

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-35**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Ms Leona Barrett

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: June 16, 2008 and April 15, 2009

ISSUE(S):

1. Whether an extension of time should be granted to allow the Appellant to file an Application for Review.
2. Whether the Appellant's benefits were properly suspended and terminated pursuant to Sections 160(b), (e), and (f) of The Manitoba Public Insurance Corporation Act (the "MPIC Act")

RELEVANT SECTIONS: Sections 160 and 172 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

On December 16, 2002, the Appellant and her daughter were pedestrians crossing [text deleted] when they were struck by a vehicle. The Appellant was struck in the right hip. There was no head injury and no loss of consciousness. The Appellant and her daughter were taken to the [hospital] by ambulance. As a result of this accident, the Appellant suffered from constant headaches, pain in her shoulder blade areas, her right hip, knee, ankle and foot. Due to the

injuries which she sustained in the motor vehicle accident, the Appellant became entitled to Personal Injury Protection Plan (“PIPP”) benefits in accordance with Part 2 of the MPIC Act.

Initially, case management of the Appellant’s claim proceeded relatively well. The Appellant began attending physiotherapy sessions; she attended sessions with [text deleted], psychologist, on a regular basis and the Appellant was also assessed by [text deleted], neurologist, who referred her for an MRI. MPIC also retained the services of [text deleted], occupational therapist in order to assist with rehabilitation services for the Appellant. [Appellant’s occupational therapist] assessed the Appellant’s needs for personal and home care assistance and arranged home care services for the Appellant. A taxi account was set up for the Appellant to travel to and from medical appointments, and transportation services were arranged for the Appellant’s children to and from school.

At the time of the accident, the Appellant was a stay at home mom and did not work outside of the home. She was classified as a non-earner in accordance with s. 85(1) of the MPIC Act. Pursuant to s. 86(1) of the MPIC Act, the Appellant was entitled to a determination of employment from the 181st day after the accident. MPIC’s case manager attempted to meet with the Appellant in order to discuss the 180 day determination process and to gather the necessary information. However, management of the Appellant’s claim stalled at this stage. The following events then transpired:

- on or about July 1, 2003, the Appellant moved residences. Thereafter, it became increasingly difficult for MPIC’s case manager to contact the Appellant.
- On July 11, 2003, [Appellant’s occupational therapist] was unable to meet with the Appellant as scheduled, as she had not provided her new address or phone number.

- On July 17, 2003, MPIC's case manager wrote to the Appellant, at her new address, asking her to contact her as soon as possible in order to proceed with the processing of her claim.
- The Appellant called her case manager on July 31, 2003. She advised the case manager that she had been busy with her move and she still did not have a phone. Unfortunately, the telephone connection was disconnected before the Appellant and the case manager could arrange a meeting.
- On August 7, 2003, MPIC's case manager again wrote to the Appellant asking her to contact her in order to address the outstanding issues on her claim.
- On November 27, 2003, MPIC's case manager wrote to the Appellant requesting that she contact her as soon as possible in order to proceed with her claim.
- On December 3, 2003, the Appellant called her case manager and left a voicemail message providing her new contact phone number. The case manager returned her call and left a message on her answering machine asking her to call her back and advising her that they had to meet.
- On December 4, 2003, the Appellant left a message for her case manager stating that she would not be available on Thursday, December 4, 2003 and that she would call her again on Friday, December 5, 2003.
- The Appellant called her case manager on December 8, 2003 and indicated that she would call her the following day to discuss the outstanding issues. Her case manager returned her call on December 8, 2003 and left a message asking the Appellant to call her and advise when she would be available to meet in order to discuss the outstanding issues.

- On December 10, 2003 the Appellant called and left a voicemail message for her case manager advising that December 17, 2003 at 10:30 a.m. would be a good time to come in and meet. The case manager replied to the phone message and left a message for the Appellant confirming the meeting for December 17th at 10:30 a.m.
- On December 17, 2003, the Appellant left a voicemail message for her case manager advising that her daughter was sick and that she could not attend the meeting scheduled for that day.
- Subsequently that appointment was rescheduled to January 7, 2004, however the Appellant did not show up for her appointment and the case manager once again left her a voicemail message asking her to call her as soon as possible. On January 7, 2004, MPIC's case manager also wrote to the Appellant requesting that she contact her to set up another appointment to discuss her entitlement to benefits under PIPP.
- On January 28, 2004, MPIC's case manager wrote to the Appellant advising her of her obligations pursuant to Section 149 of the MPIC Act. The case manager also referred to Sections 160(b), (e) and (f) of the MPIC Act, warning the Appellant of possible consequences for her continued failure to cooperate with her case manager's request. Finally the case manager advised her that, if they did not meet by February 11, 2004 to discuss the processing of her claim, the Appellant's benefits could be terminated or suspended. The case manager once again requested that the Appellant contact her as soon as possible in order to make arrangements to meet.
- In response to that letter, the Appellant did call her case manager on February 9, 2004. There was a further exchange of messages between the Appellant and her case manager and on February 10, 2004 they finally connected and had a lengthy

telephone discussion with regards to her claim. However, before a further meeting could be scheduled, the Appellant ended the conversation with the case manager.

- The file was subsequently transferred to another senior case manager in MPIC's rehabilitative case management centre. On February 26, 2004, the new case manager wrote to the Appellant and advised her that she had assumed conduct of her injury file and asked her to contact her directly.
- On March 24, 2004, MPIC's case manager wrote to the Appellant requesting that she contact her in order to make arrangements to meet and discuss her claim further.
- On April 8, 2004, a further letter was sent by MPIC's case manager to the Appellant, once again asking the Appellant to contact her in order to discuss her claim for PIPP benefits. The letter also advised that the Appellant could jeopardize her benefits if she did not contact the case manager by April 21, 2004.
- On May 19, 2004, MPIC's case manager wrote to the Appellant advising that her entitlement to further PIPP benefits was being suspended pursuant to Sections 149 and 160(b), (e) and (f) of the MPIC Act, due to the Appellant's failure to cooperate and contact her case manager.
- On May 27, 2004, the Appellant left a voicemail message for her case manager acknowledging her receipt of the decision letter of May 19, 2004. On May 28, 2004, MPIC's case manager returned her call and suggested she call her back to discuss the decision letter.
- On June 8, 2004, the Appellant once again called her case manager and they had a telephone discussion. She advised that she had received the decision letter of May 19, 2004 and began explaining what events had occurred in her life. She confirmed her current address and telephone number. The case manager advised the Appellant

that her benefits had been suspended as advised in the decision letter. She further advised the Appellant that her option at that stage was to apply for a review of this decision, should she wish to pursue her entitlement to benefits. Lastly, the case manager advised that in the interim she would be requesting pre-existing and further medical information.

- On June 11, 2004 MPIC's case manager wrote to the Appellant enclosing an Application for Review of the injury claim decision, as requested by the Appellant.
- On June 16, 2004, MPIC's case manager wrote to [Appellant's doctor] at the [text deleted], requesting a medical report respecting the Appellant's condition.

An Internal Review of the case manager's decision was subsequently filed on behalf of the Appellant by legal counsel. However, it was not filed with MPIC until October 25, 2005. The Internal Review Decision dated December 20, 2005 denied the Appellant an extension of time under Section 172(2) of the MPIC Act to file the Application for Review. The Internal Review Officer also found that the suspension of the Appellant's PIPP benefits was warranted on the basis of the provisions of the MPIC Act cited in the case manager's decision. Accordingly, the Internal Review Officer confirmed the case manager's decision and dismissed the Appellant's Application for Review.

The Appellant has now appealed from that decision to this Commission. The issues which require determination in this appeal are:

1. whether an extension of time should be granted to allow the Appellant to file her Application for Review of the case manager's decision dated May 19, 2004; and

2. whether the Appellant's PIPP benefits were properly suspended and eventually terminated pursuant to Sections 160(b), (e) and (f) of the MPIC Act.

It should be noted that the hearing of the Appellant's appeal had commenced on June 16, 2008. At that meeting, the Commission inquired as to whether there was an end date to the Appellant's suspension of benefits. This matter was subsequently canvassed by counsel for MPIC with the case manager. In a letter dated October 9, 2008, counsel for MPIC advised that the intention all along was to terminate benefits under Section 160 of the MPIC Act. As a result, the Commission is required to determine not only whether the suspension of benefits was appropriate, but as well, whether an outright termination of the Appellant's PIPP benefits was appropriate in the circumstances of this case.

Appellant's Submission:

Counsel for the Appellant submits that the Appellant did not fully appreciate the consequences of her non-compliance with MPIC. He argues that she is a lay person and not very sophisticated when it comes to dealing with legal matters. Counsel for the Appellant maintains that had the Appellant fully appreciated the significance of her actions at the time, she would have addressed the matter sooner. He contends that there is no prejudice to MPIC if the Appellant's claim is allowed to proceed and he indicates that since he has been involved with the file, the matter has in fact proceeded through the appropriate channels in a timely fashion.

Additionally, counsel for the Appellant submits that it would not be unreasonable to suspend the Appellant's benefits for lack of compliance. However, he argues that an outright termination of her benefits is too severe a consequence in the circumstances of this case. In summary, counsel for the Appellant maintains that the Appellant should be granted an extension of time to file her

Application for Review, her appeal should be allowed and a suspension of benefits should be substituted for an outright termination of all PIPP benefits.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for the late filing of the Application for Review. He argues that the Application for Review was filed 15 months late, and the Appellant has not provided a reasonable excuse for that delay. Counsel for MPIC maintains that MPIC has been prejudiced by the delay since it has lost the ability to case manage the claim during the Appellant's delay.

With respect to the termination of the Appellant's benefits pursuant to Sections 160(b), (e) and (f), counsel for MPIC maintains that the suspension and subsequent termination of the Appellant's PIPP benefits were an appropriate response on MPIC's part to the Appellant's non-compliance. Counsel for MPIC argues that:

1. Pursuant to s. 160(b), MPIC properly terminated the Appellant's benefits since she was not communicating with her case manager and therefore not providing any information;
2. pursuant to s. 160(e), MPIC properly terminated the Appellant's benefits since she was not available for treatment recommended by her caregivers; and
3. pursuant to s. 160(f), MPIC properly terminated the Appellant's benefits since she prevented or delayed her recovery by cancelling appointments with practitioners and health care providers. She was not cooperating with her health care providers and delaying her recovery by her actions.

Counsel for MPIC submits that the intent of the May 19, 2004 case manager's decision was to terminate the Appellant's PIPP benefits at that time. He notes that since that time, MPIC has lost all opportunity to rehabilitate the Appellant. Additionally, counsel for MPIC argues that there has been no prejudice to the Appellant by replacing the suspension with an outright termination of benefits, since the effect on the Appellant has been the same, her entitlement to PIPP benefits ceased effective May 19, 2004. Counsel for MPIC contends that the case manager's decision of May 19, 2004 should have prompted the Appellant to respond and to file for a review. He also claims that the case manager could have lifted the suspension, however that did not occur in this case.

In summary, counsel for MPIC argues that the Appellant has not provided a reasonable excuse for failing to apply for a review of the case manager's decision within 60 days. He maintains that the request for review was well beyond a reasonable time limit and an extension of time should not be granted. Counsel for MPIC further insists that the suspension and subsequent termination of the Appellant's PIPP benefits as of May 19, 2004 was appropriate in the circumstances pursuant to Sections 160(b), (e) and (f) of the MPIC Act. Accordingly, he submits that the Appellant's appeal should be dismissed and the Internal Review Decision of December 20, 2005 should be confirmed.

Relevant Legislation:

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;

...

(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;

...

Application for review of claim by corporation

[172\(1\)](#) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

[172\(2\)](#) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that:

1. the time for filing the Appellant's Application for Review shall be extended; and
2. a suspension of the Appellant's PIPP benefits from May 19, 2004 to June 7, 2004, inclusive, shall be replaced for the termination or indeterminate suspension of her PIPP benefits.

Reasons for Decision:

Pursuant to Section 172(2) of the MPIC Act, MPIC may extend the time for filing an Application for Review if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within 60 days of receiving notice of the decision.

Pursuant to Section 184(1) of the MPIC Act, the Commission may:

- a) confirm, vary or rescind the review decision of the Corporation or;
- b) make any decision that the Corporation could have made.

Upon a careful consideration of all of the factors which lead the Appellant to delay filing her Application for Review, the Commission is satisfied that the Appellant has a reasonable excuse for failing to file her Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act. In arriving at our decision, we have considered the following factors:

1. The Appellant testified that she felt intimidated by MPIC and the claims process. She testified that she is a very private person, and that having all of her personal information reviewed by her case managers, her caregivers, and the consultants hired by MPIC was difficult for her to accept and to handle.
2. The Appellant testified that she was overwhelmed by all of the events in her life. The Appellant testified that this included difficult domestic proceedings [text deleted]. Dealing with another formal appeal process (the internal review), on top of the domestic proceedings, was overwhelming for her at the time. She felt angry, helpless, and afraid of MPIC.
3. The motor vehicle accident was a very traumatic event in her life and she was very upset with her situation and how the motor vehicle accident had changed her life. In this regard, the Commission notes that [Appellant's psychologist], clinical psychologist, who was providing psychological treatment to the Appellant following the motor vehicle accident, noted in her report to MPIC dated May 4, 2003 that the Appellant did appear to have suffered some post-traumatic stress following her accident. [Appellant's psychologist] also noted that the Appellant was a private person, with minimal social supports, either familial or friendship.

4. The Appellant was searching out legal counsel. She notes that once she did retain [text deleted], matters involving her review and subsequent appeal have moved along in a timely fashion.
5. The justice of the proceeding. Having considered the circumstances surrounding the suspension of the Appellant's PIPP benefits, the Commission finds that a time-limited suspension was an adequate response to the Appellant's failure to communicate with her case manager. In this case, we find that a technical delay in applying for a review of the case manager's decision should not deprive the Appellant of her opportunity to challenge her suspension and subsequent termination. Additionally, the failure to adequately communicate with her case manger did not warrant a termination of the Appellant's entitlement to all PIPP benefits to which she has a statutory right as a victim of a motor vehicle accident.

As a result, the Commission finds that the time for filing the Appellant's Application for Review shall be extended to October 25, 2005.

Upon a careful consideration of all of the factors which lead to the suspension and termination of the Appellant's PIPP benefits, the Commission finds that the suspension and subsequent termination of the Appellant's PIPP benefits pursuant to Section 160(e) and (f) of the MPIC Act was not warranted. The Commission finds that there is simply insufficient evidence that the Appellant did not follow or was not available for medical treatment recommended by a medical practitioner and/or MPIC. The Commission also finds that there is insufficient evidence that the Appellant prevented or delayed recovery by her activities. MPIC argued that the Appellant's failure to cooperate with [Appellant's occupational therapist], occupational therapist, would prevent or delay her recovery. However, the Commission was not provided with any evidence or

explanation as to how the Appellant's failure to communicate with [Appellant's occupational therapist] delayed or prevented her recovery from her injuries.

With respect to the suspension of the Appellant's benefits pursuant to Section 160(b), the Commission finds that the Appellant's failure to adequately communicate with the case manager and to meet with the case manager amounted to a failure to produce information which appropriately triggered the provisions of Section 160(b) of the MPIC Act. MPIC's case manager was attempting to meet with the Appellant in order to obtain information from the Appellant regarding her employment history, so as to enable her to conduct a 180 day determination. The Appellant's prolonged failure to communicate with the case manager resulted in an evasion and neglect to produce information to the case manager. Accordingly, the Commission determines that it was appropriate for the case manager to invoke Section 160(b) of the MPIC Act in the Appellant's case.

However, the Commission finds that a time-limited suspension of benefits was an appropriate response to the Appellant's failure to communicate with her case manager. By June 8, 2004, the Appellant had contacted her case manager and had a discussion with the case manager. During that conversation, she provided an update to her case manager regarding her medical condition, her current medical treatment, her current address and her current phone number. Following that conversation, the case manager requested pre-existing and further medical information. The Commission finds that as of June 8, 2004, the Appellant was cooperating and communicating with her case manager and providing information to the case manager. Accordingly, the suspension of benefits should have been lifted as of that date. Furthermore, MPIC's subsequent decision to substitute a termination of benefits for the suspension set out in the case manager's letter of May 19, 2004 was not warranted in the circumstances of this case.

As a result, the Commission finds that a suspension of the Appellant's PIPP benefits from May 19, 2004 to June 7, 2004, inclusive, shall be replaced for the termination or indeterminate suspension of her PIPP benefits. Accordingly, the Appellant's appeal is allowed and the Internal Review Decision dated December 20, 2005 is therefore rescinded.

Dated at Winnipeg this 2nd day of July, 2009.

YVONNE TAVARES

LEONA BARRETT

DIANE BERESFORD