

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2020-02

January 31, 2020

**THE MANUFACTURERS LIFE INSURANCE COMPANY
“MANULIFE”**

Case File Number 004248

Office URL: www.oipc.ab.ca

Summary: The Complainant complained to the Commissioner that the Standard Life Assurance Company (now Manulife) (the Organization) had collected and disclosed her personal information without her consent.

The Adjudicator found that the Organization collected the Complainant’s personal information when it contacted her employer and learned of a workplace conflict. She found that the Organization had disclosed the Complainant’s personal information to her employer’s agent when the agent had contacted the Organization to find out the Organization’s criteria for claim acceptance.

The Adjudicator found that the Organization was authorized to collect information about a workplace conflict in which the Complainant was involved as the Organization considered this information relevant to the decision it had to make regarding the Complainant’s entitlement to benefits.

The Adjudicator found that the Organization was not authorized under PIPA to disclose the Complainant’s personal information to her employer’s agent without her consent. She directed the Organization to cease disclosing the Complainant’s personal information in contravention of PIPA.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 7, 8, 14, 20

I. BACKGROUND

[para 1] The Complainant made a complaint to the Commissioner that the Standard Life Assurance Company (now Manulife) (the Organization) collected and disclosed her personal information without her consent in contravention of the *Personal Information Protection Act* (PIPA). She alleged that the collection took place when the Organization obtained information from her employer about a workplace conflict in which the Complainant had been involved. She alleged that the disclosure took place when the Organization shared information about her claim with her employer's agent.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate other issues. At the conclusion of this process, the Complainant requested an inquiry.

II. ISSUES

Issue A: Did the Organization collect or disclose "personal information" of the Complainant as that term is defined in section 1(l)(k) of the Act?

Issue B: Did the Organization collect or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection or use without either authorization or consent)? In particular,

a. Did the Organization have the authority to collect or disclose the information without consent, as permitted by sections 14, and 20 of PIPA?

b. If the Organization did not have the authority to collect or disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information? In particular,

i. Did the individual consent in writing or orally? or

ii. Is the individual deemed to have consented by virtue of the conditions in section 8(2)(a) and (b) having been met? or

iii. Is the collection, use or disclosure permitted by virtue of the conditions in section 8(3)(a), (b) and (c) having been met?

III. DISCUSSION OF ISSUES

Issue A: Did the Organization collect or disclose "personal information" of the Complainant as that term is defined in section 1(l)(k) of the Act?

[para 3] Section 1(1)(k) of PIPA defines “personal information” for the purposes of the Act. It states:

1(1) In this Act,

(k) “personal information” means information about an identifiable individual [...]

To fall within the terms of section 1(1)(k) PIPA information must be about an identifiable individual.

[para 4] In her complaint, the Complainant stated:

I believe Standard Life (now Manulife Financial) improperly disclosed my personal information to [my employer’s agent]. I believe Standard Life improperly collected personal information about my workplace conflict and used it improperly to adjudicate my claim for benefits.

[para 5] A note dated May 7, 2015 prepared by an employee of Standard Life documents that the Complainant’s employer informed the insurer of a conflict between the Complainant and another employee. This note states:

[Employer] confirmed dates [employee] last worked and Date unable to work are due to shift change. However, [details about workplace conflict.] There are usually lay-off from October through mid-march, however [employee] was not included in the layoffs. [Employer] confirmed that the [employee] had been in contact through email in regards to shifts. Modified [return to work] could be possible if [employee] was capable of completed office type duties. Writer confirmed that the [employee] had not been contacted however when and if she is available for modified it would be confirmed with [employer]. Writer thanked [employer] and ended the call.

[para 6] The foregoing note allows the inference that the Organization collected information about the Complainant and a workplace conflict in which she was involved, from the Complainant’s employer. The fact that the Complainant was involved in what was described as a workplace conflict is information about her as an identifiable individual and is her personal information.

[para 7] The Organization concedes that it collected the Complainant’s personal information by obtaining information from her employer regarding the workplace conflict. However, it argues that it did so with the Complainant’s consent.

[para 8] With regard to the Organization’s disclosure of information regarding the Complainant’s claim to her employer’s agent, the Organization states:

On November 17, 2015, the adjudicator responded to [the Complainant’s employer’s agent] with her contact information. Also, on November 17, 2015, the adjudicator spoke with a representative of [the employer’s agent]. The note reflected that the adjudicator advised [the employer’s agent] that the claim was denied based on several aspects: the job description from the employer’s phone call and the medical restrictions were not restricting the employee from her own occupation; there is reference to medical information that outlined a history whereby

the employee was able to work for several years with the condition. No medical information was disclosed to [the employer's agent].

[para 9] The Organization further states: "Regarding the alleged disclosure of personal medical information to [the employer's agent], [the Organization] did not disclose any of the Complainant's personal medical information to [the employer's agent]."

[para 10] A note created by an employee of the Organization on May 19, 2015 establishes that an employee of the Organization discussed the Complainant's claim and her medical reporting with the Complainant's employer's agent:

Advised [the Complainant's employer's agent] the reason [the Complainant's] claim has been denied is based on:

1. The diagnosis is not a clear disability diagnosis
2. Employer has the modified work available to [the Complainant], which she is not working.
3. [The Complainant] has had the condition and worked with it for years, the medical does not currently support why she would be able to work for the last few years and why she would not be able to work now.

[para 11] The information that the Organization disclosed to the agent includes aspects of the Complainant's medical history, her functioning and restrictions in her workplace, and the fact that her claim had been declined. From the information that was disclosed, an inference may be drawn that the Organization considered, based on medical evidence, that the Complainant was not disabled, despite applying for disability benefits and not working.

[para 12] The Organization also states:

The Policy is administered by [the employer's agent]: it handles applications for disability benefits on behalf of [the Complainant's employer]. Because of [the agent's] appointment as administrator, [the Organization] communicates with it on Policy matters. [The Organization] is not permitted to share any Employee's personal information with [the agent].

[The Organization has no knowledge of and was not involved in any of the dealing between [the agent] and the Complainant. Specifically, [the Organization] had no knowledge of the Complainant's refusal to sign an authorization permitting [the agent] to receive any of her personal information.

[...]

[The Organization] attaches to this Response every communication it had with [the agent] during the adjudication of the Complainant's Application. [The Organization] admits it had discussions with [the agent] about the Complainant's Application, but it denies it disclosed any personal information relating to the Complainant. No personal medical information was disclosed. [The Organization] simply advised [the agent] that the Application was denied because medical information did not establish the Complainant could not do her own occupation. [The Organization] did not disclose what medical evidence was submitted or what medical condition was being presented as the disabling condition.

[The Organization] received an appeal of the Complainant's denial of Disability Benefits from [the agent]. [The Organization] has no knowledge of how [the agent] obtained the information

attached to the appeal. It is noted that the Complainant's letter is addressed "To whom it may concern" and not to [the Organization]. [The Organization] does not know whether this letter was provided directly to it, or whether it was sent by the Complainant to either or both of [the Complainant's employer] / [the agent]. If [the agent] had knowledge of the Complainant's personal information, it was not the result of any breach of the Act by [the Organization].

[para 13] The Organization takes the position that the Complainant's employer's agent obtained personal information about the Complainant from the Complainant herself, rather than from the Organization. However, as noted above, the Organization's evidence established that it disclosed the Complainant's personal information to her employer's agent on May 19, 2015. While there is no evidence that the Organization provided medical reporting to the Complainant's employer's agent, the evidence before me establishes that its employee discussed the Complainant's medical reporting generally and its significance to her claim with the agent.

[para 14] The Organization's submissions refer to "personal medical information", but not to "personal information" when it describes the information it disclosed to the Complainant's employer's agent. It takes the position that the Complainant's complaint is confined to "medical information" and not "personal information". On reviewing the Complainant's complaint, I acknowledge that she described the information that was disclosed to the agent as "medical information", in addition to describing it as "personal information". In my view, while the information that was disclosed could not be characterized as "medical reporting", it could reasonably be described as "medical information" and as "personal information" as the Complainant did. I find that her complaint is about the fact that the Organization discussed her health, her employment, and her claim with her employer's agent, without consent.

[para 15] I find that the Organization disclosed information about the Complainant as an identifiable individual to the Complainant's employer's agent. As a result, I find that the Organization disclosed the Complainant's personal information within the terms of section 1(1)(k) of PIPA in its conversation of May 19, 2015.

Issue B: Did the Organization collect or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection or use without either authorization or consent)?

[para 16] I turn now to the question of whether the Organization was authorized under PIPA to collect, use, and disclose the Complainant's personal information in the circumstances it did.

Information regarding the workplace conflict

[para 17] The Organization argues that the Complainant consented to its collection and use of her personal information in relation to the workplace conflict.

[para 18] The Complainant completed a "Disability Claim Form Initial Assessment" form. This form was created by Standard Life. The consent portion states, in part:

I authorize any health care professional, hospital, clinic, pharmacist, provincial health insurance plan, rehabilitation agency, insurer, employer, or any other person or organization in possession of information concerning [me] to release to [the Organization] all medical, financial, or other information deemed relevant by [the Organization], permitting the assessment of my claim.

I authorize [the Organization] to conduct all necessary investigations required in order to verify the validity of my claim. I accept that [the Organization] and / or their authorized agents will use the information provided in this form and in my pertinent prior claims under the same plan for the management of my claim and for production of statistical reports.

[para 19] The Organization argues:

[The Organization] submits that because the Complainant's stoppage of work occurred within a few weeks of a workplace conflict allegedly as a result of a long-standing medical condition that was apparently stable, it was reasonable for [the Organization] to collect and use information regarding the workplace conflict in its assessment of the Application. This is directly relevant to whether the absence was caused by an illness or injury (as required by the Policy) and is "other information" relevant to the adjudication of the Claim and for which the Complainant expressly consented in her Application.

[para 20] The Organization's "Action Plan", dated May 7, 2015, which appears in the Complainant's rebuttal submissions, forms part of the evidence in relation to related case file 004248. It was created by the employee of the Organization who collected the information regarding the workplace conflict and states:

Analysis – Factors of Influence to a Return to Work

Medical obstacles: Pre-existing mass discovered in 2013 and treatment was not successful.
Waiting for a specialist consultation, a diagnostic exam or a surgery: Appointment with podiatrist April 15, 2015

Non-medical obstacles: Work place performance review completed prior to [the employee] going off work. All referral tasks set up: Yes

Rehab Potential: Possibly: depends how the coming weeks go with current treatment if no [return to work] is scheduled then rehab should be consulted.

Questions: Any workplace issues

Current treatment and recovery

Is there surgery planned?

Discuss MRTW [modified return to work]

Decision

The [employee] is a [... female] who works within a medium NOC [National Occupational Classification] level. The medical received was completed by a podiatrist. The max time loss that can be covered by the podiatrist is 4 weeks. There is no current return to work scheduled. There have been diagnostic tests completed with not suggestions of surgery or other invasive treatment. [The employee] has not been responding to the regular treatment for the [diagnosis] that is listed. It would be beneficial to confirm with [employer] if there are any underlying concerns within the work place.

MDA [Medical Disability Advisor: Workplace Guidelines for Disability] suggests a time loss for 28 days maximum. At this point additional information is required from the employee prior to approval / benefits.

[para 21] The foregoing action plan indicates that the Organization's adjudicator considered non-medical workplace factors relevant to the adjudication of disability benefits. In addition, it indicates that she intended to contact the Complainant's employer to gather information regarding such workplace factors in order to make an entitlement decision.

[para 22] The Organization states:

[...] [The Organization] submits the evidence clearly shows the Complainant's Application for Disability Benefits was denied due to insufficient medical evidence supporting Total Disability. While the workplace conflict issue is mentioned in the file materials, it is abundantly clear this information was not the basis of denial.

Additionally, and perhaps most importantly, the Complainant voluntarily disclosed information relating to the workplace conflict directly to [the Organization] which is considered consent pursuant to s. 8(2) of the Act.

[The Organization] was permitted to collect and use information relating to the workplace conflict by virtue of s. 8(2.2) of the Act.

[para 23] From my review of the evidence before me, I am satisfied that the Complainant discussed information regarding the workplace conflict with the Organization only after the Organization had collected the information from the Complainant's employer.

[para 24] In my view, section 8(2.2) provides no authority for the Organization's collection of the information about the workplace conflict. Section 8(2.2) states:

8(2.2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for the purpose of the individual's enrolment in or coverage under an insurance policy, pension plan or benefit plan or a policy, plan or contract that provides for a similar type of coverage or benefit if the individual

(a) has an interest in or derives a benefit from that policy, plan or contract, and

(b) is not the applicant for the policy, plan or contract.

[para 25] Section 8(2.2) addresses the circumstance when the family members or other dependents of an applicant are to be enrolled or covered under a benefit plan. Section 8(2.2) expressly states that it does not apply to an applicant, such as the Complainant, as the applicant will be able to sign a consent allowing an insurer to collect, use, or disclose personal information in order to assess insurability and eligibility. Instead, it applies to individuals with an interest in the plan, other than the applicant for coverage.

[para 26] The following excerpt from Alberta Hansard supports finding that section 8(2.2) was intended to make it easier for insurers to assess eligibility for the purpose of plan enrolment when the person to be covered is not the applicant for coverage:

The process for obtaining consent from clients will be simplified by allowing an organization to obtain consent through an intermediary. Also, it will be easier to enrol groups or families into insurance or benefit programs. –Hansard November 4, 2009 Alberta Hansard 1721

[para 27] In my view, section 8(2.2) does not apply to an applicant who has requested payment of benefits under a disability plan.

[para 28] That said, I find that section 8(2.1) of PIPA operates so as to deem the Complainant to have consented to the Organization’s collection of the information regarding the workplace conflict from her employer.

[para 29] Section 8(2.1) states:

8(2.1) If an individual consents to the disclosure of personal information about the individual by one organization to another organization for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal information for the particular purpose by that other organization.

[para 30] As noted above, the consent the Complainant signed when she applied for disability benefits authorized her employer to provide “all medical, financial, or other information deemed relevant by [the Organization], permitting the assessment of my claim.” While the consent does not expressly state that the Organization may collect personal information, it does state that the employer is authorized to provide relevant personal information to the Organization so that it may assess the claim.

[para 31] The May 7, 2015 note created by the Organization’s adjudicator documents the information in her conversation with the Organization that she considered pertinent to the question of whether the Complainant was entitled to benefits. As set out in her subsequent decision letter, she considered that time from work had to relate solely to foot injury, and could not be the result of other contributing factors, in order to be compensable. The conversation with the employer she documented highlights information she considered important to making her decision regarding compensation, as it was information that could potentially cast light on possible reasons for the Complainant’s disability, other than the injury itself. That she considered this information necessary for her decision is supported by the Action Plan, which indicated that she would ask the Organization whether there were any “workplace issues”.

[para 32] Given that the consent authorized the employer to provide personal information the Organization considered relevant to the assessment of the Complainant’s claim to the Organization, I conclude that section 8(2.1) serves to deem the Complainant to have consented to the Organization’s collection of the information regarding the workplace conflict for that purpose.

Disclosure of personal information to the Complainant's employer's agent

[para 33] As noted above, I have found that the Organization disclosed the Complainant's personal information to the Complainant's employer's agent in a conversation on May 19, 2015.

[para 34] In its submissions, the Organization states:

The Policy is administered by [the employer's agent]: it handles applications for disability benefits on behalf of [the Complainant's employer]. Because of [the agent's] appointment as administrator, [the Organization] communicates with it on Policy matters. [The Organization] is not permitted to share any Employee's personal information with [the agent].

[para 35] I find that the Organization disclosed the Complainant's personal information to the Complainant's employer's agent without her consent. In addition, I was unable to identify a provision of PIPA that would authorize the Organization's disclosure of the Complainant's personal information in the circumstances. I find that this disclosure contravened section 7(1) of PIPA. As I find that the disclosure was in contravention of section 7(1) of PIPA, I must require the Organization to cease disclosing the Complainant's personal information without consent.

IV. ORDER

[para 36] I make this Order under section 52 of the Act.

[para 37] I order the Organization to cease disclosing the Complainant's personal information in circumstances not authorized by the Act.

Teresa Cunningham
Adjudicator