

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-15-028

PANEL: Ms Laura Diamond, Chairperson
Mr. Brian Hunt
Mr. Guy Joubert

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Paulo Arruda from the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

HEARING DATES: May 1, 2019 with submissions dated April 29, 2019, May 8, 2019 and June 7, 2019.

ISSUE(S): Whether the Appellant's PIPP benefits were properly terminated pursuant to section 160(b) of The MPIC Act.

RELEVANT SECTIONS: Section 160 of The Manitoba Public Insurance Corporation Act ('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

Background:

On April 27, 2007, the Appellant was a pedestrian injured in a motor vehicle accident (MVA) and hospitalized with a variety of injuries. She was in receipt of Personal Injury Protection Plan (PIPP) benefits under the MPIC Act, including a rehabilitation program, Income Replacement Indemnity (IRI), treatment benefits, personal care assistance and caregiver weekly indemnity benefits. As the

Appellant was considered a non-earner at the time of the MVA, her employment was determined as a Pharmacy Technician (NOC code 3414) pursuant to the MPIC Act and Regulations.

As a result of failure to cooperate with MPIC's requests and for failing to participate in a rehabilitation program, the Appellant's PIPP benefits were terminated on July 18, 2008. This decision was confirmed by an Internal Review Officer (IRO), but overturned by the Commission in a decision dated December 8, 2011 (AC-09-024), where the Commission indicated that greater assistance should have been provided to the Appellant as outlined in section 150 of the MPIC Act. The Appellant's benefits were reinstated in early of 2012, as a result.

Following reinstatement of benefits, the Appellant was provided with psychological assistance and a rehabilitation program at [rehabilitation center]. An independent psychological assessment with [independent psychologist] was scheduled.

As a result of the Appellant's alleged failure to comply with requests for information and documentation, the Appellant's benefits were suspended by her case manager, for non-compliance, on February 24, 2014. On April 10, 2014, her benefits were then terminated for her continued failure to comply with these requests.

The Appellant sought an internal review of this decision, and an IRO for MPIC provided a decision on December 22, 2014 upholding the case manager's decision. The IRO noted the Appellant's obligation to comply with the legislation governing the statutory scheme, while at the same time recognizing MPIC's obligation to advise and assist claimants. The Appellant had stated in her Application for Review that her non-compliance stemmed from her struggle with anxiety following the accident, indicating that contact with MPIC was difficult for her. However, the IRO

noted that the Appellant's file was well documented with issues of non-compliance and uncooperative behavior (in spite of MPIC's attempts to assist her) displaying a blithe disregard of the rules. The suspension and termination of benefits were upheld. It is from this decision of the IRO that the Appellant has now appealed.

Preliminary Issues:

Documents in Dispute

During the compilation by the Commission of the Appellant's indexed file, the Appellant provided a package of documentation dealing with some of the information which MPIC had been seeking from her prior to her April 2014 termination. Counsel for MPIC objected to the admission of these documents, indicating that they were not relevant to the issue before the Commission. The issue was whether MPIC was justified in terminating the Appellant's benefits in April of 2014, so providing information in 2018 that may or may not have addressed the inquiries being made by her case manager in 2014 was now not helpful.

At the hearing, counsel for the Appellant indicated that he was still seeking to have the documents admitted and that the Appellant was willing to testify to events which were supported by this documentation. He submitted that these documents would attest to the Appellant's credibility.

The Commission reserved its decision on the relevance and admissibility of these documents and accordingly, marked them as *Exhibits A-I for identification*.

Written Submissions by Counsel for MPIC

Many of the issues in the current appeal concern the Appellant's expressed stress when dealing with MPIC. Accordingly, through the case management of the appeal file, the Appellant requested

many adjournments of case conferences scheduled, due to psychological and medical concerns, often supported by medical reports or doctor's notes. Accordingly, counsel for MPIC advised that, given the Appellant's stress when dealing with MPIC, he would not be attending the hearing. He advised that MPIC would be relying on the material in the indexed file and would not cross-examine the Appellant. Counsel for MPIC therefore provided a written submission in advance of the hearing as well as a written reply to the written submission of counsel for the Appellant. Following receipt of all written submissions, the panel reconvened to review and consider the evidence and submissions.

Interpreter

The Commission arranged for an interpreter to assist the panel and Appellant during the hearing. On the morning of the hearing, the interpreter was delayed and while the panel was waiting for her to arrive, the interpreter appeared in the hearing room and, unbeknownst to the panel, was sent away by the Appellant who indicated she did not need an interpreter. Accordingly, the hearing proceeded without interpretation services.

Issue for Determination:

The issue before the panel was whether the Appellant's PIPP benefits were properly terminated pursuant to section 160(b) of the MPIC Act. The panel determined that the Appellant did not meet the onus upon her to show that the IRO erred in upholding the termination of her benefits.

Evidence and Submission for the Appellant:

The Appellant testified at the appeal hearing and provided documentary evidence for her indexed file.

The Appellant described her life before the MVA, indicating that she was energetic and active. She danced, helped her mother (who was in a wheelchair), did grocery shopping, went to the doctor, did banking, laundry and food preparation. She was a single mother who visited friends without fear.

She described the MVA and the physical effects which she suffered. These included injuries to her jaw, headaches, a worsening of her pre-MVA lower back pain, pain in her knee including arthritis, scarring, neck pain, and teeth pain, and a fractured tibia.

She also described the psychological effects of the MVA. She found it hard to leave the house or take a crowded bus. She suffered anxiety opening her mail and answering the phone so she avoided everything. She just wanted to be in isolation. She had nightmares about sitting in the back of the car, especially a car with a child safety lock, although she indicated that with therapy she was now capable of riding in the front seat of a car.

She was in the hospital for a month following the MVA, and after discharge she attended for physiotherapy. She started receiving psychological treatment with [Appellant's therapist] in 2012. She received a diagnosis and treatment plan for depression and Post-Traumatic Stress Disorder (PTSD). She started to work on her anxiety when riding on buses and having MRI's. She also had to address anxiety surrounding using elevators, the telephone, riding in taxis, checking her mail and responding to letters.

The Appellant described her physical therapy following the previous Commission decision, at [rehabilitation center]. She acknowledged that problems had arisen there, but explained that she often was late because she found it hard to leave the house and if the bus was too crowded she

would have to wait for the next bus. She also indicated that the exercises she was asked to perform were too challenging as she was still stiff and experiencing pain. She cancelled an appointment in April of 2012 because her mother died.

The Appellant also explained her refusal to participate in an initial assessment with [independent psychologist] in January of 2013. She indicated that she did not refuse but rather had attended [independent psychologist's] office that morning and listened to her explain the assessment and consent forms. When she had some concerns about privacy issues which she asked [independent psychologist] to explain, [independent psychologist] told her that she could not do that and that she should ask her case manager to explain. When they could not reach the case manager, [independent psychologist] advised her that she could leave.

The case manager's file record indicated that the Appellant wanted [independent psychologist] to explain the need for the assessment, which she was not able to answer.

The Appellant stated that she later met with her case manager and her therapist, [text deleted]. They discussed the consent forms and the Appellant signed them. The Appellant also told the case manager at that time that she had passed a test at [college #1] and wished to take a course there, asking the case manager to pay for it. However, the case manager refused.

The Appellant was also asked about her lack of compliance in providing accurate completed Daily Activity Logs to her case manager. She explained that every week she met with [text deleted], an MPIC employee, who would help her fill in the forms from that week. She indicated that she had a positive experience with [Appellant's MPIC case manager] and that she also discussed her income tax forms and plans to go to [college #2] with him.

The Appellant also described her contact with the Vocational Rehabilitation Consultant, [text deleted]. She did not recall receiving a letter from [vocational consultant] asking her to call her in October of 2013. The Appellant also explained that she did not provide consent to MPIC to obtain information from [text deleted] because he was her son's doctor and this had nothing to do with own condition.

She further explained that some delays were caused by her fear of opening the mail and testified that even when MPIC sent her cheques for a permanent impairment benefit for scarring, she couldn't open these letters. It was only when she went to visit her father in [country] that her son found these cheques when organizing her house, and opened them.

The Appellant explained that when she sees MPIC's correspondence, even unopened, her heart beats faster and she has anxiety and nightmares. She would put the documents on the top of the shelf hoping that she would be able to open it the next day, but could only do so when her daughter forced her to open them. Even then she was shaking and crying.

The Appellant explained that she sometimes missed her therapy sessions not only because her bus was crowded, but also because she got sick a lot from stress, asthma and high anxiety during exam time.

The Appellant indicated that she did not believe that she had ever refused or neglected to provide information to MPIC. She understood that MPIC needed to obtain the information in order to assess and grant her benefits but indicated that her psychological problems were controlling her and she could not do anything more. She stated that she would like MPIC to contact her face to face and help her with her psychological problems.

She indicated that her therapist, [text deleted], was helping her and had trained her to use things like escalators but she was still not working because of her knee problems. She had a lot of pain with psychological problems leaving the house and taking buses, as well as difficulty sleeping at night due to her nightmares.

Counsel for the Appellant submitted that the documents showed that the Appellant was participating in a reconditioning program at [rehabilitation center] and had participated in a Transferable Skills Analysis (TSA) and Labour Market Survey (LMS) in order to determine employment. MPIC sent her a letter on January 6, 2014 to request that she sign and submit an authorization form for the release of her educational information from [college #2]. This was followed by a second letter labeled “Authorization for Release of Education Information” sent on January 14, 2014, asking for a return by January 31, 2014. A third lettered labeled “Rehabilitation Program and Non Compliance” was then sent by MPIC on February 24, 2014 giving the Appellant formal notice of MPIC’s request for “Daily Activity Logs” (DAL), and the authorization forms from [college #2]. The Appellant was warned that failure to comply with this request by March 10, 2014 would result in a suspension of her benefits. Benefits were suspended on March 11, 2014 and on April 10, 2014, her benefits were terminated for supposed failure to comply with section 160(b) of the Act.

Counsel noted that it was not in dispute that the Appellant had been diagnosed with psychological conditions of Post-Traumatic Stress Disorder, Major Depressive Disorder and Panic Disorder with Agoraphobia, as a result of the MVA. Her psychological condition affected her ability to properly respond, in a timely manner to MPIC’s requests made through correspondence and telephone calls. Reports from [Appellant’s family physician] (dated December 20, 2007) and [Independent Psychiatrist] (Independent Medical Examination February 13, 2008) recognized and supported the

Appellant's complaints of anxiety, irritability and depression.

Later, MPIC provided the Appellant with psychological assessment and treatment from [Appellant's therapist]. She opined that the Appellant met the DSM V criteria for Post-Traumatic Stress Disorder and Major Depressive Disorder. [Appellant's therapist] treated the Appellant for severe anxiety and panic attacks, particularly when riding buses/taxis/cars, leaving her home, riding elevators, opening correspondence and answering calls from MPIC. Counsel referred to several notations in the Appellant's indexed file where [Appellant's therapist] recognized the Appellant's fear of answering the phone and the outside world, agoraphobia and anxiety and struggles with a constant feeling of doom.

Counsel submitted that MPIC has the duty to accommodate the Appellant's condition in this regard, taking their claimants as they find them, in accordance with sections 138 and 150 of the MPIC Act.

Some accommodation was provided in the way of face to face meetings between the Appellant and another case manager, [text deleted]. These meetings were used to request documents and assist the Appellant with completion of forms. Counsel submitted that this new procedure of meeting face to face, put in place by MPIC, created a legitimate expectation on the part of the Appellant that she would be asked for new documents via meetings and that she would have the ability to obtain assistance in completing forms in this way. These encounters with [Appellant's MPIC case manager] happened regularly between June 17 and August 22, 2013 when the Appellant informed MPIC about her plans to go to [college #2]. Unfortunately this message regarding her plans appears not to have been passed along by [Appellant's MPIC case manager] to her case manager, [Appellant's MPIC case manager #2]. However, the Appellant was also told

that further meetings would not be necessary, leaving her to conclude that MPIC would not be requesting documents so she could focus on her school and her reconditioning program.

Therefore the Appellant submitted that MPIC, given its knowledge of the Appellant's psychological condition, had created a procedure of meeting face to face in order to request forms from her, as well as to assist her with the completion of documents and provide file updates. This new procedure created a legitimate expectation in her, but it was violated by MPIC sending letters in January, February and April of 2014, in spite of MPIC's awareness of her inability to properly respond due to psychological concerns.

Counsel also pointed out numerous inaccuracies contained in the Internal Review Decision (IRD) under appeal. These mostly consisted of omissions regarding the reasons why the Appellant may have failed to conform with some expectations of MPIC, as, for example, when she cancelled a meeting at the last minute because her mother had passed away. The IRO also failed to mention two important letters from the Appellant's doctor, [text deleted]. In a letter dated November 13, 2013, he indicated that the Appellant "would most likely not be a good fit as a dental/medical receptionist (the proposed determined employment) as she is limited in her command of the English language and not always very clear as well as not being a good typist would struggle in the faster paced medical world. I also suspected sitting for hours, typing and answering phones would most likely exacerbate her back pain."

On May 29, 2014, he wrote that the Appellant was "struggling with her mood and becoming more disabled by her anxiety." He indicated that the Appellant "seems fatigue (sic) and stressed about the ongoing process with MPI and has constant feling (sic) of imminent doom to the point of having difficulty even opening correspondence as always anticipating a bad outcome from the

same.”

Thus, by ignoring this evidence, the IRO chose to ignore clear evidence of effects of the Appellant’s diagnosis of PTSD, Major Depressive Disorder and Panic Disorder with Agoraphobia and in particular their effect on her ability to properly respond to correspondence and telephone calls.

Therefore, counsel for the Appellant submitted that the Appellant’s testimony and the evidence on file established that her psychological condition substantially affected her ability to properly respond to MPIC’s correspondence and telephone calls. The Appellant requested that the Commission overturn the IRD, and allow the current appeal. The Appellant’s PIPP’s benefits should be reinstated since the date of suspension, with further assessment of other benefits referred back to the case manager.

Evidence and Submission for MPIC:

Counsel for MPIC reviewed the Appellant’s past history in the MVA and her previous appeal to the Commission. He submitted that since reinstatement of her benefits, she had repeatedly failed to provide MPIC with information. In reviewing the Appellant’s failure to provide information since reinstatement, he relied upon the details set out in the case manager’s letter of February 24, 2014. That letter set out a detailed summary of the efforts made to contact the Appellant for the information required for her injury claim. There were approximately 50 attempts made by MPIC and its service providers to contact the Appellant for information during the period between January 2013 and February 2014. The letter of February 24, 2014 served as formal notice that failure to provide the information and/or contact MPIC would result in a suspension of her benefits and possible termination. Counsel further noted that there had been an even earlier warning letter

sent to the Appellant on May 17, 2013 which requested outstanding Daily Activity Logs that the Appellant had then begun to complete (with the assistance of a case manager).

Counsel also reviewed the significant delay and noncompliance in providing Level of Function reports and authorizations, including an authorization to obtain information from [college #2] when the case manager learned through an Occupational Therapist that the Appellant was attending college on a full time basis.

However, the letter of February 24, 2014 was not met with any response and the Appellant's benefits (which had been initially suspended for a period of 30 days) were then terminated on April 10, 2014, when the necessary information was not received during the suspension period.

Counsel for MPIC acknowledged that the Appellant suffered from PTSD, Major Depressive Disorder and Panic Disorder with Agoraphobia. However, it was submitted that none of these conditions were related to the MVA. He noted that [independent psychologist], in a report dated March 11, 2013, did not agree that there was any causal connection to the MVA, finding that the Appellant had a Panic Disorder and Agoraphobia which predated the accident. Later another IRD confirmed the psychological injury was not related to the accident and was not appealed by the Appellant to the Commission.

Counsel also addressed the Appellant's submission that she had a fear of opening correspondence that caused her not to comply with certain of MPIC's written requests to her. He noted that while many of [Appellant's therapist's] reports do mention her fear of answering the telephone, she does not make reference to a psychological condition preventing her from opening mail.

[Appellant's doctor's] report dated May 29, 2014 stated that the Appellant has difficulty opening correspondence from MPIC, although this letter was dated at least one year after [Appellant's therapist] had advised the Appellant that it was very important that she open mail from MPIC.

Unlike the facts presented in cases/authorities relied upon by the Appellant, counsel submitted that the Appellant in this case had not provided sufficient medical evidence to support and corroborate her assertion that her psychological condition rendered her unable to open mail.

Counsel submitted that the Appellant had not made MPIC aware that she was unable to respond to letters due to her psychological condition and had not met the onus of demonstrating that her psychological condition "substantially" affected her ability to respond to MPIC's requests, which is the proper test.

Further, counsel submitted that MPIC made many attempts and efforts to accommodate the Appellant by repeatedly trying to contact her in a variety of ways. It is worth noting, he submitted, that certain sections of the MPIC Act even require that MPIC communicate in writing. And while the case manager and others made repeated efforts to contact the Appellant by telephone and in a variety of ways, counsel submitted that the Appellant's unilateral expectation that all information be requested of her in person was neither reasonable nor reasonably held. It would seem more logical that in person meetings could cause even more anxiety to the Appellant than communication by mail, a mode of communication which is mandated upon MPIC under many parts of the MPIC Act. It would not be unreasonable, he submitted, to expect that arrangements be made by the Appellant to have her mail opened and explained to her and not simply to go unheeded for the entire suspension period.

Counsel submitted that to the extent that the Appellant had made recent efforts to provide some of the requested information, the question before the Commission is whether MPIC was justified in terminating her benefits at the time the decision was made in April of 2014. Accordingly, providing information much later that may or may not have addressed the inquiries of the case manager at the relevant time is not helpful and the documents found under *Exhibits A-I for identification* were not relevant or admissible and should not be considered by the panel.

It was submitted that the onus is on the Appellant to show that the decision to terminate her benefits was unreasonable in all of the circumstances. Failing to provide required information makes it very difficult to manage claims and to justify the continued payment of PIPP benefits. Even when given a warning, at the time of her suspension, and an opportunity to comply, the Appellant did not do so. Having provided the Appellant with the benefit of the doubt, and one last opportunity to comply following months of contact effort by the case manager and service providers, MPIC was justified in terminating the Appellant's benefits. The Appellant's explanation for her failure to comply has not been sufficiently supported by the medical evidence on file to discharge the onus upon her. Accordingly, counsel submitted that the Appeal should be dismissed and the decision of the IRO upheld.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that she did not refuse or neglect to produce information without valid reason contrary to section 160(b) of the MPIC Act which provides that:

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;

The panel has carefully reviewed the Appellant's testimony, along with the documentary evidence on file and the submissions of the parties. With respect to the documents in dispute found in *Exhibits A-I for identification*, the panel has concluded that these are not relevant to the issue before the Commission. These documents were provided by the Appellant long after MPIC invoked section 160 of the Act for her failure to provide such documents, and so, are not relevant to the Commission's review of MPIC's decision to terminate her benefits in April of 2014.

The panel recognizes that MPIC has a duty to assist the Appellant, as set out in section 150 of the Act and described by the Commission in its decision of December 8, 2011 (AC-09-024). In the appeal before this panel, the Commission has been provided with extensive evidence regarding MPIC's attempts to assist the Appellant and accommodate her in a variety of ways.

Both parties agreed that the Appellant suffers from a psychological condition. Counsel for MPIC did not agree that this condition was caused by the motor vehicle accident. In spite of this, MPIC did recognize this condition and attempt to provide some accommodation.

Counseling was provided by [Appellant's therapist], who provided reports to the Appellant's case manager. Neither of her most recent reports, dated January 21, 2013 and November 27, 2013, make mention of the Appellant having any difficulty with opening correspondence.

Case manager's notes dated January 10, 2013 had reported [Appellant's therapist's] advice to her that the Appellant had developed agoraphobia, resulting in fear of leaving her house, opening her

mail and answering the phone.

The same note described the case manager's difficulties with the Appellant and her request of [Appellant's therapist] for assistance:

I'm still having difficulty with [Appellant]. I have provided her letters since October with enclosed documents that she has not responded to and there are letters with deadline dates in them. She can't ignore them, I have told her it could result in termination or suspension of benefits. Information is required to continue paying. I advised [Appellant's therapist] I spoke with [Appellant] yesterday and she will be bringing her ([Appellant's therapist]) the letters she has received for [Appellant's therapist] to assist her in completing forms enclosed. I informed [Appellant's therapist] the forms are self explanatory and I explained to [Appellant] how to complete them. (Reason why I have wanted to meet and have told her I would assist her). [Appellant] wants [Appellant's therapist] to teach her how to fill them out ([Appellant's therapist] said she could likely do on her own)...

Thus, the case manager recognized some difficulty, but set out different methods for accommodating it, advising the caregiver ([Appellant's therapist]) of the problem and asking for her help.

The case manager's note also indicates that the Appellant was advised of the importance of opening her mail as well as MPIC's willingness to find ways to assist her in this regard. As noted by counsel for MPIC, arrangements had previously been made and could have been made with others to have the Appellant's mail opened and explained to her.

Later, in a report dated May 29, 2014, [Appellant's doctor] mentions this difficulty, commenting upon the Appellant's stress with the ongoing process with MPIC and her constant feeling of imminent doom, to the point of having difficulty even opening correspondence.

However, the Appellant's assertion that she could expect all communication with her to be held

only in person was not a reasonable expectation, and the panel does not find that MPIC acted unreasonably in its dealings with her. MPIC was not insistent upon a single method of communication with the Appellant. Their approach towards accommodating her difficulties was multifaceted, flexible and fair. Some of the methods used to communicate with her in recognition of her issues included letters, telephone calls, face to face meetings with MPIC staff to assist her, as well as communications through various third party caregivers such as physical and psychological therapists and a vocational consultant.

All of these methods have been documented in the case manager's letter to the Appellant dated February 24, 2014. A portion of this letter has been reproduced below and illustrates the comprehensiveness of these attempts.

On May 17, 2013, you were provided a letter notifying you that failure to provide information requested of you could result in the suspension or termination of your entitlements as outlined under Section 142, 149, and 160 of our Act (copy attached).

You met with Supervisor, [text deleted] on May 24, 2013, you indicated you could not move forward given the relationship with myself and requested another case manager. In response to your request, [Appellant's MPIC case manager] was assigned to provide assistance to you. [MPIC Supervisor] provided you a further opportunity without suspension to provide the previously requested information.

Following your meeting with [MPIC Supervisor], [Appellant's MPIC case manager] attempted to contact you on June 6, 2013. He did not get an answer and could not leave a message.

- *On June 7, 2013, [Appellant's MPIC case manager] called your home number at 12:52 p.m. there was no answer and he was unable to leave a message. However at 3:08 p.m. [Appellant's MPIC case manager] did make contact with you and informed you he had been asked to assist you. You advised you had been expecting his call. An appointment was scheduled for June 12, 2013.*
- *On June 12, 2013, you contacted [Appellant's MPIC case manager] to cancel your appointment as you were ill and unable to attend. You advised you would call to reschedule.*
- *On June 14, 2013, [Appellant's MPIC case manager] attempted to contact you regarding the Daily Activity Logs and obtaining your 2012 tax returns. There*

was no answer and he was unable to leave a message. You did however contact [Appellant's MPIC case manager] on this same date at 10:53 am and scheduled an appointment in our office on June 17, 2013.

- *On June 17, 2013, you met with [Appellant's MPIC case manager] and together you completed Daily Activity Logs for the dates June 8 - June 12, 2013, and you signed an authorization for release of health information for [Appellant's son's doctor]. You did not have your tax return as you were still waiting on your accountant but should have it next meeting.*
- *On June 18, 2013, you attended the claim center and saw [Appellant's MPIC case manager]. You withdrew your authorization for [Appellant's son's doctor] as you did not recall seeing [Appellant's son's doctor]. For the purpose of completing the Daily Activity Logs you were advised for the next meeting to take nightly notes so you could remember what you did each day. It was explained to you that it was our expectation the forms be completed thoroughly.*
- *On June 20, 2013, you completed one week of Daily Activity Logs together. June 13 - June 19, 2013. You advised you had a hard time remembering what you did. [Appellant's MPIC case manager] suggested you do them daily, so it is easier to remember what you had done. You were also reminded your 2012 tax information was required by June 30, 2013.*
- *On July 5, 2013, [Appellant's MPIC case manager] made an attempt to contact you but there was no answer and he was unable to leave a message.*
- *On July 8, 2013, [Appellant's MPIC case manager] spoke to you in regards to providing assistance in completing the requested Daily Activity Logs. You advised you were having difficulty doing them at home. He offered to schedule an appointment but you were not well and you would call him back the next day to schedule a meeting.*
- *On July 10, 2013, you contacted [Appellant's MPIC case manager] and set an appointment for July 11, 2013*
- *On July 11, 2013, you met with [Appellant's MPIC case manager] who provided additional assistance with completing the Daily Activity Logs. You provided completed forms of July 3,9,10, and half of July 11, 2013. [Appellant's MPIC case manager] advised these were not acceptable and again provided assistance and an example.*
- *On July 25, 2013, [Appellant's MPIC case manager] followed up by phone to provide his assistance if required. He asked if you wished to meet to either assist you, or collect the logs you had completed. You advised if you need help, you will call next week. You were asked to call [Appellant's MPIC case manager] regardless, so that he could obtain whatever completed logs you had.*

August 22, 2013, was your next scheduled appointment as outlined at the beginning of our letter however that was the last contact MPI has had with you. You have had no further contact with MPI despite our continued efforts to assist you and manage your claim as follows:

- On September 9, 2013, you were sent a letter in follow up to your request for a copy of your file. I was informed following your meeting with [Appellant's MPIC case manager] on August 22, 2013 you wanted a copy of your file. As this request must be made in writing the letter outlined what is required when requesting a copy of your file. To this date however you have not responded, or made any written requests.
- On September 10, 2013, MPI was contacted by your therapist. We were informed you had enrolled in school at [college #2] on a full time basis and classes were already in session. You had changed your Rehab program time and were now attending after school, at 4:30 or 5:00 p.m. for about 1-1 ½ hours.
- Your therapist informed me that you were told to contact your case manager to advise of these changes. You mentioned to [Appellant's MPIC case manager] in your meeting of August 22, 2013 that you wanted to speak with me about a course you were interested in taking; however to date you have not contacted me regarding this interest.
- On September 11, 2013, Vocational consultant [text deleted] was contacted. Her assistance was requested to obtain the details of your educational program in consideration of the Transferrable Skill Assessment she completed previously. As you are aware [vocational consultant] had met with you on June 18, 2013. She completed a Transferable Skills Assessment (TSA) and it was determined given your skills, education, work history and physical abilities you were capable of holding employment as a Dental & Medical Receptionist.

The following are [vocational consultant's] attempts to contact you:

September 11	I was able to leave a message on your machine
September 17	I believe I left a message, there was a beep, although no outgoing message
September 18	No answer, no answering machine
September 23	Called numerous times between 4:45 pm and 5:15 pm. No answer, no machine
September 24	No answer, no answering machine
September 27	Called 3 times at 6:45 line was bus each time
September 30	Called twice, no answer, no answering machine
September 18	Letter sent regular mail and registered.

- *On September 16, 2013, [Appellant's MPIC case manager] made a phone attempt at 10:48 a.m. to follow up and offer his assistance in completing the Daily Activity Logs provided to you on August 22, 2013. A message was left on your voicemail to contact him.*
- *On September 18, 2013, [Appellant's MPIC case manager] attempted phone contact at 8:32 a.m. regarding completion of Daily Activity Logs. There was no answer and he was unable to leave message.*
- *On September 18, 2013, [text deleted], Vocational Consultant, sent you a letter outlining the dates she had attempted contact (as noted above). As she had made numerous attempts to contact you by phone she requested by way of mail that you contact her by October 9, 2013 to discuss the educational program you were enrolled in.*
- *On September 19, 2013, [Appellant's therapist] advised you left her a message wanting to change your appointments scheduled with her to late Friday. [Appellant's therapist] phoned you and left a message that she could not accommodate your request. You showed up at her office that day, however she was with a client and she could not see you. [Appellant's therapist] (sic) attempted to follow up with you on scheduling your appointment however was unsuccessful.*
- *On September 29, 2013, case manager [Appellant's MPIC case manager] attempted contact at 2:04 p.m. There was no answer and he was unable to leave a message. You had not returned his last three calls. He noted however in the past, you had called back after recognizing his phone number on call display. .*
- *On October 15, 2013, Vocational Consultant [text deleted] was contacted; she advised she had not yet received a response to her letter of September 18, 2013.*
- *October 15, 2013, [Appellant's therapist] was contacted and she advised she had not heard from you since she last spoke with MPI. Your last visit with [Appellant's therapist] was August 20, 2013.*
- *On October 16, 2013, [Appellant's MPIC case manager] made a further phone contact attempt at 2:19 p.m. and there was no answer. He noted however in the past, you would call back even when your answering machine was turned off you would recognize his phone his number.*
- *October 23, 2013, the vocational consultant provided an update that you had not claimed her registered letter and it was returned to her office. You received the post office notice on October 4, 2013, and the second notice October 10, 2013. The letter was returned to the consultant on October 22, 2013. This same letter was also sent through regular mail.*
- *October 29, 2013, [rehabilitation center] provided an update. You continued to attend therapy 4 times per weeks. You had reached 22 lbs lifting and 17 lbs to*

shoulder height. You were still attending school full time. (MPI was still unaware of what educational program you were enrolled in, or if it would lead to employment within your capabilities.) Your therapist confirmed you were asked to contact MPI and she also advised you had a new cell phone number. You had not informed MPI of the new cell phone contact number in which to reach you.

- *On October 30, 2013, a letter was provided to you and all your care providers outlining the Residual Capacity Determination and the job selection of the Dental and Medical Receptionist. All the providers were in approval except [Appellant's doctor] who indicated in a report of November 13, 2013 that you were in current studies until May 2014 at which time you were hoping to seek employment in the Lab Tech industry.*

[Appellant's doctor] commented you would be better in a more flexible sit stand position, not having to speak to public excessively due to your limited command of the English language and not being a good typist he indicated you would struggle in the faster paced medical world. He felt sitting for long hours would exacerbate your back pain. As outlined in [vocational consultant's] TSA report of July 24, 2013 the Dental and Medical Receptionist position allows for flexibility and you had previous experience while in your Pharmacy practicum working with people, and computers in a fast paced environment filling prescriptions. Your knowledge of English based on the Canadian Language Benchmarks was a level 8 out of 12 which is very acceptable for speaking, listening and in the written understanding of the English language.

- *On November 4, 2013, [Appellant's MPIC case manager] attempted to contact you on your cell phone, there was no answer but he was able to leave a voice message. The message detailed by [Appellant's MPIC case manager], was he needed more information on the [college #2] program you are enrolled in. Your residence number was also called but no answer and no voicemail available.*
- *On November 22, 2013, [Appellant's MPIC case manager] attempted to contact you at 1:45 - no answer at your residence number and no room to leave message on cell phone voicemail. School information is still required, and Daily Activity Logs have not been provided since August 2013. Multiple attempts to reach you since August 22, 2013 have been unsuccessful.*
- *November 29, 2013, [rehabilitation center] was contacted. You had attended the rehabilitation program up until the week of November 25, 2013. You had been working independently within your program and had not mentioned your knee for a long time. You advised however that you had started exams and were really busy. You were feeling stressed with it all and couldn't come to your program. To try and eliminate your stress I suggested the option of cutting back your visits to one time per week until exams were done.*
- *December 3, 2013, [rehabilitation center] attempted to contact you to arrange your next appointment. There was no answer at home and your voice mail on your cell phone was full.*

- *December 9, 2013 to December 20, 2013 [rehabilitation center] made daily attempts to contact you at both phone numbers. There was no answer and a message could not be left.*
- *January 6, 2014 [rehabilitation center] made a further attempt to contact you at both numbers without success.*
- *January 6, 2014, an authorization was sent to you for your signature to request school information from [college #2].*
- *January 14, 2014, as there was no response to our letter of January 6, 2014 a second letter was sent with release of information authorization for [college #2].*
- *January 28, 2014, [rehabilitation center] was contacted. Your attendance records indicated you cancelled your appointments of
November 21, 2013
November 22, 2013
November 25, 2013
Your last attendance date was November 18, 2013, and you have not returned to your Rehabilitation Program, you have not called and have not made yourself available to be reached.*
- *January 28, 2014, I attempted to contact you at your home number. There was no answer and I was not able to leave a message. I called your cell phone number and left a message to request that you contact me as we had not heard from you since August 2013.*
- *January 31, 2014, [Appellant's MPIC case manager] made a further attempt to contact you and was unable to reach you at home. He was however able to leave a voice message on your cell phone that advised you to call either him or myself to provide an update. He left you a voice message explaining failure to do so may jeopardize your benefits.*
- *February 5, 2014, [Appellant's therapist] was contacted and confirmed she has still not heard from you.*

The panel finds that MPIC provided many opportunities and assistance for the Appellant to comply with its requests for information. The Appellant's continued disregard of these requests and lack of cooperation was not reasonable. The evidence did not establish that her psychological condition was a reasonable excuse for the lack of cooperation, in light of the accommodations and assistance offered by MPIC in this regard.

The Commission also notes that the Appellant relied upon the Commission's decision in RH [2009]M.A.I.C.A.C.D.#12. This decision is instructive but distinguishable. In that case, the appellant had clear corroborative evidence (through medical reports and other witnesses) establishing the difficulties which his psychological condition posed in cooperating with MPIC. MPIC did not acknowledge these issues or offer him assistance at that time. In this Appellant's case, MPIC acknowledged and recognized some of the Appellant's difficulties and put in place procedures to ameliorate and accommodate her discomfort.

The Commission therefore finds that the Appellant failed or neglected to provide MPIC with relevant information. The explanation put forward by the Appellant for this failure was not, in the panel's view, a reasonable one, having regard to the significant efforts made by MPIC to address and accommodate her psychological difficulties and her apparent lack of cooperation in spite of these efforts. MPIC discharged its duty to the Appellant to advise and assist her, but the Appellant did not provide the required information. Therefore, the Appellant's appeal is dismissed and the decision of the IRO dated September 24, 2014 is upheld.

Dated at Winnipeg this 26th day of July, 2019.

LAURA DIAMOND

BRIAN HUNT

GUY JOUBERT