

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by M.F.**  
**AICAC File No.: AC-04-150**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Leona Barrett  
Ms Sandra Oakley

**APPEARANCES:** The Appellant, M.F., was represented by Mr. Ellery Strell;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Dianne Pemkowski.

**HEARING DATE:** June 4, 2008

**ISSUE(S):**

1. Whether the Appellant is capable of holding his pre-accident employment (Whether the Appellant is unable, due to physical or mental injury caused by the accident, to perform the essential duties of his pre-accident employment)
2. Funding for psychological treatments beyond December 31, 2004.
3. Entitlement to reimbursement for medications:
  - Amitriptyline for sleep and pain
  - Docusate for constipation
  - Ativan for stress and anxiety

**RELEVANT SECTIONS:** Sections 110(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 8 of Manitoba Regulation 37/94, and Section 5 of Manitoba Regulation 40/94

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

**Reasons For Decision**

The Appellant was injured in a motor vehicle accident on May 24, 2001. At the time of the accident the Appellant held two (2) jobs. He held a full time position as a Security Officer at the

[text deleted] from August 1990 until the date of the accident. He also held a casual position as a Security Officer with [text deleted] at the [text deleted].

As a result of injuries sustained in the accident, including a sore neck and low back, the Appellant was unable to work at his job and was in receipt of Income Replacement Indemnity ('IRI') benefits from MPIC.

The Appellant participated in a graduated return to work program with light duties, but this program was terminated when his employer did not want to continue the arrangement.

The Appellant also suffered from psychological issues following the accident and received psychological treatment from Dr. El-Khatib.

He also received treatment from Drs. Padua, Korol, Dubo and Johnson, and participated in a program at Associated Rehabilitation Consultants of Canada Ltd. ('ARCC'), supervised by Dr. Hoy, which included physiotherapy and athletic therapy.

### **1. IRI Benefits**

On December 11, 2003, the Appellant's case manager issued a decision indicating that the Appellant was able to hold his pre-accident employment and that his IRI entitlement would end as of December 31, 2003, save for the continuation of IRI benefits until December 31, 2004 pursuant to Section 110(2)(d) of the MPIC Act.

The Appellant sought Internal Review of this decision, and on August 10, 2004, an Internal Review Officer for MPIC found that the Appellant was not entitled to receive further ongoing

IRI benefits beyond December 31, 2003. He found there was no inability to resume the essential duties of his pre-accident employment as a result of physical or mental injuries arising from the accident in question.

The Appellant has appealed this Internal Review decision.

## **2. Psychological Treatment Benefits**

On December 3, 2004, the Appellant's case manager provided him with a decision which indicated that he would not be entitled to funding for psychological treatments beyond December 31, 2004. The case manager reviewed information received from MPIC's Health Care Services Team and concluded that the necessity for ongoing counseling was related to the termination of the Appellant's IRI benefits and not as a result of accident related injuries.

The Appellant sought Internal Review of this decision, and on January 14, 2005, an Internal Review Officer for MPIC concluded that any further treatments required by the Appellant would be related to anxiety issues resulting from the impending termination of his IRI benefits. Accordingly, the request for psychological treatments would not be the subject of coverage afforded by the Personal Injury Protection Plan and would not be medically required as a result of mental or physical injuries caused by the motor vehicle accident of May 24, 2001.

The Appellant has appealed this decision of the Internal Review Officer.

## **3. Reimbursement for Medication**

On March 24, 2005, the Appellant's case manager advised the Appellant that funding for medications would cease to be covered after April 30, 2005. The medications identified were:

- Tylenol 3
- Calcitonin or calcimar injections
- Steroid injections
- Amitriptyline
- Docusate
- Ativan
- Zopiclone

The Appellant sought Internal Review of this decision, and on April 26, 2005, an Internal Review Officer for MPIC concluded that based upon the consulting opinions received from the MPI medical and psychological consultants, these medications were not medically required in the management of conditions which the Appellant developed secondary to the incident in question. The case manager's decision was upheld.

The Appellant has appealed this decision of the Internal Review Officer. At the hearing into his appeal, his counsel indicated that his outstanding claim is for funding for Amitriptyline, Docusate and Ativan.

#### **Evidence and Submissions for the Appellant**

The panel heard evidence from the Appellant and from his wife, and was provided with a variety of medical reports from his caregivers and from MPIC's Health Care Consultants.

The Appellant testified regarding his education and work history. He described his immigration to Canada from [text deleted] and his efforts at receiving a University education while working and bringing his wife and four (4) children to Canada.

He described his work as a Security Officer both with [text deleted] and with [text deleted], working an average of almost one hundred (100) hours every two (2) weeks.

He testified that he had no problems in physically performing these duties. Aside from minor scratches and injuries occurring in the workplace, high blood pressure problems and diabetes (which were controlled by medication), and a previous minor motor vehicle accident, he did not have any significant injuries or health problems, or miss any significant amount of time from his work. Although later radiological investigations disclosed degenerative changes in the Appellant's spine, he indicated that prior to the motor vehicle accident he had not been aware of these changes and had been active both at work and at home, including sporting activities and gardening, and housework inside and outside his home.

He described his job at [text deleted] and the physical demands of the position. He described it as a highly physically demanding job which included the ability to respond to emergencies.

The Appellant then described the physical symptoms that he had following the motor vehicle accident and his attempts to return to work, which he was very motivated to do.

He described the emotional problems that he suffered from after the motor vehicle accident, including sleepless nights and headaches. He had not had previous psychological problems, except for one incident when a friend of his was killed and he had been hospitalized due to the stress, for a brief period of time.

The Appellant described the treatments he received from Dr. El-Khatib following the motor vehicle accident, for his psychological difficulty, and the medications which he took to control his pain. He also described the treatments he received from Dr. Korol, a general medical practitioner, as well as Dr. Dubo and Dr. Johnson, physiatrists.

The Appellant described his efforts to return to work and his efforts with a rehabilitation counselor. He also described his attempts to return to his job at [text deleted] in a volunteer position with part-time hours, mostly answering phones.

The Appellant's wife testified regarding the Appellant's history prior to the motor vehicle accident. He was described as a very active man who worked hard at two (2) jobs and rarely missed time away from work, perhaps only for a cold or flu and for a short time. He had no significant health problems, aside from treatment for high blood pressure and diabetes. At home, he was responsible for heavy work such as shoveling snow, mowing the lawn, taking care of the cars, vacuuming the house, gardening and playing sports with the children.

She described the significant changes that she has seen in the Appellant since the motor vehicle accident, both physically and emotionally.

Counsel for the Appellant reviewed the Appellant's resume along with his testimony. He submitted that the Appellant had been continuously employed throughout his entire working life and had also attended University while working full time. He had functioned superbly both in the workplace and at home, with minor physical conditions such as high blood pressure and diabetes controlled through lifestyle and medication. Throughout his twenty-five (25) year continuous work history, and his immigration to Canada he had evidenced a very strong desire to

work, along with the physical ability to do so. He led a very active busy lifestyle, with none of the symptoms which he suffered after the motor vehicle accident and no evidence that the pre-existing degenerative spine condition which was discovered had caused him any problems.

In regard to the Appellant's psychological condition, the evidence was that, apart from one stress reaction in 1990 when his friend was killed, there was no evidence that prior to that, or in the ten (10) years subsequent, the Appellant had suffered from psychological problems of any kind.

Counsel for the Appellant reviewed the circumstances of the motor vehicle accident which had been so significant for the Appellant that it caused a post-traumatic stress disorder which came on fairly soon after the motor vehicle accident.

In spite of this, the Appellant tried to return to work and participated in return to work programs. However, his physical level of function did not improve sufficiently for him to be successful at these programs. In counsel's view, there was clear evidence that the Appellant's pre-existing asymptomatic back condition had been triggered by the trauma of the motor vehicle accident and rendered symptomatic. Perhaps if the Appellant had had a healthy spine he would have had a quicker recovery but, because of his degenerative changes, the injuries he sustained in the motor vehicle accident have stayed with him to this time.

This view was supported by the evidence of Dr. Dubo, who indicated that the Appellant's underlying joint degeneration could be a contributing factor to his pain and the perpetuation of myofascial trigger points which he had observed and documented.

Counsel reviewed the reports of Dr. Johnson, which indicated that the Appellant was not able to work at his pre-motor vehicle accident employment. He stated that the forces of the motor vehicle accident may have altered the compensatory pattern to accommodate the Appellant's degenerative changes. He noted ongoing soft tissue tension, as Dr. Dubo had, as well as loss of range of motion, particularly in his neck and upon turning his head.

Counsel for the Appellant was very critical of Dr. Hoy's reports. He noted that his various observations of the Appellant were inconsistent, and that he had not often been present for the Appellant's daily sessions at ARCC. He submitted that Dr. Hoy's comments should be given very little weight, particularly when the panel looks at all the other medical evidence.

Counsel also noted that although there was surveillance conducted upon the Appellant, the panel had not heard much about this at the hearing, because the surveillance supported and confirmed the Appellant's version of events, as well as his credibility.

He also reviewed an MRI performed on the Appellant which indicated spinal stenosis, poor compression at the C4 level and disc herniation at the L4-L5 level. Counsel indicated that this was clear objective evidence of the injuries from the motor vehicle accident which were causing pain.

Counsel for the Appellant reviewed the reports of Dr. El-Khatib, and of Dr. Jones, a psychologist with MPIC's Health Care Services. He described the psychological aspect of the Appellant's condition as being intertwined with his physical condition, with each having a negative consequence on the other. Dr. El-Khatib had not indicated that the Appellant could return to his pre-motor vehicle accident job, repeatedly saying that the Appellant needed to find alternate

work. It was his view that he could not return to his job as a Security Patrol Officer, as the anxiety caused by that position would cause the Appellant's stress and anxiety.

Counsel submitted that the Appellant had been a credible witness, and his wife had confirmed his evidence.

Counsel pointed to the black and white difference between the Appellant's pre and post-accident condition, the temporal onset of his symptoms following the motor vehicle accident, as well as the objective findings of the physicians. His physical difficulties combined with his psychological condition lead to the conclusion that, as a consequence of the motor vehicle accident, the Appellant was not able to perform his pre-accident employment. As well, he requires further psychological treatment and funding for medications, the requirement for which were also triggered by his motor vehicle accident injuries.

### **Evidence and Submission for MPIC**

Counsel for MPIC submitted that there is a distinction between the degenerative changes which the Appellant suffers from and the soft tissue injuries which he suffered in the accident. Soft tissue injuries tend to get better over time (whether treated or not).

Following the motor vehicle accident, she submitted, the Appellant had suffered from and been diagnosed with soft tissue injuries which were getting better. He was improving continually until about five (5) months after the motor vehicle accident. If his difficulties had been due to pre-existing changes triggered by the motor vehicle accident, he should have gotten worse; instead he was getting better.

Counsel reviewed the evidence from Dr. Dubo, as well as Dr. Padua's clinical notes. Over time, the Appellant showed great improvement, although there were still some remaining issues. The physiotherapist reported an increase in his cervical and shoulder range of motion, walking tolerance, flexion and erect posture, and at that time Dr. Dubo advised that the Appellant could expect further improvement regarding increases in strength.

She noted that many of the duties of his job as a Security Officer were quite light, involving patrol responsibilities, although she recognized that there were heavier aspects to his duties at [text deleted], due to some requirements of the job to restrain patients, etc. However, the Discharge Report from Prevention Assessment Rehabilitation Health Services ('PAR') on August 1, 2002, showed that the Appellant was reporting less pain, and walking more at work in his gradual return to work attempts.

Early reports from Dr. Hoy showed an increase in symptoms, with the Appellant describing his job as very heavy. Some pain behaviour was noted. Then, a CT scan showed degenerative changes in the Appellant's cervical and lumbar spine.

Later reports from Dr. Hoy indicated that the Appellant's physical performance fell below expectations and that he was self-limiting. As a result, it was difficult for Dr. Hoy to assign any restrictions to the Appellant. Counsel indicated that the Appellant at that point viewed himself as disabled and put no energy into getting better.

Counsel also reviewed reports from Dr. MacKay who reviewed the natural history of recovery from a soft tissue injury. It was his view that the Appellant's pre-existing difficulties had not been enhanced by the motor vehicle accident. It was possible that his degenerative changes

could have resulted in increased symptoms, but these changes would not have continued to affect him at such a late date following the motor vehicle accident. From an objective standpoint, nothing could be identified which would prevent the Appellant from functioning – it was only his perceived level of function.

Counsel maintained that if the Appellant's difficulties were from the motor vehicle accident, they would not have started to get better and then worsened. It was her view that the Appellant recovered from his soft tissue injuries, but then the degenerative changes took over, causing ongoing difficulties.

She also reviewed a report from Dr. Dominique, who indicated that there were no neurological defects.

Counsel noted flaws in Dr. Johnson's reports, which, although they indicated that the Appellant could not work at his pre-motor vehicle accident due to pain, also indicated that the Appellant showed an increase in neck movements when he was distracted. It was counsel's view that although the Appellant may believe himself to be extremely disabled and unable to perform the functions of his job, the evidence shows that he can do them. The intense pain the Appellant expresses may not be reflected in what is objectively going on with him, and his subjective complaints interfered with an accurate view of his objective condition.

In regard to the Appellant's psychological difficulties, counsel for MPIC emphasized that for PIPP benefits to continue to flow, these difficulties must be a result of the motor vehicle accident. The Appellant's current difficulties were a result of anxiety from worrying about his future employment, and were not related to the motor vehicle accident. She cited a previous

decision of the Commission, upheld by the Manitoba Court of Appeal, in *Krzysik v. Manitoba Public Insurance Corporation*, [2008] M.J. No. 75 in arguing that to be successful in a claim, the injuries suffered by the Claimant must have occurred in the course of or during the accident in question.

As well, counsel for the Appellant argued that the Appellant's psychological difficulties do not preclude a return to work. Reports indicated that even his anger at MPIC was dissipating by March 17, 2004, and so, from a psychological perspective, he would have been able to work by December of that year.

In regard to the Appellant's medications, counsel noted that the only ones still at issue were Amitriptyline, Docusate and Ativan, as claims for the rest had been withdrawn by counsel for the Appellant.

Counsel submitted that as the Appellant was no longer suffering from psychological or physical issues regarding the motor vehicle accident, the Internal Review decisions on the issues of psychological treatment and reimbursement for medication should also be confirmed.

### **Discussion**

The relevant sections of the MPIC Act and Regulations are:

#### **Events that end entitlement to I.R.I.**

**110(1)** A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

#### **Reimbursement of victim for various expenses**

**136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act,

to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

**Manitoba Regulation 37/94**

**Meaning of unable to hold employment**

**8** A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

**Manitoba Regulation 40/94**

**Medical or paramedical care**

**5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

The panel has reviewed the evidence on file as well as the testimony provided by the Appellant and his wife, and the submissions of counsel for the Appellant and counsel for MPIC.

The onus is on the Appellant to show, on a balance of probabilities, that the decisions of the Internal Review Officer in finding that he was capable of holding his pre-accident employment and should no longer be eligible for funding for psychological treatments and reimbursement for medications, were in error.

Clearly, the panel heard and reviewed evidence that the Appellant did have an underlying degenerative condition, which was likely in existence prior to the motor vehicle accident. However, we also heard evidence that the Appellant had no symptoms resulting from this condition prior to the motor vehicle accident, and that he had in fact led a full and productive life. He pursued an education while working full time, worked at more than one (1) job, and was

also active in his home, with his family, and with his hobbies. He was physically strong and active.

Following the motor vehicle accident the Appellant was disabled from working and struggled with physical and psychological issues. There were some improvements, as well as backsliding, in his condition, which fluctuated throughout his treatment.

In reviewing the medical evidence, as well as the evidence of the Appellant, his wife, and the surveillance reports, the panel has concluded that the Appellant is not able to work at his pre-motor vehicle accident employment. He was not capable of holding his pre-accident employment by December 31, 2003.

The Appellant's job included physical activity as well as an emergency reaction component which required him to have the physical ability to deal with violence and to have the ability to remove unwanted individuals.

The weight of medical evidence does not support his ability to perform these duties.

On February 20, 2004, Dr. Dubo reported that in spite of treatments, the Appellant was not able to return to his job.

The underlying facet joint degenerative changes in the cervical and lumbar region could be contributing factors to his pain symptoms as well as the perpetuation of myofascial trigger points.

At this time, it is still my opinion that he is not capable of returning to his original work in the Security Department at [text deleted]. There is a vocational rehabilitation consultant from Continuum Consulting Inc. assigned by MPI to help him find alternative type of work in the field of security and investigations.

Dr. Korol reviewed the Appellant's symptoms and diagnosis in a report dated October 31, 2005. He also reviewed extensive documentation on the Appellant's file in order to address the questions of whether the patient would be able to perform the duties of a security officer and whether his disability was a consequence of any pre-existing medical condition.

He stated:

Query #1      Whether the patient would be capable of performing the duties of a security officer from December 31, 2003 to the present.

There is much evidence that the patient is definitely NOT capable of performing these duties. He certainly demonstrated diminished grip strength at all his visits with me. He certainly would be unable to comply with many of the requirements of the job description for this position. For example, apprehending and detaining unauthorized persons, or taking control of patients under the Mental Health Act would be impossible.

Dr. Korol agreed with Dr. Dubo's opinion of February 20, 2004 that the Appellant was "disabled from his work as described above; and the patient remains with restricted range of motion of the cervical spine".

In regard to the issue of whether the patient's disability was a consequence of any pre-existing medical condition, Dr. Korol noted that there was certainly no medical evidence, as contained in Dr. Padua's medical clinic notes, that the patient had any musculoskeletal neck or back pain for almost ten (10) years prior to the motor vehicle accident of May 24, 2001. He noted there was "NO evidence that he ever showed any sequelae of his MVA of 1990 or the demonstrated cervical disc degeneration from x-rays at that time". He concluded:

It seems clear to me, that prior to his accident of May 24, 2001, [M.F.] was fully functional, notwithstanding the presence of cervical disc degeneration demonstrated by x-rays in 1990. Therefore the accident must be assumed to be the immediate cause of his current disability.

The panel reviewed two (2) reports from Dr. Johnson. On May 2, 2006 he reviewed the history of the motor vehicle accident, the Appellant's symptoms and his attempts to return to work at light duties. His physical examination identified similar findings to those found by Dr. Dubo in 2004.

Dr. Johnson concluded:

I don't feel that there is going to be much change in this gentleman's neck, shoulder and back pain. There may be some help for his knee if a specific pathological lesion can be identified. At the present time I don't feel that he is able to work. He stated that he was an (sic) excellent health prior to the collision. His work record would indicate whether this was the case. He did have hypertension and diabetes but these were not affecting his work. If no other evidence of physical concerns can be identified prior to the collision, the probability that his present condition was created by the collision of May 2001 would be very high.

Dr. Johnson reported again on December 1, 2006. He stated he did not feel that the Appellant had the physical ability to return to work as a security guard, given the pain he was experiencing in his neck, shoulder, mid-back and right knee, noting that he had been able to function well prior to the motor vehicle collision of May 24, 2001, and that his present condition had arisen since that time, but not responded well to either medical treatment or medication.

. . . Given the fact he has not had significant change in his condition over the last five years, the probability of him being able to return to work of any type is nil.

Dr. Johnson reviewed the Appellant's MRI scans, which showed evidence of spinal stenosis at C3-4 and C4-5 with degenerative changes in the lower spine. He concluded:

All degenerative changes were present prior to the motor vehicle collision in 2001. There is a high probability that the forces of the collision altered the compensatory pattern developed to accommodate the degenerative vertebral levels. Although it cannot be proven with certainty, there is a high probability that his pain is arising from soft tissue

tension in his neck and back. The pain affecting the right knee is definitely soft tissue in nature with some contribution from the patellofemoral joint.

Accordingly, the panel has concluded that the weight of medical evidence from the Appellant's caregivers establishes that, as a result of his injuries from the motor vehicle accident, he was not able to perform the duties of his employment, by December 31, 2003, and that he continues to be so disabled to the present time. Accordingly, the Appellant's appeal from the Internal Review decision of August 10, 2004 is allowed. The Commission finds that the Appellant has established, on a balance of probabilities, that he was not capable of holding his pre-accident employment and is entitled to IRI benefits from December 31, 2004, and continuing to the present time.

In regard to the Appellant's entitlement to funding for psychological treatments beyond December 31, 2004, the panel has considered the evidence of Dr. El-Khatib and Dr. Jones. Most recently, on November 22, 2007, Dr. El-Khatib provided a report to address the question of whether the Appellant continued to suffer from an adjustment disorder with anxiety and, if so, whether this was related to the termination of his IRI or to broader issues concerning his injuries and ability to work. Dr. El-Khatib stated:

Yes, [M.F.] continues to suffer from an Adjustment Disorder with anxiety, it is our opinion that this diagnosis is directly related to the sequelae of his MVA in question. It was also exacerbated by the termination of his IRI by the end of December 2004.

He went on to note:

According to his medical information, he has been suffering from pain and limitations of functions, associates with injuries caused by his accident of May 24, 2001. There is extensive medical information and investigations including MRI's which continue to support his pain suffering and lack of function. Psychologically, his current condition has been secondarily caused by physical injuries associated with his accident. His

ongoing psychological condition is as a consequence of the injuries that he sustained in the accident and their sequelae.

Dr. El-Khatib clearly stated that he believed that the Appellant's inability to perform the substantial duties of his pre-accident employment is related to the injuries he sustained from the accident in question and that if he were physically treated, the secondary psychological diagnosis would be resolved and subsequently would have less impact on his employability in the future. He noted the Appellant's good work history but expressed the belief that the Appellant's psychological difficulties continued for three (3) reasons:

- a. physical limitations and inability to return to employment;
- b. cultural background which contributed to the sense of pride and losing dignity with his wife being the financial supporter to the family while he has been sitting at home without employment; and
- c. his sense of victimization which contributed to paranoid feelings.

Based upon this opinion provided by the Appellant's primary psychological caregiver, the panel finds that the Appellant has established, on a balance of probabilities, that his need for psychological treatments beyond December 31, 2004 was a result of the motor vehicle accident. The Commission allows the Appellant's appeal from the Internal Review decision of January 14, 2005, and finds that the Appellant is entitled to funding for psychological treatments beyond December 31, 2004.

Although the Appellant's initial appeal asked for entitlement to reimbursement for some seven (7) medications, this issue was narrowed at the hearing to reimbursement for Amitriptyline, Docusate and Ativan.

In upholding the discontinuation of funding for the Appellant's medications, the Internal Review Officer relied upon an opinion from Dr. Jones, MPIC's psychological consultant, dated March 10, 2005. Dr. Jones indicated:

Based on our discussion and my review of the documentation, I can only comment on the sleep and pain medication which includes Zopiclone (taken as needed), Ativan and Amitriptyline. In my opinion, these medications would not be considered a medical necessity in terms of treating an MVA related psychological condition. As noted in my last review of the file, the claimant was volunteering and seeking employment and his Adjustment Disorder with anxiety symptoms as described by Dr. El-Khatib, was felt to be related to his Income Replacement ending. As such, ongoing treatment with these medications would not be medically required at this time.

The Internal Review Officer also quoted Dr. MacKay's opinion of March 14, 2005 which stated:

It is not medically probable that [M.F.] requires specific medication at this time to address the soft tissue symptoms he developed secondary to the incident in question.

Based on the above it is my opinion the above noted medications are not medically required in the management of the conditions [M.F.] developed secondary to the incident in question.

Once again, the panel has relied upon the opinion of the Appellant's caregiver, Dr. El-Khatib, who reviewed the Appellant's current medications in his letter dated November 22, 2007. The panel accepts Dr. El-Khatib's conclusion that the Appellant's physical and psychological difficulties were a result of the motor vehicle accident, that the requirement for the listed medications arose as a result of these injuries and symptoms.

As noted above, the panel has also accepted the opinion of Dr. Johnson that the Appellant's pain complaints were due to his physical condition as a result of the motor vehicle accident.

Accordingly, the panel finds that the Appellant's appeal from the Internal Review decision of April 26, 2005, in regard to funding for Amitriptyline, Docusate and Ativan, should be allowed and that the Internal Review decision in this regard be overturned. Accordingly, we find that the Appellant is entitled to reimbursement for these medications.

In the event that the parties are unable to agree upon the amounts which are owed to the Appellant by the Corporation as a result of this appeal decision, the Commission will retain jurisdiction to assist the parties in that regard.

Interest, in accordance with Section 163 of the MPIC Act, shall be applied to any amounts owing to the Appellant by MPIC.

Dated at Winnipeg this 21<sup>st</sup> day of July, 2008.

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**LAURA DIAMOND**

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**LEONA BARRETT**

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**SANDRA OAKLEY**