

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-134**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Wilf de Graves
Ms Jean Moor

APPEARANCES: The Appellant, [text deleted] was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: March 7, 2012

ISSUE(S): Whether the Appellant is entitled to further Personal Injury Protection Plan benefits.

RELEVANT SECTIONS: Sections 160(a) and 184(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The facts giving rise to this appeal may be briefly summarized as follows:

1. On August 9, 2005, the Appellant stepped out of his parked vehicle, slipped and fell, fracturing his left ankle. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

2. At the time of the motor vehicle accident, the Appellant was employed as a driver for [text deleted]. Since the Appellant was not able to return to work following the accident, he became entitled to income replacement indemnity (“IRI”) benefits.
3. In a decision letter dated February 21, 2006, the case manager advised the Appellant of the termination of his PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and ability to work in contravention of Section 160(a) of the MPIC Act. Additionally, the case manager found that, despite the Appellant’s ongoing assertions that he remained injured and unable to return to his pre-accident employment, investigations had revealed that he had in fact been working and was capable of returning to his pre-accident employment as of December 14, 2005. Accordingly, the case manager also found that had the Appellant’s PIPP benefits not ended pursuant to Section 160(a), his entitlement to IRI benefits would have ended in accordance with Section 110(1)(a) of the MPIC Act, as the Appellant had returned to work at his pre-accident employment. Additionally, the case manager determined that the Appellant was responsible for reimbursing MPIC the amount of \$619.92, representing the benefits he received as a result of his failure to notify and provide MPIC with accurate information in accordance with Section 189(1) of the MPIC Act.
4. The Appellant sought an Internal Review of that decision. In a decision dated May 9, 2006, the Internal Review Officer dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. The Internal Review Officer found that the case manager was correct in terminating the Appellant’s entitlement to PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and his ability to work in contravention of Section 160(a) of the MPIC Act. The Internal Review Officer also found that the case manager was correct in alternatively

terminating the Appellant's IRI benefits under Section 110(1)(a) of the MPIC Act, since the Appellant was able to hold the employment which he held at the time of the accident. Lastly, the Internal Review Officer confirmed that the Appellant was responsible for reimbursing MPIC the amount of \$619.92, representing IRI payments for the time period of December 14, 2005 to January 15, 2006, to which the Appellant was not entitled.

5. The Appellant appealed that decision to this Commission. In a Decision and Reasons for Decision dated July 31, 2009, the Commission found that the Appellant did, on a balance of probabilities, provide false and inaccurate information to MPIC with regard to his return to work. The Commission also found that the Appellant was able to hold his pre-accident employment as of December 14, 2005. Additionally, the Commission determined that pursuant to Section 189(1) of the MPIC Act, MPIC was entitled to repayment of the IRI payments which the Appellant received from December 14, 2005 to January 15, 2006 to which the Appellant was not entitled, in the amount of \$619.92.

6. In its Reasons for Decision, the Commission expressly stated that:

Lastly, the Commission notes that the Claimant Adviser and MPIC agreed that the Commission's decision in this appeal would be limited to the Appellant's entitlement to PIPP benefits for the period from December 14, 2005 to April 2006. The Appellant's entitlement to PIPP benefits (including IRI benefits, reimbursement of medical expenses and permanent impairment benefits) following the surgery to his left ankle of August 30, 2007, shall be referred back to MPIC's case manager for determination.

7. On August 30, 2007, the Appellant underwent surgery to his left ankle, resulting in a further period of inability to hold his pre-accident employment. The Appellant sought further PIPP benefits from MPIC in regard to the surgery and his inability to hold his pre-accident employment following the surgery.

8. In a decision dated October 26, 2009, MPIC's case manager denied the Appellant's claim for further PIPP benefits. The case manager advised as follows:

On August 30, 2007, you underwent surgery to your left ankle, resulting in a further period of inability to hold your pre-accident employment. This would have entitled you

to a further period of Income Replacement Indemnity, reimbursement of medical expenses and a possible permanent impairment benefit. As a result of your knowingly providing false or inaccurate information to Manitoba Public Insurance regarding your functional ability and employability that was referred to in the Case Manager's decision letter of February 21, 2006 and confirmed in an Internal Review decision of May 9, 2006, there is no entitlement to any indemnity relating to the accident and resulting injuries. In other words, the effect of Section 160(a) of The Manitoba Public Insurance Corporation Act is to terminate entitlement.

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;

If your intention is to appeal this decision, we are agreeable to the filing of a Notice of Appeal without there being an Internal Review hearing and decision. Please let us know your decision.

9. By letter dated November 3, 2009, Mr. Kirk Kirby, counsel for MPIC confirmed that MPIC was agreeable to the matter proceeding directly to the Commission rather than there being an Internal Review hearing and Decision beforehand. He confirmed the jurisdiction of the Commission to hear the Appellant's appeal without the necessity of an Internal Review Decision. As a result, the case manager's decision of October 26, 2009, is being treated as an Internal Review Decision and a hearing of [the Appellant's] appeal of that decision proceeded before the Commission on March 7, 2012.

Appellant's Submission:

The Claimant Adviser, on behalf of the Appellant, submits that the Appellant's PIPP benefits should be reinstated effective August 30, 2007. She argues that, in accordance with the Commission's Decision dated July 31, 2009, the Appellant's benefits were suspended and not terminated outright. The termination of the Appellant's PIPP benefits was limited to the period from December 14, 2005 until April 2006. The Appellant's entitlement to PIPP benefits following the surgery to his left ankle of August 30, 2007 was referred back to MPIC's case manager for determination. Accordingly, the Claimant Adviser insists that the Appellant is not

automatically disqualified from further PIPP benefits as a result of his previous contravention of Section 160(a) of the MPIC Act.

The Claimant Adviser maintains that the Appellant had substantial and ongoing injuries as a result of the motor vehicle accident of August 9, 2005. She argues that MPIC is taking a harsh position with respect to the Appellant's entitlement to PIPP benefits by terminating all of his PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and ability to work in December 2005. The Claimant Adviser contends that a suspension of his benefits is a more appropriate consequence for the Appellant's error in judgment. She maintains that the Appellant has been penalized for the violation of Section 160(a), his benefits were suspended and he has repaid the total amount of \$619.92 to MPIC. As a result, the Claimant Adviser argues that the Appellant's PIPP benefits should be reinstated effective August 30, 2007 including IRI benefits, reimbursement of travel expenses, permanent impairment benefits and reimbursement of expenses for orthotics.

MPIC's Submission:

Counsel for MPIC submits that in this case there was fraud on the part of the Appellant which results in serious consequences to his claim. Counsel for MPIC maintains that the Appellant's misrepresentation to MPIC terminated all of his PIPP benefits arising from the accident of August 9, 2005. Counsel for MPIC argues that the Appellant failed to provide true and accurate information to MPIC in violation of Section 160(a). He submits that the Appellant's fraudulent actions vitiated his contract of insurance with MPIC and ended his entitlement to all PIPP benefits. Counsel for MPIC maintains that the determination of fraud concludes the claim and there can be no further consideration of any entitlements. The claim is at an end and is closed.

Further, counsel for MPIC relies upon the Commission's decision of July 31, 2009. He maintains that the Commission upheld MPIC's finding that there had been a violation of Section 160(a) and upheld MPIC's termination of the Appellant's PIPP benefits. As a result, counsel for MPIC argues that the Appellant's misrepresentation terminates and vitiates his claim and any further entitlement to PIPP benefits. There can be no revisiting his entitlement and the Appellant's fraudulent conduct results in a final and decisive conclusion to his claim. Therefore counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated October 26, 2009 upheld.

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

(a) knowingly provides false or inaccurate information to the corporation;

Powers of commission on appeal

[184\(1\)](#) After conducting a hearing, 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.

Decision:

Upon 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 the Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is entitled to PIPP benefits following the surgery to his left ankle, effective August 30, 2007.

Reasons for Decision:

In its Reasons for Decision dated July 31, 2009, the Commission expressly stated that the Claimant Adviser and MPIC agreed that the Commission's decision in that appeal would be limited to the Appellant's entitlement to PIPP benefits for the period from December 14, 2005 to April 2006. Clearly, this was not a definite termination of all future PIPP entitlements. The Commission referred the matter of the Appellant's entitlement to PIPP benefits following the surgery to his left ankle of August 30, 2007 back to MPIC's case manager for determination. Obviously, the Commission contemplated that a potential entitlement to further PIPP benefits may exist, irrespective of the Appellant's misrepresentation in the earlier appeal.

Section 160(a) of the MPIC Act provides that:

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;

Plainly, section 160(a) provides a discretion on the part of MPIC when dealing with instances where a claimant has provided false or inaccurate information to the Corporation. Section 160 specifically contemplates that a reduction of benefits **or** a suspension **or** a termination may be imposed. A misrepresentation by a claimant does not necessarily conclude a claim and all future entitlements. That is a matter which is to be determined in accordance with the specific facts and circumstances surrounding each individual claim.

In this case, MPIC has chosen to terminate all PIPP benefits for this Appellant arising out of the accident of August 9, 2005, even though they consented to the limited period of suspension (from December 14, 2005 to April 2006) at the appeal hearing in July 2009. In referring the

matter back to MPIC, the Commission provided MPIC with the opportunity to exercise its discretion pursuant to Section 160(a) of the MPIC Act in relation to the Appellant's entitlement to PIPP benefits following the August 30, 2007 foot surgery. The appeal of the review decision of October 26, 2009, to the Commission, has provided the Commission with the jurisdiction pursuant to Section 184(1) of the MPIC Act to confirm, vary or rescind the review decision of the Corporation; or make any decision that the Corporation could have made.

In this case, upon a careful consideration of all of the facts and circumstances before it, the Commission finds that the suspension of the Appellant's PIPP benefits for the period from December 14, 2005 until April 2006 was an appropriate penalty for the Appellant's contravention of Section 160(a) of the MPIC Act in December 2005. The Commission finds that a suspension of benefits is a suitable outcome in the circumstances of this case, as opposed to an outright termination of all entitlements to ongoing PIPP benefits. The Appellant sustained significant injuries and permanent impairments as a result of the August 9, 2005 motor vehicle accident which have lifelong implications for him. The seriousness of his breach must be considered in terms of the ongoing impact of his injuries. While the Commission determined that the Appellant was indeed providing false or inaccurate information with respect to his return to work, in the circumstances of this case, the short duration of that breach does not warrant a definite termination of the Appellant's ongoing entitlement to all future PIPP benefits arising from the motor vehicle accident of August 9, 2005.

As a result, the Commission finds that the Appellant is entitled to PIPP benefits following the surgery to his left ankle, effective August 30, 2007. This matter shall be referred back to MPIC's case manager for a determination of the Appellant's particular entitlements. The Commission

shall retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation either party may refer this issue back to the Commission for final determination.

As a result, the Appellant's appeal is allowed and the case manager's decision/Internal Review Decision dated October 26, 2009 is therefore rescinded.

Dated at Winnipeg this 8th day of May, 2012.

YVONNE TAVARES

WILF DE GRAVES

JEAN MOOR