 1996, some 21 months after her benefits had commenced, MPIC formally terminated her IRI benefits, citing Section 160 of the Act as the ground for that termination.

Section 160 reads as follows:

"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;

(b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;

(c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;

(d) without valid reason, neglects or refuses to undergo a medical examination, or interferes with a medical examination, requested by the corporation;

(e) without valid reason, refuses, does not follow, or is not available for, medical treatment recommended by a medical practitioner and the corporation;

(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; or

(h) prevents or obstructs the corporation from exercising its rights of subrogation under this Act."

MPIC relies primarily upon subsections (f) and (g) as the basis for its decision.

[The Appellant] appealed to the internal review officer who confirmed the termination of IRI in a decision dated June 9, 1996 and it is from this latter decision that the Appellant now appeals. The issue is whether the Appellant's benefits were properly terminated for non-compliance. In order to make this determination it becomes necessary to analyse the record along with the testimony provided by the Appellant by outlining the events in a chronological order.

On July 7th, 1994, [Appellant's doctor #1] also diagnosed [the Appellant's] pregnancy and referred her to [Appellant's obstetrician] for obstetrical care. [Appellant's doctor #2] continued to monitor the Appellant throughout the summer on her physiotherapy program and to provide assessment reports to [Appellant's doctor #1]. Along with physiotherapy treatments the Appellant commenced chiropractic care on August 4th 1994, with [Appellant's chiropractor], who diagnosed acute lumbosacral and cervicodorsal sprain/strain syndrome and commenced treatments three times weekly.

At her August 10th, 1994, appointment, [Appellant's doctor #1], upon consultation with [Appellant's doctor #2], found the Appellant fit to return to her job by August 22nd. On September 1st, 1994, the Appellant reported to [Appellant's doctor #1] that she had not recommenced work because [Appellant's chiropractor] had advised her not to return until September 19th. [The Appellant] did not return to [Appellant's doctor #1's] care until April 13th, 1995 as [Appellant's doctor #2] provided care for her accident- related injuries.

[The Appellant] attempted to go back to her employment on September 27th for a three hour evening shift but found the experience further aggravated her condition. It was determined, in agreement with her employer and the adjuster, that she was not ready to return to this physically demanding job and that she should undergo a rehabilitation assessment at [rehab clinic #1].

The Appellant participated in a rehabilitation assessment on November 24, 1994 to determine the source of mechanical pain, identify barriers to recovery and establish treatment

recommendations. [Text deleted], the clinic manager, at the [rehab clinic #1], reported that at that date, the Appellant was not able to return to her full time duties but that her condition could improve once she received conditioning, strengthening and work hardening treatment following her pregnancy. It was agreed that [the Appellant] would take part in a two week comprehensive rehabilitation program in December for the purpose of assisting her with postural education and pain control. However, [the Appellant] did not attend regularly for her prescribed treatments at [rehab clinic #1] as she frequently reported feeling ill.

[The Appellant's] obstetrician, [text deleted], reported that her pregnancy became complicated with hypertension. On January 12, 1995, she was admitted to hospital because of elevated blood pressure and treated with bed rest until the condition settled on January 17th, when she was released. She was readmitted to the obstetrical ward on February 9th, at 38 weeks gestation, because of high blood pressure. Once her blood pressure settled she was induced and proceeded to have a normal delivery on February 13, 1995.

The Senior Adjuster, [text deleted], in consultation with [rehab clinic manager], agreed that [the Appellant] would be ready to commence her [rehab clinic #1] rehabilitation program six weeks after the birth of her child.

[The Appellant] returned to [rehab clinic #1] on April 10th, 1995, for the first week of her program, but found the treatments painful and was too fatigued to carry out the program because of child care responsibilities. On April 25th, [Appellant's chiropractor] called [rehab clinic #1] indicating that the work hardening program was too strenuous for the Appellant

and asked that commencement be deferred to a later date . In consultation with all of her caregivers, it was agreed that the program be deferred until May 22nd, subject to the Appellant continuing home exercises and attending at [rehab clinic #1] every Friday for a reassessment to monitor her progress. On May 17th, the appellant reported to [Appellant's MPIC adjuster #1] that she did not have confidence in the program at [rehab clinic #1] and as a result an alternative facility was approved.

On June 9th, 1995 the Appellant was assessed by [Appellant's rehab assessor] at [rehab clinic #2]. An eight week rehabilitation program was commenced two to three times weekly. On July 10th, [Appellant's rehab assessor] reported to the adjuster that the appellant had not been heard from since June 26th and [Appellant's rehab assessor] was concerned that the Appellant's recovery would be delayed. On July 11, [Appellant's MPIC adjuster #1] spoke with the Appellant who informed him that she had missed her program because the baby had contacted the flu for a whole week after which she became ill with the flu for another week. [Appellant's chiropractor] reported he was not aware that [the Appellant] was missing her treatments and he would speak to her about it. He further stated that it was his belief that the Appellant should be able to return to her work within six to eight weeks in September.

[Appellant's rehab assessor] referred the Appellant to [Appellant's doctor #3]for an assessment. on August 22nd, [Appellant's doctor #3]reported that the Appellant would be able to return to work after the completion of a more structured work hardening program for four to six weeks on a daily basis. In concurrence with [Appellant's chiropractor], he too was of the opinion that [the Appellant] would be ready to return to work at the end of September.

[The Appellant] was referred to [text deleted], Occupational Therapist at [rehab clinic #3] for an assessment. She reported the Appellant's need for reconditioning and weight loss. She also reported inconsistencies between her reported and demonstrated levels of function. The work hardening program was planned to commence on September 5th for six weeks until October 13th, with five and one half hour sessions, five days a week. The single agreed upon goal of the program was for the Appellant to increase function, endurance and strength in order to return to her employment as a dietary aide.

Consultation was arranged for the appellant with a dietitian to assist her with weight loss. As well arrangements were made with [text deleted], a psychologist, to assess the Appellant's needs, achievement of her return to work goals and pain control. As well, every assistance was provided to assure a successful outcome in the way of babysitting while the Appellant attended sessions, travel costs, income replacement indemnity benefits and such expenses as replacement costs for a bathing suit so that the Appellant could partake in water therapy.

On August 23rd 1995, discussions commenced between [Appellant's MPIC adjuster #1] and [text deleted], the Health and Safety Officer at [text deleted]. [Appellant's employer's Health and Safety Officer] agreed that the Appellant could start a gradual return to work program (RTW) once a report was received from [rehab clinic #3] outlining the Appellant's capabilities and limitations for carrying out her job. A medical report was also required to clear the appellant for the program.

In September 1995, [the Appellant]'s file was transferred to [Appellant's MPIC adjuster #2] at MPIC who continued to monitor her progress. [Appellant's MPIC adjuster #2's] September 20th, report summarized his discussions with the Appellant regarding goals and expectations for her work hardening program and the importance of following the advice and guidance of the various professionals to assure her rehabilitation. It was stressed that every possible assistance, benefit and special consideration would be made on the part of MPIC and the health care providers to assure the success of her return to work and it was expected that she would honour her commitment to the mutually agreed upon program.

Arrangements were made between all parties for the Appellant to commence a RTW program starting October 25th, through to December 1, 1995, with the aim of returning her to her regular part-time job of 50.5 hours bi-weekly. She would start with four hour shifts and increase each shift by one hour per week, working up to an eight hour shift over a five week period. The program was outlined in great detail and agreed to by all parties considering the following: timeframes, job functions, employer monitoring and reporting, ergonomic recommendations, role of the backup worker and ongoing medical help available upon the Appellant's request. [The Appellant] was fully aware of the goals and expectations and indicated that she was keen to proceed with the program.

The Appellant indicated that she was having problems with [Appellant's doctor #3] and wished to change to [Appellant's doctor #4] for further assessments [Appellant's doctor

#4] examined the Appellant along with the RTW plan and provided a prescription notation, dated October 25, stating that [the Appellant] was able to commence the RTW program.

The program did not begin until December 6th, 1995, the week it was planned to be completed. That same day the Appellant reported difficulties with the program to [Appellant's doctor #4] who provided a note stating that the Appellant should work only 4 hours per work day for a further two week period. By January 8th, she was still having difficulty performing all of her work duties and carrying out a five hour shift. On January 15th, it was agreed, upon [Appellant's doctor #4's] suggestion, to keep the Appellant on five hour days until her following shift and then, in each succeeding week, increase the workday by one half an hour rather than the one hour that had initially been planned.

In a letter dated January 31, 1996, [Appellant's psychologist] stated that the Appellant failed to appear for the January 9th and 19th scheduled sessions and in conversation with [the Appellant] it was mutually agreed to end the sessions.

[Appellant's occupational therapist] reported, on February 2, 1996, that she did not believe that the Appellant had been doing her stretching exercises as she was not able to demonstrate the exercises that were a part of her home program. The Appellant indicated to her that she only did stretches on the job when she absolutely had to and not as a regular practice as prescribed. It was noted that although the Appellant reported problems throughout the work hardening program she had not properly followed through with [rehab clinic #3] as she would either miss appointments or arrive late. It was [Appellant's occupational therapist's] opinion that if

she had put some effort at all into her rehabilitation the Appellant should have been capable of full-time work long before this time.

On February 20th, 1996, three months after the commencement of what was to be a five week program, [Appellant's employer's Health and Safety Officer] at [text deleted] told the Adjuster that the appellant's RTW program was compromising the workplace and that they had no choice but to discontinue their involvement. [Appellant's employer's Health and Safety Officer] did not feel that the Appellant was trying to rehabilitate herself because she repeatedly used improper body mechanics despite being constantly reminded and reinstructed in the proper mechanics. [Appellant's employer's Health and Safety Officer] is of the view that either the Appellant was not concerned about worsening her condition or that her condition was not as bad as she had expressed it to be.

The MPIC decision to terminate the Appellant's program and IRI benefits was arrived at for the following reasons:

While the Appellant was provided with three different return to work programs to meet her needs and assure full rehabilitation, the caregivers in each facility reported that the Appellant's stated symptoms were inconsistent with objective findings and that there was some non-compliance in following through with the programs. The Appellant received care from at least three medical practitioners from the date of her accident and, like the rehabilitation programs, whenever a program or direction was not to the liking of the Appellant, she requested a change of caregiver.

The Appellant was warned of the consequences of non-compliance on numerous occasions. Despite being an active part of the decision- making regarding her programs and in agreement with their goals and expectations, she did not diligently follow through and participate at the prescribed level. It was the opinion of all the caregivers that, based on the Appellant's injuries and care she would have been physically capable of returning to her pre-accident status and employment if she had consistently and genuinely made an effort in her reconditioning and return to work programs. On several instances it was noted that she disregarded proper body mechanics despite repeated training and the lack of improvement in her condition indicated failure to complete home and job stretching exercises.

We are totally sympathetic to the fact that [the Appellant] was a new mother, with a first baby after a difficult pregnancy compounded with a weight problem, high blood pressure and accident related problems. Added to that, she does appear to have been met with some presumption of poor motivation bordering on outright hostility on the part of at least one of her adjusters..

Having said that, we are of the view that all of her professional caregivers appear to have gone the extra mile in their attempt to help her regain pre-accident status. The rehabilitation period was planned for commencement six weeks after the birth of her child. The fact is, it did not begin until June. Although it was agreed by the health practitioners, that the program should have been completed by the end of September 1995, it was further delayed because of continuous interruptions and changes in medical practitioners and program deferrals requested by the Appellant. Despite access to all the services of her attending

physician, clinical psychologist, occupational and physiotherapist, chiropractor and dietician, The Appellant, without valid reason, did not participate fully in her programs, thus preventing her recovery.

It is the unanimous view of the caregivers that the Appellant has, whether consciously or subconsciously, been non-compliant with the requirements of the several programs planned with her agreement; we are obliged to agree with that view. We are convinced, in consideration of the support and goodwill of the caregivers, the objective findings and the natural history for healing of a soft tissue injury, that if she had been more cooperative, the Appellant would have reached pre-accident status many months before March 10th, 1996. Furthermore, the Appellant would have been reintegrated into her former permanent part-time position at [text deleted].

DISPOSITION:

One set of circumstances of itself would not be sufficient to justify termination of benefits, but an analysis of the whole situation over 21 ½ months along with similar opinions from so many objective caregivers, persuades us that the decision of MPIC to terminate her IRI benefits was proper.

We find, therefore, that the benefits of the Appellant were properly terminated pursuant to Subsections (f) and (g) of Section 160 of the Act.

The decision of MPIC's acting internal review officer is, therefore, confirmed and the present appeal is dismissed.

Dated at Winnipeg this 13th day of January 1998.

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J.F. REEH TAYLOR, Q.C.

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CHARLES T. BIRT, Q.C.

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L.J. GOODSPEED