



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-02

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Les Marks
Mr. Antoine Frechette

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf and was assisted by her son, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: January 16, 2004

ISSUE(S):

1. Entitlement to Income Replacement Indemnity Benefits
2. Exercise of Commission's jurisdiction under Section 183(4) of The Manitoba Public Insurance Corporation Act ('MPIC Act')
3. Application of Section 150 of the MPIC Act

RELEVANT SECTIONS: Sections 110(1)(a), 150 and 183(4) of the MPIC Act

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

On July 4, 2000 [the Appellant], was the driver of a motor vehicle when the vehicle she was operating was struck in the rear by another motor vehicle. As a result of the accident the Appellant attended at the [hospital #1] and reported injuries to her neck, back, both shoulders, left thumb area, both knees and complained of headaches. The Emergency Treatment Record at the hospital indicated a diagnosis of neck strain.

The Appellant was referred to physiotherapy in respect of her injuries and on July 10, 2000 an Initial Health Care Report was provided to MPIC by a physiotherapist, [text deleted]. The physiotherapist diagnosed the Appellant as having “*bodily strain multiple sites*”. In her report she indicated risk factors for chronic pain which included depression and hypertension.

On August 11, 2000 a further Health Care Provider Progress Report was provided by the physiotherapist, [text deleted], to MPIC which indicated that the Appellant was complaining of a sore neck, headaches and sore back. The physiotherapy report further indicated that the Appellant had a limited range of motion in her cervical, thoracic and lumbar spine as well as her right knee and left thumb and, as a result, the Appellant had less than full function due to these symptoms.

On August 17, 2000 MPIC advised the Appellant that they had completed their assessment of the Appellant’s claim and that she was entitled to receive Income Replacement Indemnity (‘IRI’) benefits.

[Text deleted], the Appellant’s doctor, referred the Appellant to [text deleted], physiatrist, at the [hospital #2]. On August 31, 2000 MPIC requested an Initial Health Care Report from [Appellant’s physiatrist]. [Appellant’s physiatrist] provided a Health Care Provider Progress Report on October 11, 2000 in respect of the Appellant:

- (a) which indicated a reduced lordosis and spasm of paracervical muscles in the cervical spine;
- (b) which identified trigger points in the sternocleidomastoid, trapezius, levator and scapulae (shoulder blade) muscles;

- (c) which indicated that her cervical spine range of motion is 50% restricted and the lumbar spine has a reduced lordosis; and
- (d) which provided a diagnosis of mechanical neck and back pain syndrome and a possible disc herniation at L-5 level.

MPIC received a further Health Care Provider Progress Report from the physiotherapist, [text deleted], on October 24, 2000:

- (a) which indicated a generalized muscle weakness and limited ranges of motion in the cervical, thoracic and lumbar spine;
- (b) which diagnosed cervical and lumbar strain involving the shoulders; and
- (c) which reported that the Appellant indicated that she was unable to return to work in the near future.

[Appellant's psychiatrist], in a medical report dated September 5, 2003, indicates that the Appellant's husband died on [text deleted].

[Appellant's doctor] provided a Health Care Provider Progress Report to MPIC on November 8, 2000 which indicated that the Appellant was complaining of pain in her neck, shoulders and lower back. This report further stated the range of motion in her shoulders is improving and further stated "*patient is improving slowly . . .*".

[Rehab clinic] were requested by MPIC to provide an assessment in respect of the Appellant. [Rehab clinic] completed their assessment on January 3, 2001 and provided a report to MPIC on the same date, which stated in part:

PHYSIOTHERAPY FINDINGS:

- poor posture
- decreased cervical spine, lumbar spine, hip and shoulder range of motion
- decreased flexibility
- very deconditioned
- muscle spasm
- trigger points
- patient moves slowly and has a flat affect
- therapist was unable to test passive range of motion as [the Appellant] was unable to relax

[Rehab clinic] recommended that the Appellant undertake a rehab conditioning program of ten weeks in duration and that [rehab clinic] would reassess that program after a period of four weeks.

On February 15, 2001 the case manager, in a note to file, indicated that she had been informed the Appellant was involved in another motor vehicle accident on February 14, 2001.

On March 7, 2001 [rehab clinic] wrote to MPIC and advised that the Appellant had been reassessed on February 20, 2001 following her second motor vehicle accident on February 14, 2001. The Appellant reported that her neck, shoulders, back and headaches had increased since her second motor vehicle accident.

[Text deleted], a physiotherapist at [rehab clinic], in a further report to MPIC dated March 7, 2001, noted that there has been a delay in the rehab conditioning program for the Appellant due to the Appellant's second motor vehicle accident on February 14, 2001 and due to the Appellant's trip to [text deleted]. As a result, this program did not commence until August 2001.

An MPIC case manager produced a note to file dated August 20, 2001 which indicated that MPIC had arranged for the Appellant to enter a graduated return to work program with her employer and the Appellant had been so advised on August 10, 2001.

The Appellant's case manager provided a note to file dated August 21, 2001 which indicated that the Appellant had attended on the first day of her graduated return to work program at the employer's premises, had worked for approximately 40 minutes and then left after informing her employer that she was not feeling well. This note further indicated that the employer advised the case manager that the employer had a concern about the ability of the Appellant to participate in the return to work program.

Upon receipt of this information MPIC retained the services of a rehabilitation consultant who spoke [text deleted] and would be able to communicate with the Appellant. On September 11, 2001 the rehabilitation consultant contacted the case manager and advised her that she had met with the Appellant, who appeared depressed, and reported to the case manager that the Appellant did not attend [text deleted] and stayed home all day long while her three grown children attended University. The rehabilitation consultant further indicated to the case manager that she would arrange for the Appellant to have a psychiatric assessment. The consultant also advised the case manager that the Appellant was being treated by [Appellant's psychiatrist].

On September 24, 2001 the case manager produced a note to file indicating that the rehabilitation consultant advised her that she had not been able to find a grief counsellor that spoke [text deleted] and that she would attempt to arrange for the Appellant to see [Appellant's psychiatrist].

At the request of MPIC, [Appellant's physiatrist] provided a report to the case manager dated November 26, 2001. In his report [Appellant's physiatrist] stated that the Appellant had been referred to him by her family physician, [text deleted], and that he saw the Appellant on October 11, 2000 and she made the following complaints in respect of the motor vehicle accident of July 4, 2000:

1. Neck Pain.
2. Back Pain.
3. Shoulder Pain.
4. Sleep Disturbances.
5. Headaches
6. Pain in Knee Joints
7. Reduced functional capabilities; and
8. Inability to return to her pre-injury occupation.

[Appellant's physiatrist] further stated:

Impression: My clinical assessment on October 11, 2000 revealed that [the Appellant] in the motor vehicle accident of July 4, 2000, suffered flexion extension and possibly rotational injury to her neck and back, complicated by musculoligamentous strain, formation of taut bands with regional myofascial trigger points, restriction of movements of the neck and back, left shoulder strain, headaches and (tension myalgia), non-restorative sleep and reduced energy level with reduced functional capabilities.

[Appellant's physiatrist] further indicated that he had commenced treating the Appellant with injections and medication and reported that he had seen the Appellant on October 23, 2000, December 4, 2000 and August 27, 2001 which was subsequent to the death of her husband and her second motor vehicle accident which had occurred on February 14, 2001.

[Appellant's physiatrist] further stated in this report:

August 27, 2001: [the Appellant] was reviewed in the clinic and stated that she was involved in a second motor vehicle accident on February 14, 2001 and this aggravated her neck, shoulder, back pain and headaches. She also noticed increasing pain in both her knee joints. The pain in the knee joints is throbbing in nature and is aggravated with activities and weight bearing. She looked depressed, her mood was low and was

emotionally labile. My further inquiry revealed that she is not coping well with the pain, functional impairment and also loss of her husband. She complained of pain in both her cervical scapular regions. The pain is persistent and is aggravated on doing any light or medium level of activity and work. She was encouraged to return to work but could not function at work more than 1 ½ hours and had to stop working. . . . She looked depressed and is not coping well with her pain and losses she has experienced since the death of her husband.

[Appellant's physiatrist] further stated that on August 27, 2001 the Appellant underwent a local injection at that time and medication was also provided to the Appellant.

[Appellant's physiatrist] also indicated in his report that on October 11, 2001 he saw the Appellant and stated:

October 11, 2001: [the Appellant] in the clinic stated that there has been no further improvement in the neck and shoulder pain, in spite of doing daily exercises. She has been taking analgesics on a regular basis.

This medication helped to reduce the pain. On physical examination she looked depressed, and was quite stooped in her sitting and standing posture. Cranial nerves 2 to 12 intact. Cervical spine reduced lordosis, spasm of paracervical muscles, no active trigger points but generalized tenderness of the neck and shoulder girdle muscles noticed. Range of motion of the cervical spine 25% restricted of normal range. No myotomal, dermatomal or stretch reflex abnormalities. No tender points of fibromyalgia noticed. Plantar response flexors bilaterally and no active or inflamed joints.

Impression:

[The Appellant] has developed chronic soft tissue pain syndrome with the possibility of depression. No improvement in her mood, pain or functional level. (underlining added)

[Appellant's physiatrist] recommended that the Appellant would benefit from interdisciplinary team management, including psychosocial assessment and counselling, and that she may require drug therapy for the management of her depression. He also recommended an individual exercise program.

He further stated:

4. She has very little understanding and communication in English. Because of language barriers she may not be able to participate well in the program without the input of an interpreter or one of the children for treatments.

[Vocational rehab consulting company #1], at the request of MPIC, prepared a Job Site Analysis in respect of the Appellant's employment as a sewing machine operator and provided a report to MPIC, dated December 3, 2001, which stated in part:

III. Overall Summary and Recommendations

The Industrial job position according to the Canadian Classification and Dictionary Classification of Occupations (CCDO) is considered *sedentary work*. The definition of *light* work is activities that involve frequent handling (including; pulling, pushing, and/or moving objects during the work performed) of weight up to 20 lb.

If [the Appellant] were to return to her pre-accident position she would be working at a sedentary level. Since [the Appellant] has been off from work there has been a change in the management and therefore the physical duties that she is required to perform has changed significantly (See appendix for outline of duties). Currently there is no work to return to at [text deleted] because the warehouse has been shut down due to lack of orders due to the slow down in the economy. (underlining added)

[The Appellant] reported that she has difficulty functioning because of pain all over her body. She stated that her body pain has changed and she has difficulty with all activities. She stated that she doesn't think that she can work in any capacity.

On November 26, 2001 the case manager wrote to the Appellant's psychiatrist and requested a report in respect of the Appellant regarding the following matters:

- Any factors that would be delaying her recovery and the return to her pre accident level on function.
- Your diagnosis, prognosis and treatment recommendations.
- Any further information that is relevant for [the Appellant's] rehabilitation.
- If you have any questions or concerns please do not hesitate to contact the writer.

In response [Appellant's psychiatrist] provided a report to MPIC, dated January 4, 2002, in which he stated that the Appellant was depressed and was grieving her husband's death. He further stated the Appellant had cancer of the breast and the breast was removed five years ago

and stated “. . . *but that seems to be ok now.*” In respect of previous psychiatric history he stated:

PREVIOUS PSYCHIATRIC HISTORY: I saw her two years ago when she became very depressed following her breast surgery and also the difficulty she experienced with her sick husband and the way their marriage was going on. She was treated with antidepressants and psychotherapy. Eventually she recovered and she went back to work. (underlining added)

[Appellant’s psychiatrist] further stated in his report that the Appellant indicated concern about her financial condition in respect of supporting her children and maintaining the household.

In respect of the Appellant’s mental status [Appellant’s psychiatrist] stated:

MENTAL STATUS: She presented fairly neatly dressed. She’s oriented in three spheres. Her mood is depressed and there is considerable psychomotor retardation. There is no evidence of psychosis. She has a great deal of difficulty expressing her feelings. She hardly talks spontaneously. She answers questions with minimal elaboration. Her judgment is reasonable. Her insight is very limited. Her affect is one of depression.

DIAGNOSIS:

- Axis I - Major Depression without psychosis-unresolved grief reaction.
 - Axis II - Somewhat a passive person.
 - Axis III - Motor Vehicle Accident.
 - Axis IV - MVA-complains of multiple pains-death of husband-financial anxieties.
 - Axis V - GAF when first seen 40.
- (underlining added)

He further stated that the Appellant’s recovery is being delayed by her unresolved grief reaction.

On December 20, 2001 MPIC wrote to [Appellant’s psychiatrist] and requested his report in respect of any objective findings that would preclude the Appellant from returning to her pre-motor vehicle accident employment duties as a sewing machine operator. (underlining added)

In addition, [Appellant’s psychiatrist] was requested to provide any recommendations as to the

Appellant's return to work at this time.

In reply, [Appellant's physiatrist] provided a report to MPIC dated January 14, 2002. In this report [Appellant's physiatrist] indicated that he treated the Appellant on October 25, 2001 and on November 14, 2001 and, on both occasions, he noted bilateral shoulder pain with restrictions of the movements and sacrococcygeal pain on sitting. [Appellant's physiatrist] further indicated that he saw the Appellant on January 14, 2002 and, upon physical examination, [Appellant's physiatrist] reported objective findings that in his view would preclude the Appellant from returning to work as a sewing machine operator. He stated:

. . . . On Physical examination, she was emotionally stable, but look depressed. Cervical spines reduced lordosis, moderate severe degree of spasm and tenderness of the paracervical muscles. Range of motion of the cervical spines 30 to 40% restricted of normal in all planes. The motor strength of neck and shoulder girdle muscles graded 4 to 4+ out of 5. Lumbosacral spines reduced lordosis, tenderness of the iliocostalis lumborum and quadratus lumborum muscles bilaterally. Range of motion of the lumbar spines 25% restricted of normal range in all planes and painful. Triceps biceps, brachioradialis, knee and ankle stretch reflexes symmetrical and normal. Sensation to touch, pin, vibration and sense of position normal. The myotome strength could not be tested accurately because of pain on resistive testing of the muscle strength.

In summary, there has been no evidence of any disc herniation and there is no evidence of any significant radiculopathy but she has a significant degree of muscle spasm/tension myalgia, restriction of movements of the cervical and lumbar spines and depression. She continues to perceive high degree of disability and pain. She is still grieving to the loss of her husband. She has very poor spinal posture with significant degree of muscle spasm, some trigger points and low energy level with flat affect. She also seems to be not well motivated at present. (underlining added)

[Appellant's physiatrist] further indicates that he reviewed the Appellant's job description and that the Appellant informed him that she is unable, due to her persistent pain, of carrying out the job duties of a sewing machine operator.

On February 15, 2002 MPIC's case manager wrote to [text deleted], one of MPIC's medical consultants, who on a regular basis consults with MPIC's case managers and provides written opinions to MPIC on a variety of matters relating to a claimant's entitlement to treatment benefits and IRI benefits from MPIC.

The Commission notes that the information provided by MPIC to its medical consultant, [text deleted], and the information it requested from [MPIC's doctor #1], was very different from the information that MPIC provided to [Appellant's physiatrist] and [Appellant's psychiatrist] (hereinafter referred to as the "Appellant's medical care providers") and the information they requested from these two doctors. Unlike the Appellant's medical care providers, [MPIC's doctor #1] was:

1. provided with all relevant medical information in respect of the Appellant (22 documents); and
2. specifically requested to:
 - (i) comment on the causal relationship between the Appellant's medical complaints and the injuries she sustained in the motor vehicle accident; and
 - (ii) provide his opinion as to whether any of the motor vehicle accident injuries contributed or caused the Appellant to delay or prevent her from returning to her employment as a sewing machine operator.

[MPIC's doctor #1], on March 11, 2002, personally examined the Appellant and indicated in his report to MPIC dated March 13, 2002 that he had reviewed all 22 documents submitted to him for his consideration and he further stated in this report:

Soft Tissue Examination

She was tender at 100% of the points tested with extremely light palpation over the neck, shoulder girdle, upper and lower limbs. She also had unanticipated tenderness over bony sites including the posterior occiput and the vertex. At no point did she report referral from any of these sites. There was no evidence of increased muscle tone in association with this tenderness.

CONCLUSIONS

Diagnoses

1. Depression (underlining added)
2. Possible associated chronic pain disorder (underlining added)
3. Thalassemia
4. Diabetes

Discussion

The claimant presents with several vegetative symptoms including depressed mood, decreased level of activity and decreased level of enjoyment. She has a prior history of depression, which, according to [Appellant's psychiatrist], was as recent as the year 2000. This has intensified significantly since the death of her husband and appears to be the primary limiting factor to function. Many of her responses with respect to describing her pain complaint as well as her functional limitation appear to be the most consistent with a diagnosis of depression. (underlining added)

A chronic pain disorder implies a self-perpetuating condition where one's symptoms take on a life of their own. This appears to have been evident from early on and is reinforced by the claimant's current opinion that her condition has worsened remote from the time of injury. Her symptoms are diffuse and involve all four quadrants of the body. They are associated with physical signs that cannot be adequately explained on a neuro-anatomic basis, in the context of a generalized heightened sensitivity to pain. Chronic pain disorders may be seen in association with depression or as a result of it. The latter distinction will be deferred to [Appellant's psychiatrist]. (underlining added)

.....

Work Capacity

Per the claimant's evaluation of January 3, 2001, her function at that time was summarized as light level of work. Subsequently, per the Job Demands Analysis Report of December 3, 2001, it appears that changes have been made to her job making it more compatible with a sedentary occupation. Accordingly, the claimant appears to have the physical capacity to meet her pre-accident job demands.

The primary limiting factor for returning the claimant to work appears to be motivational/emotional. There are no physical factors identified that preclude the

claimant from returning to this type of work. I note, however, that there is currently no work to return to because the warehouse has been closed.

[Text deleted], a member of MPIC's Health Care Services Team, was requested by MPIC to provide a paper review in respect of the Appellant's medical file. Like [MPIC's doctor #1], and unlike the Appellant's medical care providers, [MPIC's doctor #2] was provided with the Appellant's file and was specifically requested by MPIC to comment on the causal relationship between the Appellant's medical complaints and injuries, and whether any of her motor vehicle accident injuries or complaints caused or contributed to the Appellant's inability to return to her full-time occupation as a sewing machine operator. [MPIC's doctor #2] provided a report to MPIC dated April 17, 2002 and stated:

RE: [the Appellant]

Claim Number: 7[text deleted]

Accident of July 4, 2000

REASON FOR REVIEW

[The Appellant's] file was reviewed to determine whether the medical evidence identifies a physical impairment of function arising from the incident in question that, in turn, precludes her from returning to her full-time occupational duties as a sewing machine operator. (underlining added)

REVIEW OF DOCUMENTS

It is noted in the file that [[the Appellant] developed symptoms in keeping with a soft tissue strain involving her neck, shoulders and lower back regions. It is documented that she received a course of physiotherapy treatments that resulted in improvement to her condition. Despite the improvement and undergoing a work-hardening program, [the Appellant] was unable to return to her occupational duties as a result of her persistent symptoms.

It is documented that her pre-existing depression in conjunction with loss of her husband adversely affected her perceived level of function.

In the reports submitted by [Appellant's physiatrist] and [MPIC's doctor #1], there is no documentation identifying a physical impairment of function that would preclude [the Appellant] from returning to her sedentary occupational duties.

It was [MPIC's doctor #1]'s opinion that the primary limiting factor for [the Appellant] to return to her work appeared to be motivational/emotional.

In [Appellant's psychiatrist's] January 4, 2002 report, it is documented that [the Appellant] was identified as being very depressed following breast surgery. It was

[Appellant's psychiatrist's] opinion that [the Appellant] to have problems with major depression without psychosis as a result of unresolved grief reaction. It was his opinion that she should continue with psychotherapy, which she had been receiving on a weekly basis.

.....

CONCLUSIONS

Based on my review of [the Appellant's] file, it is my opinion that the medical evidence indicates that she had physically recovered from the medical conditions arising from the incident in question to the extent that she is able to return to her pre-collision occupational duties at this time.

On April 30, 2002 [text deleted], Psychological Consultant, MPIC Health Care Services, provided an Inter-Departmental Memorandum to the case manager. Unlike the Appellant's medical care providers, MPIC when they requested a medical opinion from [MPIC's psychologist], provided [MPIC's psychologist] with the Appellant's medical file and specifically requested [MPIC's psychologist] to review the medical file and provide a specific opinion in respect to the possible relationship between the Appellant's clinical depression and her motor vehicle accident of July 4, 2000.

In his Memorandum [MPIC's psychologist] indicates that the reason for the referral was:

[The Appellant's] medical file was submitted for review with a specific opinion being sought regarding the possible relationship between her clinical depression and her MVA of July 4, 2000. (underlining added)

[MPIC's psychologist] concludes, after reviewing [Appellant's psychiatrist's] report of January 4, 2002 and [MPIC's doctor #1's] report of March 11, 2002, on the balance of probabilities, there is no cause/effect relationship between the Appellant's current major depression and the motor vehicle accident of July 4, 2000. In arriving at this opinion [MPIC's psychologist] indicates that [Appellant's psychiatrist], in his report of January 4, 2002, states that the Appellant's unresolved

grief reaction to her husband's death delayed the Appellant's recovery and there is no mention in the report that her depression is related to her motor vehicle accident.

Like [MPIC's doctor #1] and [MPIC's doctor #2], [MPIC's psychologist] had the opportunity of reviewing the reports in the Appellant's medical file which included [Appellant's psychiatrist's] two reports and [Appellant's psychiatrist's] two reports. It should further be noted that neither of the Appellant's medical care providers were provided with the opportunity of reviewing the reports of [MPIC's doctor #1], [MPIC's doctor #2] or [MPIC's psychologist].

Case Manager's Decision

Upon review of the medical reports that the case manager received from [MPIC's doctor #1], [MPIC's doctor #2] and [MPIC's psychologist] (hereinafter referred to as "MPIC's Health Care Services Team") and from the Appellant's medical care providers, the case manager wrote to the Appellant and advised her that her IRI benefits would end on May 18, 2002 for the following reasons:

On March 11, 2002 you attended for an Independent Medical Examination that was performed by [MPIC's doctor #1]. In [MPIC's doctor #1's] report of March 13, 2002 he advised that there are no physical factors identified that preclude you from returning to the employment that you held as a sewing machine operator at the time of the accident. He went on to advise that the primary limiting factor for your return to work is motivational/emotional.

In [Appellant's psychiatrist's] report of January 4, 2002 he confirmed that your depression was pre-existing and that you were presently suffering from unresolved grief reaction related to the loss of your husband. We are aware that your return to work is affected by your diagnosed depression and unresolved grief reaction but this diagnosis is unrelated to your motor vehicle accident of July 4, 2000.

Members of our Medical Services Team have reviewed all the medical information on file. These reviews support that you have physically recovered from your motor vehicle accident injuries to the extent that you would be capable of returning to your pre-collision occupational duties and that your unrelated psychological state contributes to your high

perception of disability.

You have been assessed and deemed physically capable of returning to your employment as a sewing machine operator. As per the enclosed Section 110(1)(a) of the Manitoba Public Insurance Corporation Act your Income Replacement Indemnity will therefore end as of May 18, 2002.

The Commission notes that the case manager, in providing her reasons for terminating the IRI benefits to the Appellant, ignored the two medical reports that [Appellant's psychiatrist] provided to MPIC.

The Appellant, upon receipt of the case manager's decision, on June 20, 2002 made an application to have the case manager's decision reviewed by an Internal Review Officer.

Internal Review Officer's Decision

On October 7, 2002 the Internal Review Officer issued a decision dismissing the Application for Review and confirming the case manager's decision dated May 3, 2002.

The Internal Review Officer, in setting out the reasons for her decision, stated:

REASONS FOR REVIEW DECISION

In her decision letter of May 8, 2002 (sic), your Case Manager outlined the information that she relied on in making her decision. She advised that [MPIC's doctor #1's] report of March 13, 2002 advised that there are no physical factors identified that preclude you from returning to your employment as a sewing machine operator. [MPIC's doctor #1] continued on by saying that the primary limiting factor for your return to work is motivational/emotional.

[Appellant's case manager] also writes about [Appellant's psychiatrist's] report of January 4, 2002 in which he confirmed that your depression was pre-existing and that you were presently suffering from unresolved grief reaction related to the loss of your husband. This diagnosed depression and unresolved grief reaction is unrelated to your motor vehicle accident of July 4, 2000 even though it is affecting your capability of

returning to work.

In my review of the medical information on file, I could not find any indication that you were not physically fit to return to your pre-accident occupation.

.....

[MPIC's doctor #1's] report was very thorough and advised that you are physically capable of performing the duties required in your pre-accident occupation. I must conclude that there is no reason related to your motor vehicle accident that is preventing you from returning to your occupational duties. Therefore, it is my decision that your Case Manager was correct in terminating your Income Replacement Indemnity Benefits as of May 18, 2002 as you were capable at that time of performing your pre-accident occupation.

An examination of this decision indicates that the Internal Review Officer specifically referred to [MPIC's doctor #1's] report dated March 13, 2002 and [Appellant's psychiatrist's] report dated January 4, 2002 in arriving at her decision. The Internal Review Officer further stated on a review of the medical information on file that she could find no indication that the Appellant was not physically fit to return to her pre-accident occupation. It should be noted that the Internal Review Officer, like the case manager, in arriving at her decision ignored [Appellant's psychiatrist's] two medical reports to MPIC.

Appeal

The Appellant filed a Notice of Appeal dated January 21, 2003 and attached thereto a two page letter dated December 30, 2002 setting out the reasons for the appeal, which Notice of Appeal and Letter are attached to this decision as Exhibit "A".

A hearing was scheduled for July 9, 2003 but, due to a misunderstanding, the Appellant was unable to attend at this hearing. MPIC's legal counsel did attend the hearing and was advised by the Commission panel that the hearing would be adjourned.

The Commission panel, on review of the medical information on file, decided to hold a Pre-Hearing Meeting with both parties, and this meeting took place on July 25, 2003. The Appellant appeared together with her daughter, a university student, who acted as representative and translator for the Appellant, who did not appear to be fully familiar with the English language. MPIC was represented by Mr. O'Neill and the Chief Commissioner chaired this Pre-Hearing Meeting.

At the commencement of the Pre-Hearing Meeting the Chief Commissioner indicated to both parties that the members of the Commission panel had reviewed the medical reports of the Appellant's medical care providers and that the Commission panel was not satisfied that these two doctors had provided complete medical reports to the Commission and, as a result, the Commission panel wished to obtain further medical reports from both doctors pursuant to Section 183 of the MPIC Act. The Chief Commissioner informed both parties that the proceedings would be adjourned and would be reconvened after receipt by the Commission and the parties of the two medical reports.

The context in which the Commission decided to obtain medical reports from [Appellant's psychiatrist] and [Appellant's physiatrist] was as follows:

1. The Appellant was not represented by legal counsel but by one of her children who is a university student.
2. [Appellant's physiatrist], in his report to MPIC dated November 26, 2001, stated the Appellant had very little understanding or communication of the English language. He further stated that because of the language barrier the Appellant would not be able to participate well in treatment programs without the input of an interpreter or one of her children.

3. [Appellant's physiatrist] in his report further stated the Appellant had developed a chronic soft tissue pain syndrome with the possibility of depression. In addition to depression, [Appellant's physiatrist] stated the Appellant complained of constant pain which she asserted prevented her from returning to work as a sewing machine operator and earning an income.
4. A few months after the motor vehicle accident, the Appellant's husband [text deleted] passed away.
5. [Appellant's psychiatrist] determined the Appellant was suffering from a grief reaction resulting from her husband's death.
6. After her husband's death, the Appellant was the sole provider for herself and her children who were attending university, and indicated to [Appellant's physiatrist] that she was suffering from significant financial problems.
7. That the termination of IRI benefits caused additional financial pressures on the Appellant and her family.

The Commission wrote to both [Appellant's psychiatrist] and [Appellant's physiatrist] by letters dated August 1, 2003.

[Appellant's physiatrist's] Reply

[Appellant's physiatrist] replied to the Commission by letter dated November 17, 2003. In his report [Appellant's physiatrist] indicated that he reviewed the report of [MPIC's doctor #1] dated March 13, 2002, which was provided to him by the Commission. [Appellant's physiatrist] further indicated that he personally conducted an examination of the Appellant on August 26, 2002 and stated there has been no further improvement or change in her neck, left shoulder and knee. [Appellant's physiatrist] further indicated that he also examined the Appellant on

September 29, 2003 and stated:

Follow-Up September 29, 2003: On September 29, 2003 she was reviewed in the clinic and stated that she continues to experience neck pain which gets worse after doing any light level of activities and household work. She has persistent back pain which does not radiate to her legs. She can not sit more than 1-1 ½ hours. She continues to experience left knee joint pain since the motor vehicle accident. She has reduced energy level and her feet and hands get cold easily. Her sleep is disturbed frequently during the night. All these symptoms started after the motor vehicle accident. Before the motor vehicle accident, she would occasionally have shoulder pain.

Her functional level has not changed. She can prepare meals and do light grocery shopping. She has difficulty in doing any cleaning and washing at home. She feels that she can not return to work because any prolonged sitting and repetitive activities aggravates the pain and her sitting, standing and working tolerance is up to 1-1 ½ hours.

Her mood is depressed and she does not feel like doing any work. She has been isolated and does not feel like socializing or going to her temple. She has stopped going to the temple since her motor vehicle accident. Before the motor vehicle accident, she was able to go to the temple 3-4 times a month. She lives with her two daughters and one son and one granddaughter. Most of the children are independent and they are attending school. All the children prepare their own meals.

[Appellant's physiatrist] further stated:

Impression: My assessment revealed that she has chronic mechanical and discogenic pain syndrome of the cervical and lumbar spine. She has developed pain and disuse related weakness of the muscles of the upper and lower extremities leading to further reduction in her working capabilities and endurance level. As she has some objective evidence of discogenic pain, disc herniation should be ruled out. She has developed major depression which is contributed to by her motor vehicle accident leading to pain and anxiety and also unresolved grief of the loss of her husband. She has developed chronic soft tissue pain syndrome which is further contributed to by her poor posture and poor body mechanics and fatigue, poor pain coping strategies, low self efficacy with reduced confidence and helplessness which has led to experienced higher level of depression and functional impairment. There may be social factors such as lack of social and emotional support. (underlining added)

[Appellant's physiatrist] further stated:

I would like to reply to the specific questions you have asked in your letter of August 1, 2003.

1. *Whether or not on May 18, 2002 (the date Income Replacement Indemnity benefits were terminated by MPIC). [The Appellant's] injuries were:*

- (a) *caused by the motor vehicle accident of July 4, 2002 (sic)*
- (b) *that the motor vehicle accident materially contributed to her injuries, and*
- (c) *whether these injuries precluded her from returning to work as a sewing machine operator at that time.*

In my opinion she did not recover from the injuries she sustained in the motor vehicle accident of July 4, 2000 until now. On May 18, 2002 her symptoms and signs did not change and in my opinion, she was disabled related to injuries she suffered in the motor vehicle accident of July 4, 2000. Before this motor vehicle accident she was functional and was able to continue her full time job. The motor vehicle accident materially contributed to her injuries and these injuries precluded her from returning to work as a sewing machine operator at that time. (underlining added)

[Appellant's psychiatrist's] Reply

[Appellant's psychiatrist] replied to the Commission by letter dated September 5, 2003 and stated:

The case manager stated on May 3, 2002, that [the Appellant] had a pre-existing depression prior to July 4th, 2000.

As my letter dated January 4th, 2002, states, [the Appellant] did have depression prior to her 4th July 2000 accident but she had recovered from this and has gone back to work. (underlining added)

[Appellant's psychiatrist] further stated:

You have requested my opinion as to whether or not on May 18, 2002, [the Appellant's] complaints were

- a) caused by Motor Vehicle Accident of July 4, 2000
- b) that the Motor Vehicle Accident materially contributed to her complaints and
- c) whether these complaints precluded her from returning to work as a sewing machine operator at that time.

.....

[Appellant's psychiatrist's] letter of 14 January 2002, states she was suffering considerable physical disability as a consequence of her motor vehicle accident which needs further treatment. The physical disability which has resulted from the accident has caused [the Appellant] loss of function, and loss of capacity to make a living.

These losses have also contributed to her depressive symptoms and perpetuated them.

It is my estimate that her motor vehicle accident is responsible for approximately 50% of her depressive symptoms she complained of on May 18, 2002.

It is also my opinion that these complaints would have precluded her from returning to work as a sewing machine operator at that time.

She is still in need of further physical and psychological treatment. (underlining added)

Upon receipt of [Appellant's physiatrist's] report dated November 17, 2003 and [Appellant's psychiatrist's] report dated September 5, 2003, the Commission forwarded these reports to both the Appellant and MPIC's legal counsel. The Commission received no further medical reports or written submissions from either of the parties prior to the appeal hearing which reconvened on January 16, 2004.

Appeal Hearing – January 16, 2004

The relevant provision of the Act in respect of this appeal is Section 110(1)(a) of the MPIC Act which states:

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;

At this hearing the Appellant was present and was represented by her son, [text deleted], who also acted in the capacity of a translator. [Appellant's son] indicated that his mother would not testify but intended to rely on the Appellant's letter to the Commission dated December 30, 2002 which was attached to the Appellant's Notice of Appeal to the Commission (attached to this Decision and marked Exhibit "A").

[Appellant's son], in a brief submission, indicated that [MPIC's doctor #1] had erred in concluding that the Appellant's depression was a pre-existing condition and that it intensified subsequent to the motor vehicle accident. [Appellant's son] submitted that [Appellant's

psychiatrist] in his initial report to MPIC stated that:

1. the Appellant's initial depression was a result of her breast cancer, which had occurred several years prior to the motor vehicle accident;
2. the Appellant had recovered from this depression; and
3. at the time of the motor vehicle accident the Appellant did not suffer from depression. [Appellant's son] further stated that [Appellant's psychiatrist] confirmed this medical opinion in respect of the Appellant's depression in his report to the Commission.

[Appellant's son] further submitted, having regard to [MPIC's doctor #1's] error, the Commission should reject his entire medical opinion provided to MPIC and rely on the medical opinions the Commission obtained from [Appellant's psychiatrist] in his report of November 17, 2003 and [Appellant's psychiatrist] in his report dated September 5, 2003. [Appellant's son] argued that both of these medical reports demonstrated that as a result of the motor vehicle accident the Appellant suffered physical and psychological injuries which prevented her from returning to work as a sewing machine operator and, therefore, the IRI benefits should be reinstated by MPIC.

Legal counsel for MPIC submitted that MPIC was justified, pursuant to Section 110(1)(a) of the MPIC Act, to terminate the IRI benefits to the Appellant on the grounds the Appellant was able to hold the employment which she held at the time of the motor vehicle accident. MPIC's legal counsel further submitted the onus was upon the Appellant to establish, on a balance of probabilities, that the Appellant was unable, due to the motor vehicle accident injuries, to return to her pre-accident employment and that the Appellant had failed to meet this onus. MPIC's legal counsel criticized the medical reports of [Appellant's psychiatrist] as being contradictory,

and that [Appellant's physiatrist's] reports were inconsistent and, as a result, the Commission should reject these medical reports. He further submitted that the Commission should accept the medical reports of MPIC's Health Care Services Team and the initial report of [Appellant's psychiatrist] and concluded his submission by indicating that there was ample medical evidence available to justify the Internal Review Officer's decision.

Section 183(4) of the MPIC Act

During the course of MPIC's legal counsel's submission, he was critical of the Commission's letters to the Appellant's medical care providers. MPIC's legal counsel submitted that the manner in which the Commission wrote to these two doctors unduly influenced the manner in which the two doctors provided their medical opinions to the Commission in support of the Appellant's position. The criticism by MPIC's legal counsel in respect of the manner in which the Commission exercised its statutory power under Section 183(4) of the MPIC Act requires a response from the Commission.

Section 183(4) of the MPIC Act states:

Commission may carry out investigation

183(4) The commission may, before or during a hearing, carry out any investigation or inspection or refer any question for an expert opinion that it considers necessary or advisable.

The Appellant was involved in a motor vehicle accident on July 4, 2000 and suffered injuries which prevented her from returning to work as a sewing machine operator pursuant to Section 81(1)(a) of the MPIC Act. As a result, MPIC provided the Appellant with IRI benefits.

Section 81(1)(a) of the MPIC Act states:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

On May 18, 2002 MPIC terminated the IRI benefits to the Appellant pursuant to Section 110(1)(a) of the MPIC Act, which states:

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;

The case manager, in arriving at her decision, reviewed the relevant medical reports and concluded that the injuries the Appellant sustained in the motor vehicle accident had resolved themselves and, therefore, the Appellant was physically capable of returning to work as a sewing machine operator. The case manager determined that any medical complaints the Appellant had at that time, such as depression and chronic pain syndrome, were related directly to the grief reaction the Appellant experienced as a result of the death of her husband several months after the motor vehicle accident and were not connected to the injuries the Appellant sustained in the motor vehicle accident.

In order for the case manager to terminate the IRI benefits of the Appellant, the case manager was required to address the central issues as to whether or not the Appellant's motor vehicle accident injuries, as of May 18, 2002, no longer prevented her from returning to her work. An examination of the medical reports provided by MPIC's Health Care Services Team indicated that these reports addressed these central issues while an examination of the medical reports provided by the Appellant's medical care providers did not address these issues.

The case manager, in arriving at her decision, determined that members of MPIC's Health Care

Services Team had reviewed all of the medical information on file and had concluded that the Appellant had physically recovered from her motor vehicle accident injuries and was capable of returning to her pre-accident employment.

[MPIC's doctor #1] and [MPIC's doctor #2], in their medical reports, stated:

1. that there was a connection between the motor vehicle accident and the Appellant's subjective medical complaints;
2. that these complaints did not prevent the Appellant from returning to her pre-accident employment.

[MPIC's psychologist], in his medical report stated that there was no causal relationship between the Appellant's clinical depression and her motor vehicle accident on July 4, 2000.

The Commission, however, notes that the Appellant's medical care providers addressed different issues in response to inquiries from MPIC. [Appellant's psychiatrist], in his initial report to MPIC, addressed the relationship between the death of the Appellant's husband and her grief reaction. [Appellant's physiatrist] in his initial report to MPIC determined the Appellant suffered from a chronic pain disability with the possibility of depression subsequent to the motor vehicle accident. In his second report to MPIC, [Appellant's physiatrist] specifically set out his objective findings of the Appellant's medical problems.

The Commission has determined that the failure of the Appellant's medical care providers to address the central issues that the case manager was required to determine in order to continue or terminate the Appellant's IRI benefits, was caused, in this appeal, by the method by which MPIC sought medical information from these medical practitioners.

MPIC, in requesting medical reports from [MPIC's doctor #1] and [MPIC's doctor #2], specifically requested these doctors to comment on:

1. whether there was a causal connection between the motor vehicle accident and the Appellant's objective medical complaints; and
2. whether these complaints prevented the Appellant from returning to her pre-accident work.

MPIC in requesting medical reports from [MPIC's psychologist], requested a specific opinion from him regarding the possible relationship between the Appellant's clinical depression and her motor vehicle accident on July 4, 2000.

As a result, these three doctors were specifically requested by MPIC to provide medical information which would directly assist the case manager in determining whether or not the Appellant's IRI benefits would continue or be terminated.

However, when MPIC requested medical reports from the Appellant's medical care providers, they were not specifically requested to provide medical opinions on:

1. the causal connection between the motor vehicle accident and the Appellant's objective medical complaints; and
2. whether these complaints prevented the Appellant from returning to her pre-accident work.

As a result, neither doctor was requested to provide relevant medical information on the central issues which the case manager had to address in order to determine whether to continue or terminate the Appellant's IRI benefits.

This differential treatment is also demonstrated by the manner in which MPIC provided relevant medical reports to MPIC's Health Care Services Team but not to the Appellant's medical care providers when MPIC sought medical opinions from these medical practitioners. MPIC when requesting their medical consultants to provide medical opinions, provided these consultants with all relevant medical information in respect of the Appellant that MPIC had in their possession at that time. However, the Appellant's medical care providers were not provided with any of the relevant medical information on the Appellant's file when MPIC sought medical opinions from them. As a result, MPIC's Health Care Services Team were given the opportunity of considering all of the relevant medical information in arriving at their medical opinions and the opportunity of commenting on the medical reports of the Appellant's medical care providers. On the other hand, the Appellant's medical care providers did not have the opportunity of reviewing the medical reports of MPIC's Health Care Services Team at any time and therefore never had the opportunity of commenting on the reports of MPIC's Health Care Services Team.

The Commission further notes that the Appellant's medical care providers have been treating the Appellant over a long period of time and were in an excellent position to provide relevant medical information to MPIC in order to assist them in deciding whether or not to continue or to terminate the Appellant's IRI benefits. However, [MPIC's doctor #1] had examined the Appellant only on one occasion prior to providing his medical opinion to MPIC. [MPIC's psychologist] and [MPIC's doctor #2] never examined the Appellant but only conducted paper reviews of the Appellant's medical file. Notwithstanding the fact that the Appellant's medical care providers were in the best position to provide medical information to MPIC in order to assist MPIC in determining whether or not to continue or terminate the IRI benefits, MPIC's method of obtaining information from the Appellant's medical care providers prejudiced the Appellant's

claim for IRI benefits to continue.

In order to demonstrate the differential treatment provided by MPIC to its own medical consultants and to the Appellant's medical care providers, the correspondence between MPIC and the five doctors in question is set out hereinafter.

MPIC and [MPIC's doctor #1]

MPIC's case manager wrote to [MPIC's doctor #1] by letter dated February 15, 2002, and requested [MPIC's doctor #1] to meet with the Appellant and assess her and stated:

[The Appellant] is scheduled to attend your office on March 11, 2002 at 9:00 a.m. for an assessment. [The Appellant's] primary language is [text deleted] so an interpreter has been arranged through [text deleted].

On July 4, 2000 [the Appellant] was driving when she rear-ended another vehicle. The damage to his vehicle was \$2269.00. [The Appellant] reported injuries to her neck, back, both shoulders, left hand thumb area, both knees and she had headaches.

[The Appellant] has been seeing [Appellant's physiatrist] for treatments and has also been through a program at [rehab clinic]. [The Appellant] is also seeing [Appellant's psychiatrist] for unrelated issues of depression. We have enclosed copies of all medical information on file and the job demand analysis for your review. We have also enclosed [the Appellant's] signed Medical Information Authorization form.

We would appreciate receiving your narrative report following your examination, outlining your diagnosis and prognosis. During the course of your examination, we would appreciate your answer to the following questions:

1. A listing of all objective signs or findings noted in the examination and their relation to the MVA. (underlining added)
2. If there are any objective findings related to the MVA that would preclude [the Appellant] from performing her pre accident occupational duties as a light sewing machine operator. (underlining added)
3. Your opinion as regards current complaints, signs and symptoms as to their relevancy/relationship to the motor vehicle accident related injuries. (underlining added)
4. Details of any pre-existing or unrelated condition which could either be contributing to/causing the current complaints or delaying or preventing

recovery from any injuries which may have been sustained in the motor vehicle accident. (underlining added)

5. Your opinion as regards both treatments to date and the need, if any, or continuing same, and if so, your approximation of the timeframe and treatment frequency during which you would expect continued treatment to be warranted.
6. Any other information arising out of your examination which you believe to be relevant to the claim for care and treatment.

In this report [MPIC's doctor #1] indicates that the Appellant's records were reviewed and noted and this included the following 22 documents:

1. July 4, 2000 – Emergency Treatment Record, [text deleted] (Author Unkonwn)
2. July 10, 2000 – Initial Health Care Report, [Appellant's physiotherapist #1]
3. July 31, 2000 – Sickness Certificate, [Appellant's doctor]
4. August 1, 2000 – Request for Multi-site Treatment
5. August 11, 2000 – Health Care Provider Progress Report, [Appellant's physiotherapist #1]
6. August 24, 2000 – Initial Health Care Report, [Appellant's doctor]
7. October 11, 2000 – Initial Health Care Report, Dr. A. [Appellant's physiatrist]
8. October 24, 2000 – Health Care Provider Progress Report, [Appellant's physiotherapist #1]
9. November 8, 200 – Health Care Provider Progress Report, [Appellant's doctor]
10. January 3, 2001 – Fax Memo, [text deleted]
11. January 23, 2001 (Fax Date) – Report, [text deleted]
12. February 9, 2001 – Memo, [text deleted]
13. February 16, 2001 – Memo, [text deleted]
14. March 7, 2001 – Report, [text deleted]
15. July 11, 2001 – Report, [text deleted]
16. November 26, 2001 – Letter, [Appellant's physiatrist]
17. December 3, 2001 – Letter, [text deleted]
18. December 14, 2001 – Letter, [text deleted]
19. January 3, 2002 – Letter, [text deleted]
20. January 4, 2002 – Letter, [Appellant's physiatrist]
21. January 14, 2002 – Narrative Report, [Appellant's physiatrist]
22. January 20, 2002 – Clinic Note, [Appellant's physiatrist]

MPIC and [MPIC's doctor #2]

MPIC wrote to [MPIC's doctor #2], a Medical Consultant with MPIC's Health Care Services Team, who provided a report to MPIC dated April 17, 2002. In this report [MPIC's doctor #2]

states:

RE: [the Appellant]

Claim Number: [text deleted]

Accident of July 4, 2000

REASON FOR REVIEW

[The Appellant's] file was reviewed to determine whether the medical evidence identifies a physical impairment of function arising from the incident in question that, in turn, precludes her from returning to her full-time occupational duties as a sewing machine operator. (underlining added)

Unlike [Appellant's physiatrist] and [Appellant's psychiatrist], [MPIC's doctor #2] was given all relevant medical information and specifically directed to provide an opinion as to whether, as a result of the motor vehicle accident, the Appellant suffered from a physical impairment which precluded her from returning to her pre-accident employment as a sewing machine operator.

The Commission upon a review of the correspondence between MPIC, [MPIC's doctor #1] and [MPIC's doctor #2], finds that in the course of investigating the Appellant's claim for IRI benefits, it treated the Appellant's medical care providers in a different manner than it treated its own medical consultants.

MPIC and [MPIC's psychologist]

On April 30, 2002, [text deleted], Psychological Consultant, MPIC Health Care Services, provided an Inter-Departmental Memorandum to the case manager. In this Memorandum [MPIC's psychologist] indicates that the reason for the referral was:

[The Appellant's] medical file was submitted for review with a specific opinion being sought regarding the possible relationship between her clinical depression and her MVA of July 4, 2000. (underlining added)

Unlike [Appellant's psychiatrist], [MPIC's psychologist] was given all relevant medical information and specifically directed to provide an opinion as to the possible relationship

between the Appellant's depression and her motor vehicle accident of July 4, 2000.

MPIC and [Appellant's physiatrist]

MPIC retained [vocational rehab consulting company #2] to assist the Appellant in returning to work as a sewing machine operator. [Text deleted], Rehabilitation Consultant with [vocational rehab company #2], wrote to [Appellant's physiatrist] on September 25, 2001 and stated:

[The Appellant] had started a graduated return to work program as a sewing machine operator in August 2001. [The Appellant] left her work place after approximately two hours due to increased pain in her neck and upper back area.

[The Appellant] indicated in our initial meeting on September 6th, 2001 that she had seen you in August 2001. [The Appellant] could not remember the date and treatment plan.

I am requesting current medical information from you that identifies [the Appellant's]:

1. Current medical status.
2. Functional limitations.
3. Proposed method of treatment including pharmacological intervention.
4. General prognosis.

I am enclosing a Release of Information form signed by [the Appellant] authorizing our communication. Thank you in advance for your attention to this matter.

[Appellant's rehab consultant] provided a copy of this letter to MPIC's case manager.

On November 26, 2001 [Appellant's physiatrist] wrote directly to the case manager in response to [Appellant's rehab consultant's] letter of September 25, 2001 and provided a narrative report to MPIC outlining the medical status of the Appellant and including his diagnosis that the Appellant suffered from a chronic soft tissue pain syndrome with the possibility of depression.

On December 20, 2001 MPIC wrote to [Appellant's physiatrist] and requested a report in respect of any objective findings that would preclude the Appellant from returning to her pre-motor

vehicle accident employment duties as a sewing machine operator.

[Appellant's physiatrist] replied to MPIC in his report dated January 14, 2002 setting out his objective findings in respect of the Appellant and indicated that the Appellant was suffering from a high degree of disability and pain and was grieving the loss of her husband.

Unlike [MPIC's doctor #1], MPIC never requested [Appellant's physiatrist] to specifically indicate whether in his view the objective findings in respect of the Appellant related to the motor vehicle accident, and whether any objective findings in respect of the motor vehicle accident would preclude the Appellant from returning to her pre-accident occupation as a sewing machine operator. Unlike [MPIC's doctor #1], [Appellant's physiatrist] was not asked by MPIC whether, in his opinion, the Appellant's current complaints, signs or symptoms were connected to the motor vehicle accident related injuries and whether there were any pre-existing or unrelated conditions which would contribute or cause to contribute to the current complaints delaying or preventing the Appellant from returning to work. [Appellant's physiatrist] also was not provided with any of the relevant medical reports that the medical consultants received nor given an opportunity of commenting on their reports.

It is, therefore, not surprising that [Appellant's physiatrist], in his report to MPIC dated January 14, 2002, did not specifically address the issue as to whether there was a connection between the Appellant's medical complaints and the motor vehicle accident. The questions put to [Appellant's physiatrist] by MPIC related to issues different than the questions put to MPIC's Health Care Services Team and, therefore, the information provided by [Appellant's physiatrist] differed from the information provided by MPIC's Health Care Services Team.

In reply to [Appellant's physiatrist's]report dated January 14, 2002 MPIC did write to [Appellant's physiatrist] on January 25, 2002 and indicated that [Appellant's physiatrist] had not responded to MPIC's request of December 28, 2001 wherein they asked for any objective findings that would preclude the Appellant from returning to her duties as a sewing machine operator.

It does not appear, from an examination of MPIC's file, that [Appellant's physiatrist] ever responded to this letter. Unfortunately, it does not appear that MPIC ever pursued [Appellant's physiatrist] any further in obtaining this information prior to terminating the Appellant's IRI benefits.

MPIC and [Appellant's psychiatrist]

On November 26, 2001 the case manager wrote to the [Appellant's psychiatrist] and stated:

[The Appellant] was involved in an MVA on July 4, 2000. She is employed as a sewing machine operator and has been unable to return to her employment since the MVA.

[Vocational rehab consulting company #2] requested that you meet with [the Appellant] and provide a psychological assessment to MPI.

Please provide a detailed report based on your meeting with [the Appellant] as well as the background on pre MVA history with you.

Please address the following:

- Any factors that would be delaying her recovery and the return to her pre accident level on function.
- Your diagnosis, prognosis and treatment recommendations.
- Any further information that is relevant for [the Appellant's] rehabilitation.
- If you have any questions or concerns please do not hesitate to contact the writer.

Like [Appellant's physiatrist], [Appellant's psychiatrist] was neither provided with the relevant medical reports nor asked the same questions that the MPIC case manager asked MPIC's Health Care Services Team, nor was [Appellant's psychiatrist] given the opportunity of commenting on

the reports of [Appellant's psychiatrist], [MPIC's doctor #1], [MPIC's doctor #2] or [MPIC's psychologist].

[Text deleted], MPIC's psychological consultant, who never examined the Appellant was specifically requested by MPIC to review the medical file and provide a specific opinion regarding the possible relationship between the Appellant's clinical depression and her motor vehicle accident of July 4, 2000.

However, [Appellant's psychiatrist], who had treated the Appellant over a long period of time, was never asked by MPIC to review the medical file and provide a specific opinion regarding the possible relationship between the Appellant's clinical depression and her motor vehicle accident of July 4, 2000.

It is, therefore, not surprising that [Appellant's psychiatrist] in his report to MPIC dated January 4, 2002 did not specifically address the issue as to whether there was a connection between the Appellant's depression and its connection to the motor vehicle accident. The questions put to [Appellant's psychiatrist] related to issues different than the questions put to [MPIC's psychologist], [MPIC's doctor #1] and [MPIC's doctor #2] and, therefore, the information provided by [Appellant's psychiatrist] was different from the information provided by MPIC's medical consultants.

Section 150 of the MPIC Act

MPIC's differential treatment of the medical practitioners was not in compliance with Section 150 of the MPIC Act. MPIC, in determining a claimant's entitlement to benefits under the MPIC Act, is required to comply with Section 150 which states:

Corporation to advise and assist claimants

150 The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

In order to determine whether a claimant is entitled to a benefit under the MPIC Act, MPIC will conduct an investigation which will usually include interviewing the claimant and perhaps other witnesses, obtaining various medical reports from the claimant's doctors and often obtaining medical reports from its own medical consultants. At the conclusion of its investigation MPIC is required to determine whether or not the claimant is entitled to the benefits claimed under the MPIC Act.

In carrying out its investigation, MPIC is required to comply with the principles set out in Section 150 of the MPIC Act. During the investigative process the relationship between MPIC and the Appellant is not adversarial but is subject to Section 150 of the MPIC Act. As a result, when MPIC is carrying out its investigation, it is required to act fairly, reasonably and in good faith in order to determine the Appellant's entitlement to benefits under the MPIC Act. MPIC must provide a level playing field to the Appellant and to treat the Appellant's medical practitioners in the same manner as they treat their own medical consultants.

During the course of the investigation, MPIC cannot put its own interest ahead of the Appellant's interest. When obtaining medical opinions in order to determine the Appellant's entitlement to a claim for IRI benefits, MPIC was required to deal fairly and equally with the Appellant's medical practitioners as they dealt with their own medical consultants but, unfortunately, they failed to do so in this appeal.

The Commission finds that by employing a different method of obtaining medical information from the Appellant's medical care providers than it did from its own Health Care Services Team, MPIC impaired its ability to fairly determine the Appellant's entitlement to IRI benefits contrary to Section 150 of the MPIC Act. The investigation conducted by MPIC was flawed and, as a result thereof, it failed to obtain full and complete medical reports from the Appellant's medical care providers. The Commission finds this flawed procedure prejudiced the Appellant's entitlement to a continuation of IRI benefits.

It is important for medical practitioners who are not MPIC's medical consultants, and who are not familiar with the MPIC Act or the operation of MPIC and the role of the Commission, to be provided with relevant background information in order that they understand the context in which to provide relevant medical opinions. It has been the practice of the Commission for many years in seeking medical opinions from such medical practitioners pursuant to Section 183(4) of the MPIC Act to inform these medical practitioners of the context in which they are giving their opinions. As a result, the Commission will provide these medical practitioners with:

1. all relevant medical information to assist them in arriving at a full and complete medical opinion;
2. the statutory provisions under the MPIC Act under which the Commission is required to make its decisions;
3. the issue(s) which the Commission is required to determine in the appeal. For example, whether the issue relates to the reimbursement by MPIC to an Appellant for treatment expenses, i.e. chiropractic or physiotherapy treatments, and/or reimbursement for medical expenses, and/or travel allowance expenses, and/or permanent impairment awards and/or the payment or termination of payment of income replacement indemnity benefits.

On August 1, 2003, the Commission wrote to [Appellant's psychiatrist] and [Appellant's psychiatrist] and copies of these letters were provided to the Appellant and MPIC's legal counsel. On September 16, 2003 the Commission received [Appellant's psychiatrist's] report dated September 5, 2003 and provided copies of this report to the Appellant and MPIC's legal counsel. On November 20, 2003 the Commission received [Appellant's psychiatrist's] report, dated November 17, 2003, and provided a copy of this report to the Appellant and MPIC's legal counsel.

Between August 1, 2003, and the Commission's hearing on January 16, 2004, a period of approximately six months, no complaint was received by the Commission from MPIC's legal counsel in respect of the Commission's letters to [Appellant's psychiatrist] or [Appellant's psychiatrist] or when the Commission received [Appellant's psychiatrist's] and [Appellant's psychiatrist's] reports in the middle of September and the middle of November 2003. The first time the Commission heard any complaints from MPIC's legal counsel in respect of the Commission's letters to these two doctors was at the hearing on January 16, 2004.

At this hearing MPIC's legal counsel did not subpoena [Appellant's psychiatrist] or [Appellant's psychiatrist] to attend the appeal hearing to be cross-examined in respect of the two medical reports they provided to the Commission, nor did MPIC's legal counsel in rebuttal call upon [MPIC's doctor #1], [MPIC's doctor #2] or [MPIC's psychologist] to testify in respect of [Appellant's psychiatrist's] and [Appellant's psychiatrist's] medical reports to the Commission.

Discussion

The Internal Review Officer, in her decision letter dated October 7, 2002, confirmed the case manager's decision and dismissed the Application for Review. In arriving at her decision the

Internal Review Officer accepted the medical opinion of [MPIC's doctor #1] who, after reviewing [Appellant's psychiatrist's] report dated January 14, 2002, determined that:

1. the Appellant's depression pre-existed the motor vehicle accident;
2. this depression intensified after the motor vehicle accident as a result of the death of the Appellant's husband and appeared to be the primary limiting factor in respect of the Appellant's capacity to return to work; and
3. the Appellant was physically capable of performing her duties required in her pre-accident occupation.

As a result of [MPIC's doctor #1's] opinion, the Internal Review Officer determined that the Appellant's depression and unresolved grief reaction were unrelated to the motor vehicle accident even though it affected the capacity of the Appellant to return to work. The Internal Review Officer, in her review of the Appellant's medical file, and having regard to the decision of the case manager, concluded that the Appellant was physically fit to return to her pre-accident work. As a result the Internal Review Officer dismissed the Application for Review and confirmed the case manager's decision.

The Commission, on reviewing the Internal Review Officer's decision, concluded that the Internal Review Officer erred in determining the Appellant suffered from depression at the time of the motor vehicle accident.

[Appellant's psychiatrist], in his report dated January 4, 2002, stated:

PREVIOUS PSYCHIATRIC HISTORY: I saw her two years ago when she became very depressed following her breast surgery and also the difficulty she experienced with her sick husband and the way their marriage was going on. She was treated with antidepressants and psychotherapy. Eventually she recovered and she went back to work. (underlining added)

[MPIC's doctor #1], in his report dated March 13, 2002, erred in his review of [Appellant's psychiatrist's] report as to whether or not the Appellant suffered from depression immediately prior to the motor vehicle accident. In his report [MPIC's doctor #1] states:

Discussion

The claimant presents with several vegetative symptoms including depressed mood, decreased level of activity and decreased level of enjoyment. She has a prior history of depression, which, according to [Appellant's psychiatrist], was as recent as the year 2000. This has intensified significantly since the death of her husband and appears to be the primary limiting factor to function. Many of her responses with respect to describing her pain complaint as well as her functional limitation appear to be the most consistent with a diagnosis of depression. (underlining added)

By misinterpreting [text deleted's] diagnosis in respect of the Appellant's depression, [MPIC's doctor #1] failed to address the central issues as to whether or not there was a causal connection between the motor vehicle accident and the Appellant's depression, and whether any of the Appellant's motor vehicle accident injuries delayed or prevented the Appellant from returning to her pre-accident employment. As a result, [MPIC's doctor #1] wrongly concluded that the Appellant's pre-existing depression was intensified significantly by the death of the Appellant's husband and wrongly concluded that this was the primary limiting factor in her ability to return to work.

The Commission also finds that unfortunately both the case manager and the Internal Review Officer accepted [MPIC's doctor #1's] opinion and, as a result of this significant error, failed to consider whether the motor vehicle accident caused or materially contributed to the Appellant's depression and, if so, whether such depression delayed or prevented the Appellant from returning to her pre-accident employment as a sewing machine operator.

The case manager, in her decision dated May 3, 2002, states:

In [Appellant's psychiatrist's] report of January 4, 2002 he confirmed that your depression was pre-existing and that you were presently suffering from unresolved grief reaction to the loss of your husband. We are aware that your return to work is affected by your diagnosed depression and unresolved grief reaction but this diagnosis is unrelated to your motor vehicle accident of July 4, 2000.

In her decision dated October 7, 2002 the Internal Review Officer repeated this error when she stated:

[Appellant's case manager] also writes about [Appellant's psychiatrist]'s report of January 4, 2002 in which he confirmed that your depression was pre-existing and that you were presently suffering from unresolved grief reaction related to the loss of your husband. This diagnosed depression and unresolved grief reaction is unrelated to your motor vehicle accident of July 4, 2000 even though it is affecting your capability of returning to work. (underlining added)

Unfortunately, as a result of [MPIC's doctor #1's] misinterpretation of [Appellant's psychiatrist's] diagnosis of depression, the Internal Review Officer also addressed the wrong issues in confirming the case manager's decision and concluded that:

1. the Appellant's depression was pre-existing;
2. subsequent to the motor vehicle accident the Appellant suffered from an unresolved grief reaction due to the loss of her husband;
3. the Appellant's pre-existing depression intensified as a result of the Appellant's unresolved grief reaction;
4. this psychological condition was unrelated to the motor vehicle accident of July 4, 2000 and was the primary reason why she was unable to return to work. As a result, the Internal Review Officer confirmed the case manager's decision to terminate the Appellant's IRI benefits and, thus, dismissed the Appellant's Application for Review.

The Commission notes that in arriving at her decision of October 7, 2002 the Internal Review Officer ignored the two medical reports provided by [Appellant's psychiatrist] to MPIC dated respectively November 26, 2001 and January 14, 2001, and [Appellant's psychiatrist's] initial report dated November 26, 2001, wherein [Appellant's psychiatrist] determined that the Appellant had developed a chronic soft tissue pain syndrome with the possibility of depression. [Appellant's psychiatrist] was not asked nor did he comment on the causal connection between his diagnosis and the motor vehicle accident.

On December 28, 2001 MPIC requested a further medical report from [Appellant's psychiatrist] and specifically requested [Appellant's psychiatrist] to advise if there were any objective findings which would preclude the Appellant from returning to her pre-accident employment as a sewing machine operator. In response, [Appellant's psychiatrist] provided his second report dated January 14, 2002 and, at page two thereof, set out his objective findings in respect to the Appellant's condition. However, again he was not asked nor did he comment on the causal relationship between these objective findings and the motor vehicle accident. As well, [Appellant's psychiatrist] did not respond to the question asked by MPIC as to whether there were any objective findings which would preclude the Appellant from returning to her pre-employment duties.

On January 25, 2002 MPIC wrote again to [Appellant's psychiatrist], by letter dated January 25, 2002, and again requested him to advise whether there were any objective findings which would preclude the Appellant from returning to her pre-accident occupational duties. It does not appear that [Appellant's psychiatrist] ever replied to this request by MPIC. It also does not appear that the case manager ever pursued this matter any further with [Appellant's psychiatrist].

The Commission finds that the case manager, prior to terminating the Appellant's IRI benefits, should have:

1. insisted that [Appellant's physiatrist] provide the information that the case manager initially requested;
2. when obtaining a medical opinion from [Appellant's physiatrist], requested [Appellant's physiatrist] to advise whether the motor vehicle accident in question caused or materially contributed to the development of chronic soft pain syndrome with a possibility of depression and whether this medical condition precluded or delayed the Appellant's return to work as a sewing machine operator;
3. provided relevant medical reports with respect to the Appellant to [Appellant's physiatrist] for his consideration;
4. provided information to [Appellant's physiatrist] in respect of the context and the background in which [Appellant's physiatrist] could provide a full and complete medical opinion.

As a result of the failure by the case manager to conduct an appropriate investigation in order to obtain the relevant medical information from [Appellant's physiatrist], the Internal Review Officer did not, unlike the Commission, have a full and complete report from [Appellant's physiatrist] and, as a result, ignored [Appellant's physiatrist's] medical opinions when confirming the case manager's decision and rejecting the Appellant's Application for Review.

The Commission rejects MPIC's legal counsel's submission that the initial two medical reports from [Appellant's physiatrist] are inconsistent with [Appellant's physiatrist's] report obtained by the Commission. The Commission finds that the information MPIC sought from [Appellant's

physiatrist] in the two initial reports were very different from the information the Commission sought from [Appellant's physiatrist] in his final report. Since [Appellant's physiatrist] was addressing different issues, the Commission does not find any inconsistencies between [Appellant's physiatrist's] two initial reports and his final report.

[Appellant's physiatrist] was given an opportunity by the Commission to review relevant medical reports, and to provide medical opinions in respect of issues central to the decision MPIC was required to make in respect of the Appellant's entitlement to IRI benefits in light of the relevant background information. As a result, [Appellant's physiatrist] was able to advise the Commission that the Appellant's motor vehicle accident injuries caused or materially contributed to the Appellant's chronic soft tissue pain syndrome with the possibility of depression and that this medical condition prevented the Appellant from returning to her pre-accident work.

The Internal Review Officer, in arriving at her decision, did adopt [Appellant's psychiatrist's] medical opinion that the primary cause of the Appellant's inability to return to work was the grief reaction suffered as a result of her husband's death. The Commission finds that the case manager, prior to terminating the Appellant's IRI benefits, should have:

1. requested a medical opinion from [Appellant's psychiatrist] as to whether the motor vehicle accident in question caused or materially contributed to the development of the Appellant's depression and chronic soft tissue pain syndrome and whether this medical condition precluded or delayed the Appellant's return to work as a sewing machine operator;
2. provided relevant medical reports in respect to the Appellant to [Appellant's psychiatrist] for his consideration;
3. provided information to [Appellant's psychiatrist] in respect of the context and

the background in which [Appellant's psychiatrist] could provide a full and complete medical opinion.

As a result of the failure by the case manager to conduct an appropriate investigation and obtaining relevant medical information from [Appellant's psychiatrist], the Internal Review Officer did not, unlike the Commission, have a full and complete report from [Appellant's psychiatrist] on issues central to the termination of the Appellant's entitlement to IRI benefits.

The Commission agrees with MPIC's legal counsel's submission that [Appellant's psychiatrist], in his report to the Commission, modified the medical opinion that he provided initially to the case manager. However, the Commission finds that the information that MPIC sought from [Appellant's psychiatrist] in his initial report was very different from the information the Commission sought from [Appellant's psychiatrist] in his report to the Commission.

[Appellant's psychiatrist] was given an opportunity by the Commission to review relevant medical reports, provide medical opinions in respect of issues central to the decision MPIC was required to make in respect of the Appellant's entitlement to IRI benefits in light of relevant background information. As a result, [Appellant's psychiatrist] was able to determine that the Appellant's motor vehicle accident injuries caused or materially contributed to the Appellant's depression as did the Appellant's grief reaction to the loss of her husband and that both of these factors played a role in precluding the Appellant from returning to her pre-accident work.

The Commission therefore rejects the submission by MPIC's legal counsel that because [Appellant's psychiatrist] has provided two inconsistent medical reports relating to the primary cause of the Appellant's inability to return to work, his medical opinion should be rejected. The

Commission concludes that [Appellant's psychiatrist] had valid reasons to modify his initial medical opinion when he reported to the Commission.

The Appellant did not testify and relied on the letter which was attached to her Notice of Appeal (Exhibit A).

The Appellant, in her Notice of Appeal dated December 30, 2002 asserts that:

1. she suffered injury to her neck, shoulders and back as a result of the motor vehicle accident;
2. she had not fully recovered from these injuries;
3. she had a depression prior to the motor vehicle accident but also recovered prior to the motor vehicle accident and that the depression did not exist at the time of the motor vehicle accident;
4. after the Appellant recovered from her initial depression due to her breast cancer she was able to work full time for approximately one year until the motor vehicle accident occurred;
5. after the motor vehicle accident she was unable to work due to the injuries she suffered to her neck, shoulders and lower back; and
6. her psychological condition was affected by her husband's death and her stressful financial condition due to her inability to earn an income as a result of the motor vehicle accident.

Since the Appellant did not testify at the hearing, the Commission did not have an opportunity of observing the Appellant in both examination-in-chief and cross-examination. However, the Appellant's complaints as to her motor vehicle accident injuries and her inability to return to

work as a result of these injuries has been consistent from the date of the motor vehicle accident to the date of the appeal hearing. Both of the Appellant's medical care providers had the opportunity of treating the Appellant over a long period of time, had the opportunity of assessing her credibility and there is no documentation in either of their medical reports which indicates the Appellant was not credible. [MPIC's doctor #1], MPIC's medical consultant, also had an opportunity to personally examine the Appellant and in his medical report does not raise any issue as to the Appellant's credibility. As well, MPIC's legal counsel did not attack the Appellant's credibility during the course of the Commission hearing.

The Appellant's medical care providers, in their medical reports to the Commission, corroborate the Appellant's position in respect of her physical and psychological complaints, the connection between these complaints and the motor vehicle accident and her inability to return to work due to her motor vehicle accident injuries. Having regard to the totality of the medical evidence and the consistency of the Appellant's position, the Commission finds the Appellant is a credible witness and that her medical condition at the time of the termination of the IRI benefits has been corroborated by [Appellant's psychiatrist] and [Appellant's physiatrist].

[MPIC's doctor #1] had only one opportunity to physically examine the Appellant. [MPIC's psychologist] and [MPIC's doctor #2] never saw the Appellant and only conducted paper reviews of the relevant medical reports. [Appellant's physiatrist] and [Appellant's psychiatrist], however, personally observed the Appellant on more than one occasion, and treated her over a long period of time. In these circumstances the Commission finds that [Appellant's psychiatrist] and [Appellant's physiatrist] were in a better position to assess the Appellant's physical and psychological condition than either [MPIC's doctor #1], [MPIC's doctor #2] or [MPIC's psychologist]. For these reasons the Commission gives greater weight to the medical opinions

provided by the Appellant's medical care providers than it does to the medical opinions of MPIC's obtained from its Health Care Services Team.

The Commission finds that [MPIC's doctor #1], [MPIC's doctor #2] and [MPIC's psychologist] unfortunately erred in concluding that at the time of the accident the Appellant was suffering from a depression. As a result of this fundamental error, these doctors wrongly concluded that the Appellant's depression was unrelated to the motor vehicle accident.

The Commission determines that [Appellant's psychiatrist] was correct in determining that at the time of the motor vehicle accident the Appellant did not suffer from depression and that this depression occurred subsequent to the motor vehicle accident. The Commission also accepts [Appellant's psychiatrist's] psychiatric opinion that the motor vehicle accident materially contributed to the Appellant's depression and, together with the depression caused by the Appellant's grief reaction to her husband's death, that this medical condition prevented the Appellant from returning to her pre-accident work. It is for these reasons the Commission rejects the medical opinions of [MPIC's doctor #1], [MPIC's doctor #2] and [MPIC's psychologist] and prefers the opinion of [Appellant's psychiatrist] that at the time of the motor vehicle accident the Appellant did not suffer from a depression and that the motor vehicle accident materially contributed to her subsequent depression.

The Commission also accepts [Appellant's physiatrist's] medical opinion that the Appellant's motor vehicle accident injury caused or materially contributed to the Appellant's soft tissue chronic pain syndrome together with the Appellant's depression caused by the grief reaction to her husband's death prevented the Appellant from returning to work as a sewing machine

operator. The Commission finds that [MPIC's doctor #1] and [MPIC's doctor #2], by misinterpreting [Appellant's psychiatrist's] diagnosis of depression, failed to consider the causal relationship between the motor vehicle accident injuries and the Appellant's depression and chronic pain syndrome, and whether these medical conditions delayed or prevented the Appellant from returning to her pre-accident employment. For these reasons the Commission accepts the medical opinions of [Appellant's physiatrist] and rejects the medical opinions of [MPIC's doctor #1] and [MPIC's doctor #2] on this issue.

Decision

The Commission determines that MPIC erred in terminating the Appellant's entitlement to IRI benefits pursuant to Section 110(1)(a) of the MPIC Act. The Commission, therefore, finds that the Appellant has established, on the balance of probabilities, that the motor vehicle accident materially contributed to the Appellant's injuries which prevented her from returning to work as a sewing machine operator as of May 18, 2002.

The Commission directs MPIC to reinstate the Appellant's IRI benefits from the date of their termination on May 18, 2002, together with interest at the statutory rate from that date to the date of actual payment. The Commission retains jurisdiction in this matter and, if the parties are unable to agree as to the amount of compensation, then either party may refer the dispute back to the Commission for final determination.

Dated at Winnipeg this 8th day of April, 2004.

MEL MYERS, Q.C.

LES MARKS

ANTOINE FRECHETTE