Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [text deleted]

AICAC File No.: AC-20-012

PANEL:	**Pamela Reilly, Chairperson** **Janet Frohlich** **Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Counsel];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Andrew Robertson.**
HEARING DATE:	**June 14, 2022**
ISSUE(S):	**Whether the Appellant's IRI benefits were properly terminated based on his failure to participate in a rehabilitation program.**
RELEVANT SECTIONS:	**Section 160(g) 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 CONFIDENTAIL. References to the appellant's personal health information and other personal, identifying information have been removed.

Reasons For Decision

Background:

On August 1, 2016 the Appellant rolled his vehicle into the ditch several times ("the MVA"). He was not wearing his seatbelt and had a blood alcohol level that exceeded the legal

limit. The Appellant was taken by air ambulance to the [hospital] where he was treated for nine days and then discharged.

On discharge, the Appellant was diagnosed with gall bladder injury; compression fracture at L1; transverse fracture at C2; multiple fractures to his left ribs; single fractured rib on right side; and, evidence of bilateral pulmonary contusions. The Appellant had sustained a blow to his head with a loss of consciousness, although imaging did not reveal any signs of trauma. He was diagnosed with concussion but no neuropsychological consult or traumatic brain injury screening was deemed necessary.

Although the Appellant had an employment history as an [occupation 1] in the [text deleted] industry, he was unemployed at the time of the MVA. In accordance with the Act, the Appellant became eligible for Income Replacement Indemnity ("IRI") benefits after 180 days following the MVA. MPIC determined his occupation as "[occupation 2]" and paid IRI in accordance with that determined occupation.

On January 23, 2017, the Appellant completed a Functional Capacity Evaluation ("FCE") at [rehabilitation center] ("[text deleted]") where he demonstrated the ability to perform medium level strength demands. The Appellant attended [rehabilitation center] for physiotherapy treatments, which were covered by MPIC's Personal Injury Protection Plan ("PIPP") benefits.

The Appellant initially regularly attended his three times per week physiotherapy appointments. However, at the end of February and into March 2017, the Appellant missed a number of appointments without calling to cancel.

On March 20, 2017 the Appellant's case manager sent a letter to the Appellant confirming his three missed appointments in March, two of which he neglected to call and advise of his non-attendance. The letter advised the Appellant that he was expected to fully participate in the recommended physiotherapy.

On April 5, 2017 [rehabilitation center] personnel advised the Appellant's case manager that he had not attended his scheduled therapy sessions since March 22, 2017. On April 7, 2017 the case manager sent a second letter to the Appellant warning that his benefits may be suspended if he failed to comply.

After receiving MRI results for the Appellant's left shoulder, and a recommendation from [text deleted] [Doctor #1] of [rehabilitation center], MPIC arranged for the Appellant to commence a work hardening, rehabilitation program at [rehabilitation center], on May 1, 2017.

On May 3, 2017 the Appellant attended [rehabilitation center] but left after five minutes because he was ill. On May 5, 2017, the Appellant's case manager sent a third letter, warning the Appellant his benefits would be suspended for failure to comply, and advising that he must provide objective written medical evidence of an inability to attend his program.

The Appellant did not attend his rehabilitation appointments for May 5th or 8th, which resulted in a verbal warning. He then failed to attend his appointments for May 9-12 inclusive. On May 12, 2017 the Appellant's case manager issued a decision letter that suspended the Appellant's entitlement to IRI.

On June 22, 2017 the Appellant contacted his case manager and requested that MPIC re-start his rehabilitation program at [rehabilitation center]. In a letter dated June 23, 2017, the case manager re-started the rehabilitation program on the strict condition that if the Appellant missed an appointment without an objective written medical reason, his benefits would be terminated.

On July 24, 2017 the Appellant failed to attend his rehab session. On July 25, 2017 the case manager spoke with the Appellant who advised he missed the prior day because he was in [text deleted], MB and his vehicle would not start for his return trip. He did not call to advise he would miss his July 24th appointment because he was too stressed.

On July 26, 2017 the case manager issued a decision that terminated the Appellant's IRI and PIPP benefits, stating that the Appellant was able to return to full time employment pursuant to s.110(1)(c) of the Act. Also, because he had missed his rehabilitation appointment on July 24th without a valid medical reason supported by a medical note, and had failed to advise the program that he would not be attending, his PIPP benefits were terminated, pursuant to section 160(g). This decision was re-issued on August 22, 2017 to correct typographical errors ("the 2017 CMD").

Internal Review and Case Management History

The Appellant filed an Application for Review dated September 6, 2017 ("AFR") stating that he could not find a job as a "[occupation 2]" because he was, in fact, an "[occupation 1]." He submitted that "[occupation 1]" was a "heavy job" that required climbing high ladders with heavy tools and wire cable. His doctor had prescribed him Tylenol 3 so he could "survive the pain." An Internal Review Decision dated November 10, 2017 ("the 2017 IRD") upheld the 2017 CMD.

The Appellant continued to deal with MPIC for reimbursement of medication expenses. MPIC denied medication expenses for opioid and kidney function medication.

The Appellant retained counsel who, on October 21, 2019 filed a subsequent Application for Review ("the 2019 AFR") of the 2017 CMD, and included a written submission ("the Submission") to the Internal Review Officer ("IRO"). The Submission revisited the issue of the Appellant's determined employment and termination of PIPP benefits, and also addressed the medication and kidney function issues.

The Submission pointed out that MPIC's determined employment of "[occupation 2]", was invalid because the Appellant was never licensed as a [occupation 2]. Rather, he was an "[occupation 1]", which was a job that required heavy manual and physical labour. The Submission argued that the documented medical evidence supported the Appellant's position that he could not return to his heavy work duties as an [occupation 1].

On the issue of the applicability of section 160(g), the Submission argued that, contrary to the case manager's stipulation to provide a valid medical reason for non-participation in his rehabilitation program, the legislation simply requires a "valid reason." The Appellant had a valid reason. Therefore, PIPP benefits should be reinstated.

The IRO issued another IRD dated November 27, 2019 ("the 2019 IRD"), which considered the above issues and affirmed the conclusions in the 2017 CMD. In particular, it upheld MPIC's determined employment of "[occupation 2]" and therefore the Appellant met the strength demand for the determined employment. The 2019 IRD also upheld prior findings that the Appellant failed to attend his rehabilitation program without a valid reason, and without notice to his case manager or the administrators at [rehabilitation center].

The entirety of the Applications for Review were therefore dismissed. The Appellant appealed the 2019 IRD to the Commission. The Appellant did not pursue the medication issues with the Commission.

Post 2019 IRD History

The Appellant retained new counsel and through various case management processes and discussions with MPIC counsel, two additional MPIC decisions were issued. On January 26, 2022 ("the Jan 2022 CMD"), the Senior Case Manager issued a decision, which stated that following a review of the new information presented, MPIC had revised the Appellant's determined employment to "[occupation 3]" National Occupation Classification ("NOC") Code 7242.

MPIC acknowledged that, in fact, the Appellant's pre-accident job demands fell within the category of "very heavy duty". Therefore, MPIC rescinded its decision to terminate IRI based upon section 110(1)(c). However, the Jan 2022 CMD did not affect the termination of PIPP entitlements pursuant to section 160(g), as set out in the 2017 CMD.

On February 22, 2022, another letter from the Senior Case Manager ("the Feb 2022 letter) emphasized that the Jan 2022 CMD did not alter the decision to terminate PIPP benefits pursuant to section 160(g). The letter confirmed as follows:

> If AICAC were to overturn the termination, [the Appellant's] IRI benefits would be reinstated back to that date and would continue forward from that date without any interruption."

Issue:

Did MPIC properly terminate the Appellant's IRI benefits pursuant to section 160(g) of the Act?

Decision:

The Panel finds that MPIC did not properly terminate the Appellant's IRI benefits pursuant to section 160(g). The Panel allows the appeal and rescinds, in part, the November 27, 2019 IRD that dealt with the termination of the Appellant's IRI and PIPP benefits pursuant to section 160(g). For greater certainty, the Panel also rescinds the IRD dated November 10, 2017.

The Hearing

As a result of safety considerations arising from the pandemic, and with the parties' consent, the hearing of the appeal was conducted remotely, through videoconference technology. The Appellant attended via videoconference utilizing the Commission's videoconference facilities in its Public Access Work Station ("PAWS") office.

In preparation for the hearing, the Commission compiled an Indexed File, which contains all documents agreed upon by the parties as evidence to be relied upon at the hearing. These documents are numbered for ease of reference by the parties and the Panel. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

At the outset, the Chair acknowledged that English is not the Appellant's first language, and requested that he advise the panel or counsel, if he did not understand the questions, or needed further explanation.

Appellant Opening Statement:

Appellant Counsel explained that he would make a detailed opening statement with reference to the Indexed File, for the purpose of creating a time line to provide context for the Panel. He would follow his opening with minimal questions to the Appellant in direct, and then close with a brief bullet point summary.

Appellant Counsel emphasized that the Appellant's rehabilitation program involved two distinct time periods, which consisted of his pre and post-suspension attendance. With reference to the Attendance Report attached as Appendix A to the Work Hardening Discharge Report, Counsel noted that the post-suspension rehabilitation program began on June 26, 2017.

He pointed out that the Attendance Report showed the Appellant did not attend on June 27th because of "Two Dr's appts.", which the Appellant had made MPIC aware of, before the rehabilitation program was restarted. On July 17, 2017 the Attendance Report showed that the Appellant "left early 12 mins. Reason: Doctor's appt." The only other missed date was July 24, 2017, otherwise the Appellant had 100% attendance.

Appellant counsel stated that the Panel would hear that the Appellant's son lived in [text deleted], and that the case manager refused assistance with accommodations because the Appellant had access to his son's residence.

Further, Appellant Counsel stated that the Panel would hear evidence that the Appellant lived hours' [text deleted] drive from the city and had to take breaks during his drive because he could not sit for long periods, and was experiencing the after effects of a concussion. The Appellant would sleep in his truck to avoid the drive back and forth to his work hardening program.

He submitted that the Panel would hear evidence of how the Appellant had to travel to his house in [text deleted] and that his vehicle would not start, which caused him to miss his work hardening appointment. Counsel pointed out that when the Appellant's IRI and PIPP benefits were terminated, he was one week away from completing the work hardening program. He said that the case manager "punished" the Appellant and "piled it on" by adding the section 160(g) termination to the section 110(1)(c) reason for termination.

Counsel reviewed specific Indexed File documents that recorded the Appellant's pain medication and Permanent Impairment ("PI") in early 2019, as well as the Appellant's use of a walker in late 2019, to illustrate the extent of the Appellant's injuries

Counsel said that the Appellant should not have been in the work hardening program at [rehabilitation center] because [Doctor #1] knew of the Appellant's rotator cuff tear. He referred to the July 17, 2017 Work Hardening Progress Report as evidence that the Appellant experienced pain in his left shoulder (which had the torn rotator cuff), and that he was in the wrong program.

Nonetheless, he said that the Appellant put forward good effort, and was able to perform medium strength demands. This report was the basis for [Doctor #1] advising the Appellant's case manager on July 25th, that the Appellant was able to hold his determined employment.

Counsel said that the Appellant would speak to his pain and suffering, and speak to his reasons for not attending the rehabilitation program on July 24th. Counsel submitted that the Appellant's absences prior to the reinstatement of the work hardening program were "water under the bridge".

He said the Appellant would speak to his use of alcohol to manage pain, but never missed appointments because of his alcohol use. Counsel concluded that the Appellant had a

valid reason for missing his appointment, and that the IRD was completely wrong and should be overturned.

MPIC Opening Statement

MPIC Counsel confirmed the issue is whether the Appellant failed to follow or participate in his rehabilitation program, without a valid reason. Counsel submitted that factually, the [rehabilitation center] program was one continuous program that was interrupted and re-started, rather than two distinct programs. When considering the failure to participate, the Panel should apply a purposive interpretation to section 160(g) and consider the entirety of the absences, both pre and post-suspension.

Counsel submitted that the warnings and steps taken by MPIC were akin to progressive discipline in a labour law context. He stated that MPIC did not take the position that the only valid reason could be medical, but would review the Appellant's medical reasons for non-participation, which provided insufficient detail to constitute a reasonable excuse. MPIC's position was that the case manager told the Appellant what was required, but he failed to follow those instructions.

Further, MPIC would not take the position that MPIC's first employment determination was correct, which was irrelevant to establishing the [rehabilitation center] program, in any event. The [rehabilitation center] program was not based upon the Appellant's employment classification, but rather, on available medical evidence, and there was no evidence that the Appellant thought the program was inappropriate for him.

MPIC Counsel submitted that the role of the Panel was to determine whether MPIC's decision was correct based upon the evidence.

Appellant direct examination:

The Appellant began by explaining what happened on July 24, 2017 and the circumstances that resulted in the termination of his benefits. He said that he received a

call from his neighbour in [text deleted], MB who said that the Appellant's house door was open. He thought his house may have been broken into. It was the weekend and so he drove to [text deleted] to investigate. When he arrived he found everything in order. He decided to stay overnight and leave for [text deleted] early the following morning.

The Appellant said that he drove a [text deleted] truck with a diesel engine and his truck would not start the next morning. He suspected his battery was dead. By the time he found somebody to give him a boost, and knowing it was a [text deleted] hour drive back to [text deleted], he "knew he could not make [his] appointment for physio." He said he did not remember if he contacted [Doctor #1] about not attending that day. He said that he always tried, "Especially because that medical notice." He was told his benefits would stop if he did not have the "medical record".

Appellant Counsel read an excerpt from the June 23, 2017 MPIC letter that reinstated the Appellant's rehabilitation program, as follows:

> "…should you not attend any part of your rehabilitation program without valid medical reason supported by a doctor's note…your entitlements under PIPP will be terminated as per Section 160…"

The Appellant confirmed this was what he meant by 'medical notice' and 'medical record'.

The Appellant said that he had a concussion after the MVA, but did not know what that meant. He testified, as follows:

> I could not organize, had headache, dizziness and I was sleeping in my truck in [text deleted]. That was very difficult…I was lost. I even walk on the street – I don't know where you were going. [sic]

The Appellant denied having prior memory or confusion issues, and explained the steps he took to make sure he attended his appointments.

Prior to his May suspension, the Appellant testified that he explained to [Doctor #1] that he did not understand why he was forgetting things. The Appellant confirmed [Doctor #1]'s April 18, 2017 letter to MPIC in which [Doctor #1] stated that the Appellant had no method to trigger his memory and would therefore obtain a calendar. The Appellant said that he purchased three calendars to write down appointments so that he would not miss what he had scheduled for the next day. This strategy helped him, and he continued to use it after his rehabilitation program re-started.

The Appellant said that the last time he drank was in April or May 2017. He referred to a letter dated June 6, 2019 from Family Physician, [Doctor #2] that stated the Appellant always presented looking alert and oriented, and denied any ongoing alcohol abuse. [Doctor #2] had previously recorded his abstinence from alcohol since May 2017. In testimony, he denied that he was an alcoholic and agreed that he was a casual drinker.

He denied that his confusion and headaches were the result of drinking. He said they were related to his concussion and repeated that, at the time, he did not know what a concussion was. He denied that he had ever missed physiotherapy appointments due to alcohol.

The Appellant said that he was separated from his wife and living in [text deleted], which is [text deleted] kilometers from [text deleted]. Before the first suspension of his benefits he was driving between [text deleted] and [text deleted], which took about [text deleted] hours. He said that he needed to take at least two breaks because his back could not handle sitting for long periods.

Counsel referred the Appellant to his case manager's April 18, 2017 file note that documented the return of the Appellant's driver's licence. The Appellant confirmed this and said that he did not have his licence because of his medical condition. He said that he had previously relied on his wife to give him a ride to his appointments.

The Appellant said that part of the time he stayed with his [child] in [text deleted], and his wife did not always have the time to drive him the [text deleted] kilometers into the city. He later learned that he could ask MPIC for accommodation assistance if he lived a certain distance from his physiotherapy location. He said he asked his case manager for help obtaining accommodations, but was apparently told that he would receive assistance if he showed that he was staying with his [child] for two weeks.

The Appellant spoke to his missed MRI appointment in March, saying that he got bad headaches, which he managed with 2 sleeping pills and 3-4 Tylenols. Nonetheless, he could not control the headaches. He still had a headache when woke up and could not make the appointment.

The Appellant explained his May 3, 2017 rehabilitation visit, which documented that he arrived but then left after five minutes. He said that after his MVA he was tripping on his left leg, but he did not know why. On this occasion he had tripped and hit his head, which made him sick, but he nonetheless went to the appointment to show them he was sick, and not because of alcohol. His illness lasted 3-4 days.

The Appellant confirmed that when he restarted the rehabilitation program he used his three calendars. He said they helped him plan his daily events, both in terms of what he planned to do and what he had already done. He said this helped his memory to slowly get better.

In response to Counsel's question about his experience in the work hardening program in June and July of 2017, the Appellant said that he suffered and reported pain "every time". He described his experience as physical torture. He also experienced mental stress about the requirement to provide a medical reason for absences. He said that he did not have a doctor and could not get an appointment without waiting 3-4 days. This gave him "mental stress".

He said that prior to his suspension, he managed his pain with extra strength Tylenol. He said he asked for stronger medication but a doctor told him not to use Tylenol 3. He asked at the drug store what to use and added 4-5 Ibuprofen to kill the pain. He repeated that he reported his level of pain at every rehabilitation session. The pain was steady, and during the program he would lay for ½ an hour on a special bed with heat, to help him continue. He did not want to refuse any of the tasks he was asked to do.

He said that after every session the pain was very bad, and despite using more Tylenol, nothing would stop the pain. He admitted that he had sometimes mixed alcohol and Tylenol to manage pain, but he stopped this. He talked to [Doctor #1] about asking his doctor for stronger pain medication so that he could finish the program. His MD, [Doctor #3], ultimately prescribed Tylenol 3. He said that he took five "T3s" per day as well as three Gabapentin, which effectively managed his pain.

In response to a question about his missed appointments, the Appellant explained as follows:

> After that concussion I wasn't ready, mentally, to control everything, probably for the pain; difficulties with the concussion, the headache. That's the only reason, and I had no help. Nobody want to send me to specialist until [Doctor #4]. The case manager put visit to neurologist on hold. I didn't know why I couldn't manage. I was mad at myself. I couldn't control anything. I was lost. I don't know how to explain.

The Appellant said it was a shock when his benefits were terminated. He did not know what to think because he had forced himself to physically and mentally satisfy the rehabilitation program and so, in his mind, he had done nothing wrong

After his benefits were terminated, and for approximately the next year, he was forced to rely on his wife or [child] to pay whatever they could afford for his food and medication

expenses. The Appellant said that he applied for CPP Disability benefits, which he eventually received. He said this was a very stressful and difficult time for him.

The Appellant explained that he went from using a cane, to using a walker. However, he could not walk far and has since received a wheelchair supplied through Homecare. He was also unable to sleep in a normal position and Homecare supplied him with a hospital bed, which allows him to sleep in a sitting position.

He said that his injury has disabled him from returning to his former [text deleted] work.

Appellant cross-examination

The Appellant confirmed that his house was located in [text deleted], MB. He said that in 2017 he sometimes lived with his [child] in [text deleted], MB, which was approximately a [text deleted] hour drive to his program at [rehabilitation center].

He also sometimes lived at his wife's apartment in [text deleted]. He and his wife were separated, and she would only accommodate him for perhaps a day or two, once per week. His wife babysat their [child]'s children in [text deleted], and so she sometimes stayed in [text deleted], too. The Appellant agreed that he sometimes lived in his truck, which he parked in [text deleted].

On the issue of his lack of transportation, the Appellant said that, until he got his driver's licence back, he relied on his wife to drive him to appointments. He said his [child] worked and therefore, was not available. He had no other friends or family on whom he could rely for transportation.

With reference to his case manager's file note of March 8, 2017 that said he missed three physiotherapy visits (only one of which he called to cancel), he agreed with the note that said he could not get his wife to drive him to the appointments. Because he was not driving, his wife used his vehicle. He explained, "…if she had something else she didn't

want to give me a ride." He said, "She was doing me a favour. We were separated. I couldn't say: 'you have to.'"

The Appellant admitted that he had been told, and was aware, that he was supposed to call if he needed to miss an appointment. He could not remember why he did not call to advise that he would miss his appointments for March 1st, 2nd and 3rd. He said that he always tried unless his phone did not work, but in this particular case, he could not remember.

The Appellant admitted that he should have probably called a taxi, or taken steps to put in place a travel plan if his wife refused him rides in the future. He said he spoke to his case manager about steady living accommodations, and he described his understanding of her response, as follows: "if you give us this address for more than 2 weeks, I can consider you steady live there."

The Appellant did not deny that he received MPIC's March 20, 2017 letter which stated he was expected to fully participate in his recommended treatment, but said he "just couldn't organize well, myself." He said that he missed his March 31st MRI appointment because he did not remember it.

The Appellant agreed with the April 4th case manager's written comment stating that his wife had taken all of his IRI money out of their joint bank account, and therefore he could not pay for a taxi. He also testified that he "had lots of payments behind." He could not convince his bank to close their joint account, but he eventually opened a separate account in his own name.

MPIC Counsel referred the Appellant to the April 7, 2017 case manager letter, which warned the Appellant that if he missed further rehabilitation, treatment or test appointments, his PIPP entitlements would be suspended without remuneration. The Appellant did not deny receiving the letter and said that he did "everything to be there." He said he went to his May 3rd appointment to show the staff that he was in fact sick.

When asked why he was not feeling well, the Appellant said he had pain all over his body and was puking. He could not do the exercises and wished to show them that he wanted to participate, but could not. He said he could not remember if he called to advise he would not attend on May 4th or 5th, but because he showed them he was sick on May 3rd, he expected them to know that. Referring to the May 5, 2017 letter from his case manager, the Appellant said he understood that without a medical note, he would not be paid for two missed days.

The Appellant said that he did not get a medical note because he had to wait 3 or 4 days for an appointment and by the time he got to the appointment his doctor would not give him a note. He said his doctor was at a walk-in clinic and when a new doctor took over his file, he needed an appointment.

In response to a question about why he did not go to another walk-in clinic, the Appellant replied, “If I jump around doctor, they say I’m playing dirty games with them.” When asked about the May 8th case note comment that he did not attend an appointment with his doctor because he was sick and his wife would not give him a ride, the Appellant replied that he could not remember what he said at that time.

The Appellant missed the following week of appointments and by letter dated Friday, May 12th MPIC suspended the Appellant’s IRI benefits for failing to participate and provide a medical note. MPIC Counsel reviewed the above suspension letter with the Appellant. Counsel noted that the Appellant got his licence back on April 18th and questioned why he would need a ride to his doctor in May.

The Appellant said that when his wife needed a vehicle she simply took his truck, irrespective of whether he needed it. At that time he and his wife were staying with their [child]; the Appellant because he had no nearby accommodations and his wife because she looked after their grandchildren.

MPIC Counsel reviewed the Appellant's statement in his July 3, 2017 Application for Review of the May 12th suspension decision. His statement reads, as follows:

> I had to go to my place in [text deleted] which is away from [text deleted] about [text deleted] km. My wife should pick me up but she never did and she didn't answer my phone for almost 2 weeks. I mine [sic] time I get sick and stay in bet [sic] for a week. The distance, lack of comunication [sic] and sicknes [sic] was the absent reason. I appologize [sic] for that situation, I would like continuing that program. Please accept my appology [sic]. Thank you.

Counsel suggested to the Appellant that the above statement contradicted his testimony that he was living in [text deleted]. The Appellant replied, "It was too far to go. I don't remember exactly." Counsel suggested that the statement implied the Appellant was in [text deleted] for 2 weeks, and asked why that was. The Appellant said he did not remember.

The Appellant then explained that his wife drove him to [text deleted] and left him without a vehicle. He did not know why he did not advise his case manager that he was stranded in [text deleted] or why he did not call to cancel his appointments. The Appellant said his doctor would not give him a medical note confirming his illness because his doctor had previously told him to come in for an appointment.

In response to questions, the Appellant agreed that he liked the rehabilitation program and thought it would help him. However, he said it did not help; it made him worse. He said that his understanding was that he must do the exercises and work harder, which caused him pain. He did not understand that he could say 'no, I can't.' He understood that irrespective of the pain, he was supposed to do the exercises.

MPIC counsel reviewed the case manager note of their June 22, 2017 conversation which stated that the Appellant had "one more chance" to attend the rehabilitation program. The

Appellant said that he understood this and believed he would start a new program. When referred to the case manager's letter of June 23, 2017, which stated he was offered the opportunity to "re-start your program," he testified that he understood this, also.

Moving to the Appellant's non-attendance on July 24th that resulted in the termination of his benefits, he said that he planned to stay overnight in [text deleted] because it was late. At 6 a.m. the next morning his vehicle would not start and he was unsuccessful using his charger. He explained that [text deleted] is a small, remote "ghost-town" since the [text deleted] closed. The gas station did not open until 9 a.m., and it was about this time he was finally able to "catch somebody driving around" and get a boost.

The Appellant said it took more than three hours to drive back because he had to stop and take a break, which put him in [text deleted] at about 2 o'clock. In response to questions about why he did not call, the Appellant said he thought he did. A July 25th case manager note recorded that the Appellant told her he was "too stressed and did not think to call". The Appellant responded that he did not remember this statement.

In response to questions about why he did not go to his rehabilitation appointment irrespective of his late arrival, he said that he was so tired he would "not do anything good there." The Appellant confirmed that his program went until almost 4 p.m.

Appellant re-direct

In response to questions about his concussion, the Appellant testified that his concussion caused his memory to be "not steady and when I do something, I go to start talking and forget what I was doing". In response to a question about his program's start time, the Appellant recalled he started in the morning; "8:30 or something."

Appellant closing submissions:

Appellant's Counsel acknowledged that his opening remarks contained much of his closing submission. He submitted that it was "atrocious" and "defies common sense" that

one missed appointment should result in the Appellant's termination of benefits. He conceded that the Appellant's pre-suspension attendance could have been better. However, he submitted that the Appellant provided the following reasons for missed appointments: his difficult relationship with his wife; his lack of driver's licence; and, his medical problems.

Counsel submitted that the Appellant's reason for non-attendance on July 24th was a valid reason. It was wrong to tell the Appellant that a "medical reason" was the only valid reason for missing an appointment. Counsel submitted that if the Commission finds the Appellant's car trouble explanation for non-attendance on July 24th to be credible, then the Commission must overturn the IRD. This missed appointment was the basis for applying section 160(g).

Appellant Counsel noted that MPIC's determined NOC of "[occupation 2]", was overturned by the January 2022 CMD. The correct NOC was "Industrial Electrician", which more closely reflected the Appellant's very heavy job demands. Therefore, MPIC's termination of the Appellant's benefits on the basis that he was able to perform the duties of his employment was wrong and invalid. This left the section 160(g) reason as the only issue before the Commission.

Appellant Counsel submitted that the Appellant was clearly having MVA-related problems with his memory, which explained his pre-suspension missed appointments. Counsel pointed out that when the Appellant's benefits were suspended in May, he had only just begun his work hardening program.

By June, the Appellant had learned to manage and correct his memory problem by using three calendars as reminders. Counsel submitted that based upon the Appellant's injuries and level of pain, he should not have been in the work hardening program. Nonetheless, the Appellant persevered and did an A+ job by attending every appointment once his work hardening was reinstated. Counsel submitted that [Doctor #1]'s July 11, 2017 3-week

progress report is evidence that the Appellant was putting forward his best effort and successfully increasing his function.

Appellant Counsel suggested that the Appellant's inability to remember events dating back many years is normal. He submitted that there is no evidence that alcohol had anything to do with the Appellant's missed appointments. Instead of congratulating his progress, his case manager chose not to help him. Counsel requested the Panel apply common sense to overturn the IRD and reinstate the Appellant's IRI benefits.

MPIC closing submissions:

MPIC Counsel submitted that the issue is whether the Appellant failed to participate in his rehabilitation program without a valid reason. There are two elements to this issue: 1) failure to participate, and 2) whether there was a valid reason.

Failure to participate

MPIC Counsel reviewed the Appellant's numerous missed physiotherapy and medical appointments in February and March 2017. Counsel pointed out discrepancies related to the missed MRI appointment. In direct, the Appellant said he was ill from a headache, however in cross-examination he said that he forgot his MRI appointment. As of April 7, 2017, his case manager had sent him two warning letters.

Counsel pointed out the cumulative number of days the Appellant missed at [rehabilitation center]. He referred to the April 10, 2017 "Physio Update" email, which stated that the Appellant had not attended physiotherapy since March 22. Further, when the Appellant's work hardening program started on May 1st, he missed all but one or two days between May 1st and May 12th and did not call in to cancel. The Appellant said that he was sick but did not provide a doctor's note. This resulted in the Appellant's benefits being suspended effective May 12th.

MPIC Counsel submitted that the Appellant's testimony is confusing in relation to his July 3, 2017 AFR. This AFR stated the Appellant missed appointments because he could not get a ride from his wife, but also because he was sick. The Appellant said he could not remember why he did not obtain a doctor's note. The testimony about where he was living was also confusing.

Counsel submitted that MPIC sees this history as representative of the Appellant's failure to participate pursuant to section 160(g), and is relevant to counter the Appellant's argument that his benefits were terminated based upon the one missed appointment of July 24th.

He submitted that factually, the [rehabilitation center] program was a continuous program that was suspended and then re-started. The April 21, 2017 case management memo (pre-suspension) is no different than the June 23, 2017 reinstatement letter to the Appellant, which both describe a 6-week "work hardening" or "reconditioning" program. The Appellant's case manager made it clear to the Appellant on June 22nd that this was his last chance to comply with the program schedule.

Counsel submitted that the purpose of section 160(g) is to ensure that claimants are active participants in their rehabilitation and to ensure that they resume maximum function, as soon as possible. The section provides flexibility in allowing for either a reduction of the amount of an indemnity, or the suspension or termination of an indemnity.

MPIC Counsel suggested that this was a form of progressive discipline, and it was unreasonable to separate out the prior absences to avoid considering the overall context. He submitted that in the context of progressive discipline, the prior warning letters are particularly relevant, as they clearly set out MPIC's expectations.

Counsel referred to MPIC's June 23, 2017 letter to the Appellant, which explicitly stated that failure to attend the rehabilitation program, without valid reason, would result in the

termination of his benefits. The Appellant understood this. Counsel submitted that the re-start was not a fresh start; it was in fact intended as a last chance.

In the context of the prior instances of the Appellant's failure to participate, and considering all of the steps taken by MPIC to respond with verbal warnings, then written warnings, and progress to suspending benefits and ultimately terminating benefits, Counsel submitted that MPIC acted within the scope of section 160(g).

Moving to the issue of a "valid reason", MPIC Counsel noted that the Appellant's two main reasons for non-participation were illness and transportation.

Valid reason - illness

Counsel conceded that "valid reason" for non-participation is not restricted to medical reasons. However, in this case, the Appellant's illnesses lacked detail and his case manager explicitly required a medical note, which the Appellant failed to provide for his multiple absences due to his alleged illnesses. He submitted that for the longer absences in particular, it was reasonable for the case manager to request detailed information and confirmation.

Counsel submitted that the Appellant's explanations as to why he did not obtain a doctor's note are somewhat confused and therefore, the Panel should look critically at his explanations, and give them little weight. Further, despite his case manager's instruction, the Appellant rarely called to notify when he could not attend his appointments.

Valid reason - transportation

Counsel submitted that MPIC does not take the position that transportation cannot be a valid reason. However, in this case, transportation did not constitute a valid reason for not participating in his rehabilitation program.

Counsel submitted that there is no evidence that the Appellant took any steps to address his lack of transportation. Counsel again reviewed the July 3, 2017 AFR in which the

Appellant said he was stuck in [text deleted] for 2 weeks and his wife did not answer the phone. He noted that despite having a phone, the Appellant did not call to advise his case manager or rehabilitation therapists that he needed to cancel appointments. He submitted that this lack of notice is evidence that the Appellant did not have a valid reason.

Finally, in relation to his July 24th non-attendance because of transportation problems from [text deleted], Counsel pointed out the Appellant's inconsistent statements where, on the one hand, he told his case manager that he did not call because he was stressed, and conversely, his testimony stating that he thought he had called.

Counsel submitted that the explanation about being too stressed to call is not reasonable, particularly in light of the many warnings the Appellant had received. This is the context in which the single July 24th absence should be considered. That is, the termination was the conclusion of the Appellant's history of unreasonable and unexcused absences from his rehabilitation program.

MPIC Counsel briefly responded to the Appellant's arguments that MPIC initially applied the wrong NOC. Counsel agreed the first classification was wrong which is why it was withdrawn and corrected in a subsequent decision. Counsel rejected the notion that the Appellant was somehow set up to fail or overwhelmed by the rehabilitation program because of the wrong NOC. Counsel pointed out that the progress reports confirm that the Appellant found the program appropriate and actively engaged in the program when he was there. The Appellant's failure to attend was not due to the inappropriateness of the program.

Counsel referred to prior Commission reasons in AC-08-135 in which the Commission found that the appellant did not provide any valid reason for his refusal to participate in his rehabilitation program. The Commission did not accept that appellant's explanation that he was ill, because his illness was not supported by a medical note from his doctor. In that case, the Commission found that the appellant failed to establish that he had a valid reason for refusing to participate.

Counsel submitted that in this case, the Appellant failed to attend his rehabilitation program without a valid reason and therefore the Commission should affirm the IRD and dismiss the appeal.

Appellant's Rebuttal

Appellant's Counsel clarified that it was not the Appellant's position that there were two rehabilitation programs that should be treated differently. Rather, after the suspension, the program was reinstated, which resulted in two time-periods. The Appellant characterized the reinstated work hardening program as a different time period that constituted a fresh start. The Appellant had corrected the prior problems and it is unfair to consider the older attendance problems.

Counsel stressed that the case manager's decision to terminate under section 160(g) was discretionary and included the ability to suspend rather than terminate. The termination of benefits was "without rhyme or reason."

Legislation:

The applicable sections of the MPIC Act and Regulations are as follows:

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.

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

. . .

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the corporation; . . .

Substantive Issue:

Did MPIC properly terminate the Appellant's IRI benefits pursuant to section 160(g) of the MPIC Act?

Discussion and Analysis:

Inconsistent testimony

MPIC raised the issue of the Appellant's inconsistent testimony including inconsistencies with prior documented statements. In particular, the Appellant testified that he thought he called about his non-attendance on July 24th but an MPIC file note states that he did not call because he was stressed. Further, the Appellant's testimony about his MRI, his trips to [text deleted], his living accommodations and his access to a vehicle was confusing. The Appellant testified that he could not remember certain events from five years ago.

The Panel recognizes that memory fades with time. Further, there is no dispute that the Appellant suffered injuries from a high-speed, roll-over MVA, in which he was found unconscious with a scalp laceration and hematoma. He received an MPIC Permanent Impairment award for moderate cerebral concussion or contusion. The Indexed File contains documentation about the Appellant's memory issues.

The Panel also considered the Appellant's unstable living situation in which he was relying on his [child] or estranged wife to provide accommodations closer to his rehabilitation

program. He was apparently without strong family, or other social supports for transportation and accommodation during his recovery from his MVA-related injuries to such an extent that he resorted to living in his vehicle.

Finally, the Panel considered that English is not the Appellant's first language. MPIC also acknowledged a "language barrier" in an initial case note dated September 23, 2016.

Notwithstanding some inconsistencies, the Panel notes that the Appellant's testimony about his pain, his May 2017 illness and his request for medication was internally consistent, and was corroborated by documentation in the Indexed File. The Panel finds that any inconsistent testimony is likely the result of faded memory, concussion related memory issues in conjunction with is chaotic living situation, and challenges with language. The Panel finds the Appellant's testimony to be credible and reliable.

Left Shoulder rotator cuff tear

A November 17, 2016 referral from the Appellant's spinal neurosurgeon, [Doctor #5], stated that the Appellant was healing well from his spinal fracture, but queried a left rotator cuff issue and requested [Doctor #1]'s assessment for therapy. On January 6, 2017, [Doctor #1] recommended the Appellant start physiotherapy, and ordered an MRI scan to investigate the Appellant's left shoulder issue.

The April 19, 2017 MRI imaging report revealed tendinosis and a small 2 x 2 mm partial-thickness tear of the left shoulder supraspinatus tendon. The April 21, 2017 MPIC file note indicates that [Doctor #1] interpreted the MRI results as showing "some abnormality…consistent with age", and "recommended a six-week work hardening program with progression to full days to start on Monday, May 1."

Appellant Counsel took issue with the fact that [Doctor #1] never referred to the rotator cuff tear when documenting the Appellant's pain during therapy. He submitted that 'you don't put someone in rehabilitation to perform duties with a torn rotator cuff.'

However, the Appellant conceded the necessity and effectiveness of the rehabilitation plan. It is not unusual to experience pain in rehabilitation. Unfortunately, it appears the Appellant did not fully understand that he could reduce his effort based upon his pain level. The Panel finds that there is insufficient evidence to conclude that the rehabilitation plan was inappropriate.

Alcohol abuse

The 2017 and 2019 IRDs both made reference to the Appellant's alleged alcohol abuse. The Appellant testified to sometimes using liquor with his medication in an effort to manage his pain. Documents in the Indexed File show that the Appellant has consistently denied an alcohol problem.

The Panel finds that there is insufficient evidence of alcohol abuse by the Appellant. MPIC did not raise alcohol abuse as an issue, nor address it in submissions.

Substantive Issue and history

The fundamental issue is whether MPIC appropriately exercised its discretion in applying the most severe statutory consequence of the available choices itemized in section 160 (g). Those choices provide MPIC with the discretion to either refuse to pay compensation, or reduce, suspend or terminate an indemnity.

The January 9, 2017 case management note documents that the Appellant advised MPIC of his evaluation with [Doctor #1] and confirmed that his physiotherapy would start that day. The note also recorded that the Appellant was confused as to why his driver's licence had been suspended because his memory and concentration were getting better. The case manager stated she would get back to him regarding testing for this issue, and advised him to follow up with the department dealing with his licence.

In a January 10, 2017 MPIC file note, the case manager documented that the "neuropsych consult" was put on hold because "cognition is not a RTW barrier at this time as claimant

is a non earner" and the Appellant had reported that his memory and concentration were getting better.

[Doctor #1]'s January 23, 2017 Functional Capacity Evaluation ("FCE") documented that the Appellant demonstrated consistent and reliable effort during the evaluation. [Doctor #1] concluded that the Appellant "may continue to slowly recover additional strength and physical tolerance with physiotherapy and rehabilitation interventions."

After a month of physiotherapy and regular attendance approximately three times per week, the Appellant cancelled his February 28, 2017 appointment and did not attend his March 1st to 3rd appointments. These absences appear to be a culmination of the Appellant's difficulties with illness, his unstable accommodation, his memory issues and licence suspension, and his transportation issues with his wife in March and into April.

The Appellant had been notified by [rehabilitation center] that based upon his current functioning he would transition from physiotherapy to a formal reconditioning program effective May 1st. The Appellant attended May 1st, but then arrived at his program on May 3rd to show the facilitators that he was sick and then left. MPIC's May 5, 2017 letter advised the Appellant that because he had failed to attend his reconditioning program on May 4th and May 5th without notification or explanation, his IRI would be suspended unless he provided a medical note.

There is no dispute that the Appellant missed these appointments and was advised by MPIC that he must have a "valid medical reason" supported by a doctor's note. There is no dispute that the Appellant understood that if he missed appointments he was to notify and provide a medical note to support medical absences. Finally, there is no dispute that the Appellant did not comply with notification and providing a medical note.

Further absences occurred without notice or corroboration by a medical note, and after further discussions and written warnings, MPIC suspended the Appellant's PIPP entitlements effective May 12th. It is apparent from the case manager's file notes that she

was frustrated with the Appellant's failure to consistently provide advance notice that he would miss appointments.

The Panel notes that according to MPIC's file note dated May 24, 2017, the Appellant advised his case manager that he met with his medical doctor, [Doctor #3], on May 23rd and requested that MPIC follow up with [Doctor #3] for information about why the Appellant did not attend the program. The Appellant's illness is documented by [Doctor #3]'s chart notes of the Appellant's visit on May 23, 2017.

[Doctor #3]'s chart notes state, among other things, that the Appellant was "not doing well", had "missed x 2 weeks of work hardening…" and "describes 3/52 of 'flu' symptoms, headache, dysuria, nauseated…", "endorses 'stress' with work hardening program, worrying about his progress and chronic lumbago, poor ambulation."

There is no dispute that MPIC re-started the Appellant's 6-week formal reconditioning program with [Doctor #1] effective June 26, 2017, which required attendance five days per week, starting at three hours per day and increasing one hour per day, per week until he reached seven hours per day by week five. MPIC's June 23, 2017 letter to the Appellant stated as follows:

> I advised you that should you not attend any part of your rehabilitation program without valid medical reason supported by a doctor's note that your entitlements under PIPP will be terminated as per Section 160 of The Manitoba Public Insurance Corporation Act. You confirmed twice with me that you understand this position.

The Appellant does not dispute receiving and understanding this letter.

There is no dispute that the Appellant attended the re-started reconditioning program for weeks 1 – 4 inclusive, in compliance with MPIC's requirements. This is confirmed in the August 1, 2017 Discharge Report from [Doctor #1], which states "[the Appellant]

participated fully in his rehabilitation program", despite his "reported significant increases in his pain".

The Appellant's testimony about his pain experience had been previously documented in [Doctor #1]'s March 21, 2017 report that recorded the Appellant's increased pain after physio, which he managed with Tylenol ES. The Appellant's testimony about requesting stronger pain medication is corroborated in [Doctor]'s July 11, 2017 report, as well as [Doctor #3]'s July 17th chart notes wherein he prescribed Tylenol #3 to manage the Appellant's pain.

There is no dispute that starting in week 5, the Appellant then missed his Monday, July 24, 2017 appointment without calling in to notify the program of his non-attendance. However, the Appellant did attend the program for the full day on Tuesday, July 25th from 8:15 a.m. to 3:44 p.m.

In a mid-day telephone discussion on July 25, 2017, the Appellant explained to his case manager that he missed his July 24th appointment because he we was in [text deleted] on Sunday and could not get his truck boosted until Monday. He said he did not think to call because he was too stressed.

The July 26, 2017 CMD (re-issued August 22, 2017) terminated the Appellant's reconditioning program and IRI benefits, specifically stating that it was the Appellant's non-attendance on July 24th that resulted in MPIC's re-evaluation. The letter quoted the warning set out in the June 23rd letter that not attending any part of his rehabilitation program without valid medical reason supported by a doctor's note, would result in termination of his PIPP entitlements pursuant to section 160.

Additionally, the case manager relied on [Doctor #1]'s assessment that the Appellant had reached the strength requirements of his employment (albeit incorrectly classified) and also terminated his PIPP benefits pursuant to section 110(1)(c). The parties agree that termination pursuant to section 110(1)(c) is no longer an issue.

The parties are at odds on whether to characterize the July 24th absence as one incidence of non-participation of the re-started rehabilitation program, or to characterize the July 24th absence as a continuation of the Appellant's history of non-participation in his rehabilitation program.

Findings

The Panel makes the following factual findings:

- The Appellant sustained a concussion, and experienced headaches and significant pain throughout his entire rehabilitation, for which he required pain medication;
- On May 12, 2017, MPIC suspended the Appellant's PIPP entitlements on the basis that the Appellant had failed to advise about each day of his missed appointments, and did not provide a medical note for the days he was ill;
- MPIC restarted the Appellant's rehabilitation program effective June 26th;
- The pre and post-suspension periods involve one continuous rehabilitation program at [rehabilitation center];
- MPIC expressly defined and advised the Appellant that "valid reason" meant "medical" reason accompanied by a medical note;
- The Appellant understood that the only "valid reason" he was allowed, if he was not able to participate, was a medical reason accompanied by a medical note;
- The Appellant notified his case manager and the [rehabilitation center] facilitators of his non-attendance on June 27th and July 17th for medical reasons, which was accepted without accompanying medical notes;
- The Appellant fully participated in his rehabilitation program for four of the six scheduled weeks;
- At the beginning of his 5th week, the Appellant missed his Monday, July 24th rehabilitation appointment without notice and without a medical reason;
- On July 25th, the Appellant attended and completed his full day of rehabilitation from 8:15 a.m. to 3:44 p.m.;
- On July 25th the Appellant advised his case manager that the reason he failed to participate the day before was because his truck would not start in[text deleted], MB;
- On July 26th, MPIC terminated the Appellant's rehabilitation program and IRI benefits stating, among other things, his failure to provide a "valid medical reason".

The Panel has considered MPIC's positon that its warnings were akin to a progressive discipline situation in a labour context. The general goal of progressive discipline is to correct and improve unacceptable behaviour. The process uses increasingly severe measures to correct a problem after the individual has been given a reasonable opportunity to do so. The underlying principle of progressive discipline is to use the least

severe action necessary to correct the undesirable behaviour. Increasing the severity of the discipline is typically applied only if the behaviour is not corrected.

The Panel has considered the Appellant's pre-suspension attendance behaviour in comparison with his post-suspension attendance behaviour, and finds that there is a distinct difference in these two time periods. Specifically, it is clear that the Appellant corrected and significantly improved his attendance behaviour with the re-instatement of his rehabilitation program.

The Appellant's circumstances post-suspension had also changed in that he had developed and utilized a successful memory strategy; he opened a separate bank account to ensure sole access to his funds; and, he obtained stronger pain medication. After the re-start, the Appellant had near perfect attendance for 4 weeks. Therefore, while the Appellant's past attendance behaviour is relevant, his essentially perfect re-start participation cannot be ignored and operates as a mitigating factor.

The Panel agrees with MPIC that transportation may constitute a valid reason. The Panel finds that the Appellant's dead battery explanation for his non-attendance on July 24th is credible, and therefore valid. The Panel acknowledges that the Appellant has used transportation problems as a past reason for not participating in his rehabilitation. However, the circumstances of the July 24th missed appointment are distinct from the Appellant's prior behaviour. Notably, the following day, the Appellant attended his program on time and in full, and he spoke with his case manager. His full attendance the following day is another example of his corrected behaviour.

The Panel has considered MPIC's submission that the purpose of section 160(g) is to ensure that claimants are active partners in their rehabilitation programs in order to improve their functioning as soon as possible. The Panels finds that the [rehabilitation center] documentation supports the conclusion that the Appellant was an active partner in his rehabilitation. Even before the suspension, [Doctor #1]'s January 2017 FCE

documented the Appellant's consistent and reliable effort, and the Appellant attended his physiotherapy consistently until the end of February 2017.

The Panel notes that the November 27, 2019 IRD stated that the case manager should, in every instance, attempt to discuss and "identify any potentially valid reason before any action is taken." The 2019 IRD concluded, as follows:

> It is clear that if [the Appellant] presented with any one of the reasons for his non-attendance, the case manager was prepared to accept same. However, after several months, numerous phone conversations and four written warnings, the case manager had no choice but to apply the appropriate compensation controls laid out by Section 160 of the Act.

However, the case manager did not identify potential valid reasons. She expressly limited the valid reason to be a medical reason. She did not accept the Appellant's explanation that his truck would not start. Importantly, she did have the choice to apply the section 160 "compensation control" option of suspending, rather than terminating, the Appellant's benefits for his missed appointment on July 24th.

MPIC submitted that the work hardening program would have continued even if the Appellant had reached the strength demands of his occupation before he completed the full 6 weeks. This is undoubtedly correct, which makes it curious as to why the case manager included section 110(1)(c) as an additional ground for terminating the Appellant's PIPP entitlement, when he had not yet completed his full 6 weeks.

The Panel finds that the case manager narrowly and improperly interpreted "without valid reason" in section 160(g) to mean "without valid medical reason", which she then imposed upon the Appellant. Further, the case manager was then inconsistent in her post-suspension instructions in that, while she verbally and in writing insisted that the Appellant provide a medical note, she in fact accepted his verbal notification of medical absences without requiring an accompanying medical note.

Finally, when applying principles of fairness in a situation in which the case manager imposes the most severe punishment contained in section 160(g), there should be some proportionality of culpable behaviour on the part of the Appellant.

The Panel understands MPIC's position that the Appellant's pre-suspension history of absences provides that proportionality. However, the Panel disagrees, and finds that the Appellant's notification about his two medical absences, and his near perfect post-suspension attendance (but for July 24th) demonstrates that he corrected his behaviour, which significantly mitigates any culpability related to his past behaviour.

There is no indication that the Appellant's absence on July 24th was a deliberate act to avoid his rehabilitation. While the Panel acknowledges that the Appellant should have notified his case manager or the [rehabilitation center] facilitators on July 24th that he would not attend, it is understandable that the Appellant was "stressed" about calling. His case manager had made it clear that he must provide a "medical" reason for not attending, and he knew he did not have a medical reason. He nonetheless provided a valid reason.

The Panel reviewed the prior Commission decision in *AC-08-135* submitted by MPIC and finds it distinguishable on the facts. The appellant in that case refused to participate in any of his rehabilitation appointments and there was evidence that the appellant had lied about his illness.

Disposition:

The Panel finds that MPIC did not appropriately interpret the meaning of "valid reason" in section 160(g), nor did MPIC appropriately apply to the Appellant's circumstances, what it considered to be the progressive disciplinary "compensation control" options found in section 160. As such, MPIC did not properly terminate the Appellant's IRI benefits.

The Panel allows the appeal and rescinds, in part, the November 27, 2019 IRD that dealt with the termination of the Appellant's IRI and PIPP benefits pursuant to section 160(g). For greater certainty, the Panel also rescinds the IRD dated November 10, 2017.

The matter is referred back to case management to deal with the Appellant's IRI and PIPP benefits.

Dated at Winnipeg this 22nd day of August, 2022.

PAMELA REILLY

JANET FROHLICH

PAUL TAILLEFER