



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-159

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Bill Joyce
Ms. Wendy Sol

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

HEARING DATE: April 15, 2004

ISSUE(S): Whether Personal Injury Protection Plan benefits appropriately suspended.

RELEVANT SECTIONS: Sections 142 and 160(b) 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 October 10, 1996 and on September 19, 1997. As a result of the injuries which the Appellant sustained in those accidents, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the decision of MPIC's Internal Review Officer, dated October 6, 2003, with regards to the suspension of his PIPP benefits pursuant to ss. 160(b) of the MPIC Act.

In a decision dated August 29, 2003, MPIC's case manager advised the Appellant that his PIPP benefits would be suspended, in accordance with ss. 160(b) of the MPIC Act, due to his refusal to provide a signed medical information authorization, which would enable the case manager to request medical information from the Appellant's physicians.

The Appellant sought an internal review of that decision. In a decision dated October 6, 2003, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that it was appropriate for the case manager to apply ss. 160(b) of the MPIC Act to suspend the Appellant's PIPP benefits, given the Appellant's refusal to provide the authorization requested by the case manager.

The Appellant has now appealed to this Commission. The issue which requires determination in this appeal is whether the Appellant's PIPP benefits were appropriately suspended by MPIC.

At the hearing of the appeal, the Appellant's representative submitted that MPIC has always been in possession of a valid authorization permitting both [Appellant's doctor #1] and [Appellant's doctor #2] to release medical information respecting the Appellant, to MPIC. The Appellant's representative notes that the case manager obtained an updated report from [Appellant's doctor #1], without the necessity of a new medical information authorization, and should have been able to obtain a medical report from [Appellant's doctor #2] without the requirement of an updated medical information authorization.

The Appellant's representative maintains that the case manager simply refused to request a report from [Appellant's doctor #2], on the basis of the authorization on MPIC's file. The Appellant's representative insists that MPIC is attempting to review the Appellant's entire claim by requesting an authorization which would permit MPIC to access all of the Appellant's prior health records. She submits that at this stage of a claims adjudication process, MPIC is not entitled to the Appellant's prior health records.

Counsel for MPIC submits that the request by MPIC's case manager, for an updated medical information authorization, was reasonable. He claims that the authorization form appended to the Application for Compensation is insufficient for the release of medical information pursuant to the provisions of The Personal Health Information Act ('PHIA'). Accordingly, counsel for MPIC maintains that the case manager was either attempting to replace a previous authorization which had expired, or she was attempting to secure a new medical information authorization which complied with the provisions of the PHIA.

Counsel for MPIC submits that the case manager had requested the authorization from the Appellant in order to obtain updated medical information, in order to consider the Appellant's ongoing claim for reimbursement of medication, and in order to consider his requests for Income Replacement Indemnity ('IRI') benefits and for permanent impairment benefits. Counsel for MPIC maintains that MPIC is entitled to consider new information with respect to a claim at any time. He also insists that MPIC has the right, if not also a responsibility, to continuously investigate and assess ongoing claims. In this context, counsel for MPIC submits that the case manager's request was reasonable, the Appellant understood the request, and therefore the suspension of PIPP benefits pursuant to ss. 160(b) of the MPIC Act was justified.

The relevant sections of the MPIC Act are as follows:

Corporation to be provided with information

142 A claimant or a person who receives compensation under this Part shall provide any information, and any authorization necessary to obtain information, requested by the corporation for the purpose of this Part.

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

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

Section 142 of the MPIC Act provides MPIC with the requisite authority to obtain any authorization it deems necessary, in order to obtain information for the purpose of Part 2 of the MPIC Act. Pursuant to section 142 of the MPIC Act, the case manager requested that the Appellant provide an up-to-date authorization, in order to obtain the medical information necessary to continue to manage the Appellant's claim. The Appellant refused to sign the authorization provided by MPIC and indicated that he would only authorize the release of current medical information with respect to his condition. We find that MPIC was justified in suspending the Appellant's PIPP benefits pursuant to ss. 160(b) of the MPIC Act, due to his failure to sign the required medical information authorization.

The Appellant, as a claimant of MPIC, is required to provide any information or authorization requested by MPIC, in order to allow the corporation to carry out an appropriate investigation and assessment of a claim, pursuant to s. 142 of the MPIC Act. Undoubtedly, this requirement is rooted in the principle of "*utmost good faith*" between an insured and insurer. A necessary basis of the contract of insurance involves full and complete disclosure on the part of an insured. This requirement cannot be dismissed or waived by an insured.

Additionally, we are not persuaded by the argument that MPIC should have attempted to obtain the report from [Appellant's doctor #2], irregardless of whether they had a current and valid medical information authorization on their file. We find that the case manager was acting in a prudent manner, in attempting to obtain a valid and current authorization, not only to avoid delays with [Appellant's doctor #2's] office in processing the request, but also to ensure that MPIC did not violate the Appellant's right under the PHIA, by obtaining his express consent to the release of his personal health information. Clearly, the case manager was also required to obtain a new authorization in order to conduct any further investigation that she may have deemed necessary, beyond the scope of [Appellant's doctor #1] and [Appellant's doctor #2].

The Appellant has refused to provide the requested authorization, and accordingly MPIC has invoked the provisions of ss. 160(b) of the MPIC Act to suspend his benefits. We find the suspension of benefits appropriate in the circumstances of this case. As a result, we find that the Appellant's appeal should be dismissed, and the Internal Review Decision dated October 6, 2003 is therefore confirmed.

Dated at Winnipeg this 29th day of April, 2004.

YVONNE TAVARES

BILL JOYCE

WENDY SOL