

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-81**

PANEL: Ms Laura Diamond, Chairperson
Dr. Patrick Doyle
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Kirk Kirby.

HEARING DATE: November 25, 2009

ISSUE(S):

1. Entitlement to Permanent Impairment Protection Plan ("PIPP") benefits;
2. Whether the Appellant's PIPP benefits were properly suspended;
3. Whether the Appellant's PIPP benefits were properly terminated October 15, 2007; and
4. Entitlement to Income Replacement Indemnity ("IRI") benefits beyond October 15, 2007.

RELEVANT SECTIONS: Sections 81, 110(1)(e), 127, 129 and 160 of The Manitoba
Public Insurance Corporation Act ('MPIC Act')

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

Reasons For Decision

The Appellant was injured in a motor vehicle accident on October 8, 1998. Following the motor vehicle accident, the Appellant sustained injury to his neck, back, chest, left shoulder and depressive episodes.

The Appellant was in receipt of both treatment and IRI benefits from MPIC. In the years following the motor vehicle accident, he was examined, evaluated or treated by three

neurologists ([Appellant's Neurologist #1], [Appellant's Neurologist #2] and [Appellant's Neurologist #3]), four psychiatrists ([Appellant's Psychiatrist #1], [Appellant's Psychiatrist #2], [Appellant's Psychiatrist #3] and [Appellant's Psychiatrist #4]), two orthopaedists ([Appellant's Orthopaedist #1] and [Appellant's Orthopaedist #2]), one anaesthesiologist ([Appellant's Anaesthesiologist]), three general practitioners ([Appellant's Doctor #1], [Appellant's Doctor #2] and [Appellant's Employer's Doctor]), a chiropractor ([Appellant's Chiropractor]), three physiotherapists ([Appellant's Physiotherapist #1], [Appellant's Physiotherapist #2] and [Appellant's Physiotherapist #3]), four occupational therapists ([Appellant's Occupational Therapist #1], [Appellant's Occupational Therapist #2], [Appellant's Occupational Therapist #3], and [Appellant's Occupational Therapist #4]), an athletic therapist ([Appellant's Athletic Therapist]) and four psychiatrists ([Appellant's Psychiatrist #1], [Independent Psychiatrist], [Appellant's Psychiatrist #2] and [Appellant's Psychiatrist #3] . His file was also reviewed by [MPIC's Psychologist] and [MPIC's Doctor].

Prior to the motor vehicle accident, the Appellant was employed for approximately 20 years as a diesel electrician with [TEXT DELETED]. He suffered nine recorded accidents during this period of work with [TEXT DELETED], all affecting his lower back. These incidents were mostly minor, usually resulting in the loss of a few days of work time, except for the occasions when he lost two months and six months from work as a result of low back injuries.

X-ray examinations prior to the motor vehicle accident showed that the Appellant had some "mild lumbo-sacral instability with L5 discopathy" and a CT scan in 1987 indicated a bulging inter-vertebral disc at L5-S1 which did not compromise the S1 nerve root. An X-ray in July 1998 showed lumbar vertebral degeneration and considerable narrowing of the L5-S1 joint space. However, no cervical spine X-rays were taken, because the Appellant did not have a history of injury or symptoms referable to the neck or shoulders.

In 1991, the Appellant had also suffered as a result of an earlier, unfortunate accident affecting his two children [text deleted] resulting in the drowning of both children. In spite of psychological and psychiatric treatment and examination, this incident did not come to light for many of the Appellant's caregivers until [Appellant's Psychiatrist #1] produced his files in 2004 and 2007.

The Appellant received IRI benefits from MPIC until October 15, 2007. His present appeal relates to four Internal Review Decisions of MPIC.

1. Whether the Appellant's PIPP Benefits were Properly Suspended:

On January 17, 2006, [MPIC's Psychologist] (based upon a report provided by [Appellant's Psychiatrist #3] dated December 27, 2001) had concluded that the Appellant's major depressive disorder was causally related to the motor vehicle accident. However, due to a significant lack of information pertaining to the Appellant's psychological state, [MPIC's Psychologist] was unable to provide an opinion as to whether the Appellant continued to suffer from a depressive disorder causally related to the motor vehicle accident and recommended that an opinion be obtained from [Appellant's Psychiatrist #1], the treating psychiatrist, as well as further information from his general practitioner, [Appellant's Doctor #1], in this regard.

MPIC began to attempt to obtain reports and chart notes and information from [Appellant's Psychiatrist #1].

While [Appellant's Psychiatrist #1] provided some reports, difficulties in obtaining further information led to two Internal Review Decisions.

MPIC requested the Appellant's authorization to obtain required information from [Appellant's Psychiatrist #1]. He complied with this request. [Appellant's Psychiatrist #1] provided a brief narrative report but failed to answer all of MPIC's questions, provide copies of his chart notes, or the details and results of any diagnostic testing which he may have completed.

The Appellant's case manager wrote to him on January 2, 2007 and stated:

"...The Personal Health Information Act (PHIA) explains that [Appellant's Psychiatrist #1] holds your information in trust. As you previously authorized Manitoba Public Insurance (MPI) to gain access to a copy of your file, in our letter dated October 18, 2006, we asked you to obtain same from [Appellant's Psychiatrist #1] as he did not seem willing to release it himself. We took your previous signature on our authorization to obtain information from [Appellant's Psychiatrist #1] as your willingness to comply with this request. Since that time you have explained that you do no longer wish to comply with this request..."

The January 1, 2007 deadline for you to provide this information has now since past and we have not been provided with the information, nor a valid reason why either you or your doctor is refusing to comply with the request. As you have chosen not to comply with our request prior to the prescribed deadline, we have no other alternative but to suspend your IRI benefits until the information is received."

The Appellant sought an Internal Review of this decision. On April 20, 2007, an Internal Review Officer confirmed the case manager's decision to suspend the Appellant's entitlement to PIPP benefits due to the withdrawal of his authorization to allow the case manager to obtain medical information from [Appellant's Psychiatrist #1].

"...I understand that you had previously provided your authorization and now your case manager was requesting that you get the information from your doctor which your doctor was refusing to provide. This, of course, you are not required to do as you had already provided an authorization and therefore it was up to MPI at this point to obtain that information from [Appellant's Psychiatrist #1]. Your case manager was requesting your assistance in getting this information from [Appellant's Psychiatrist #1], but you were not required to comply with that request..."

However, the Internal Review Officer continued:

“...You are not at any time required to obtain information from your physicians if you have provided an authorization to MPIC, but you cannot interfere with the request from MPI as this would be non-compliance...”

As a result, she confirmed the case manager’s decision letter, upheld the suspension and dismissed the Appellant’s Application for Review.

2. Whether the Appellant’s PIPP Benefits were Properly Terminated October 15, 2007:

On April 25, 2007, counsel for the Appellant forwarded to MPIC an authorization re-executed by the Appellant reiterating that the Appellant did not “wish in any way, shape or form to interfere with MPIC’s obtaining of information that it views relevant to the claim”.

On May 17, 2007, the Appellant’s benefits were reinstated.

However, the Appellant’s case manager wrote to him on September 17, 2007 complaining that the Appellant had:

“...chosen not to comply with our requests (July 19, 2007 and August 10, 2007) to provide a complete copy of your medical file form (sic) [Appellant’s Psychiatrist #1] to Manitoba Public Insurance (MPI). Even though in our August 10, 2007 letter, we offered three methods of providing MPI with the requested medical information.

As you have chosen not to comply with our request, we have no alternative but to suspend your entitlement to PIPP benefits for this claim. The suspension will be in effect for 30 days. If we still have not received the requested information within the 30 days suspension period, we will then proceed to terminate your claim, as of October 15, 2007.”

On October 15, 2007, the case manager wrote to the Appellant again, advising that the deadline to provide the information had now passed and as MPIC had not received the requisite medical

information or a valid reason why either he or his doctor refused to comply with the requests, they had no alternative but to terminate the Appellant's PIPP benefits in accordance with Section 160(b) of the MPIC Act.

On December 5, 2007, an Internal Review Officer for MPIC upheld the case manager's termination of the Appellant's PIPP benefits for non-compliance with the request to obtain information in accordance with Section 160(b) of the MPIC Act, effective October 15, 2007. The Internal Review Officer found that the Appellant had not requested the information from [Appellant's Psychiatrist #1] as was requested of him. She stated that if he had requested the information and [Appellant's Psychiatrist #1] had put it in writing that there is no further information that he had (whether he thought it is relevant or not), the Appellant may have provided that to MPIC. Since he did not take that step, or take any step to provide the information to MPIC, his suspension of September 15, 2007 and termination of October 15, 2007 were upheld.

3. Entitlement to IRI Benefits beyond October 15, 2007:

On June 9, 2008, copies of the requested medical information were received by MPIC via the Claimant Adviser Office, the Appellant's representative at that time. Arrangements were then made for him to undergo an independent psychiatric assessment on September 25, 2008. Upon receipt of that report, all the Appellant's medical information was reviewed in consultation with Health Care Services, to assess any causal relationship between the Appellant's condition and the motor vehicle accident injuries.

On March 9, 2009, the Appellant's case manager wrote to him to indicate:

“Health Care Services documented that the medical evidence indicates given your pre-existing conditions, at no point in time following the motor vehicle accident in question, was your psychological condition related to the motor vehicle accident.

At the same time, Health Care Services also reviewed the medical information regarding your physical condition as it relates to the motor vehicle accident. The medical evidence indicates that you experienced a partial temporary impairment of physical function arising from and following the motor vehicle accident. Your pre-existing unrelated conditions and symptomatology continued on after your motor vehicle accident injuries had resolved.

It is therefore, the opinion our Health Care Services that the medical evidence does not establish a causal relationship between your psychological condition and the motor vehicle accident of October 5, 1998. They further concluded there was no causal relationship between your physical condition and the motor vehicle accident beyond June 14, 2000.”

The Appellant sought Internal Review of this decision.

On April 21, 2009, an Internal Review Officer for MPIC reviewed the evidence in regard to both the Appellant’s psychological and physical condition. Following the review of reports from [Appellant’s Psychiatrist #1], [Independent Psychiatrist], (the independent psychiatric assessment), [Appellant’s Psychologist], [Appellant’s Psychiatrist #3], [Appellant’s Psychiatrist #2], and [MPIC’s Psychologist], the Internal Review Officer found that the Appellant’s psychological issues are multi-factorial in origin, including the passing of his children and chronic pain from degenerative issues, but not related to the motor vehicle accident. As well, his psychological condition did not prevent him from working.

In regard to the Appellant’s physical condition, reports were reviewed from [MPIC’s Doctor], [Appellant’s Physiatrist #4], [Appellant’s Physiatrist #3], [Appellant’s Orthopaedist #1] as well as the Appellant’s CPP, [TEXT DELETED] and Worker’s Compensation Board files. The Internal Review Officer agreed with [MPIC’s Doctor’s] conclusions that the motor vehicle accident could have resulted in the exacerbation of symptoms arising from pre-existing medical

conditions but did not enhance the pre-existing condition. There was likely a short period of time after the motor vehicle accident in which the Appellant was unable to perform the duties of his pre-motor vehicle accident occupation, but he had regained his ability to work at this occupation prior to June 14, 2000 and certainly by October 15, 2007.

The case manager's decision that there was no causal connection between any of the Appellant's present physical symptoms and psychological condition and the motor vehicle accident which prevented the Appellant from working was confirmed by the Internal Review Officer.

4. Entitlement to Permanent Impairment Benefits:

The Appellant sought Permanent Impairment benefits from MPIC. He took the position that he should be entitled to a permanent impairment award for myofascial pain, facet joint arthropathy, cervical facet joint injury and depression. The Appellant's case manager sent him a decision letter on December 20, 2004 indicating that the information on his file had been reviewed by a medical consultant of MPIC's Health Care Services team and based on the evidence, concluded that he did not receive an injury in the motor vehicle accident of October 5, 1998 which would entitle him to a permanent impairment payment.

On April 26, 2006, an Internal Review Officer for MPIC agreed with the case manager and with the opinion of [MPIC's Doctor] that the Appellant did not have a medical condition which developed secondary to the motor vehicle accident that would entitle him to a PIPP benefit. The Internal Review Officer noted that PIPP awards are not intended to be compensation for what used to be called "pain, suffering and loss of amenities". She agreed with [MPIC's Doctor] that there was no physical permanent impairment, including no impairment award for fractured ribs,

as [MPIC's Doctor] had noted that there was no report on file outlining the results of X-rays taken of the Appellant's ribs that would entitle him to a permanent impairment benefit for displacement or non-union of the ribs. The file was returned to the Appellant's case manager to determine if he had developed some degree of psychological dysfunction relating to the injuries sustained in the accident. However, it seems that no Permanent Impairment benefit for psychological dysfunction was ever awarded to the Appellant, as MPIC's subsequent attempts to obtain further information from [Appellant's Psychiatrist #1] resulted in the suspension and termination of the Appellant's benefits.

It is from these decisions of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described his work history prior to the motor vehicle accident, the motor vehicle accident, and the time spent in rehabilitation. He talked about attending a variety of doctors, psychologists and psychiatrists, including consultation with the [text deleted] clinic. He was frustrated by delays as he waited for appointments to see various specialists and described constant pain in his shoulder and neck, and chronic pain affecting his headaches and causing depression. He experienced anxiety, emotion, a lack of concentration, withdrawal from normal society and an inability to do all kinds of activities. As a result, his family physician referred him to [Appellant's Psychiatrist #1] to deal with the depression.

The Appellant also described his frustration as he attempted to obtain for MPIC the information they were requesting from [Appellant's Psychiatrist #1]. He exhibited deference to the doctor and seemed anxious not to annoy the doctor, for fear he would no longer be willing to help him.

He described his life before the motor vehicle accident, indicating that he worked and took all kinds of courses in the evening. He completed courses, passed exams and was happy doing his work. He acknowledged the strain from the tragic accident involving his children's death, but maintained that in spite of that, he had been able to continue on with his work and his life.

The Appellant also talked about some problems he had with his lower lumbar spine, prior to the motor vehicle accident. He described these as sprains and strains to his muscles arising from his work as an industrial electrician who had to climb scaffolds with tools and fixings, working from overhead cranes. In the Appellant's view, these problems were contained to his lower back. Now, following the motor vehicle accident, the problem he described was with his upper back, particularly his shoulders and facet joints. He described numbness which prevented him from working with power tools and climbing ladders and facet joint shoulder pain which gives him severe headaches causing depression.

The Appellant submitted that he had been an industrial electrician with [TEXT DELETED] for over 20 years, with good benefits and vacation time. He had been happy working for that employer. He submitted that if there had been no car accident and he hadn't had to "go through hell for the past seven years" he would still be employed with [TEXT DELETED] to this day until he retired with a good pension. Now, he is off work because of the motor vehicle accident and had to apply to CPP for a disability pension, which was approved. Now, because of the motor vehicle accident, he cannot work and MPIC refuses to top-up his pension benefits.

Evidence and Submission for MPIC:

Counsel for MPIC took the position that upon disclosure of the Appellant's pre-1998 medical history, in 2008, a long-standing history of back problems, as well as a history of some mental

disorder was disclosed. The pre-motor vehicle accident medical history revealed the fact that the Appellant's symptoms and back condition (which was described as chronic pain radiating down both sides, with numbness) pre-dated the motor vehicle accident. His complaints were all attributable, according to [Appellant's Psychiatrist #4], [Appellant's Psychiatrist #3] and [Appellant's Neurologist #1], as well as [Appellant's Physiotherapist #3] to a pre-existing degenerative condition in the Appellant's back.

The Appellant had also minimized the effect of his pre-accident mental condition, but the psychiatrists who had the "full medical picture", [Independent Psychiatrist], [Appellant's Psychiatrist #2], and [Appellant's Psychiatrist #1], understood that it was the post-traumatic stress resulting from the traumatic event of his children's accidental death which precipitated the Appellant's somatization complaints as well as his depression, anxiety and stress.

Even before the motor vehicle accident, the Appellant had a pre-existing condition in his back and was working with restrictions. He was also labouring under a psychosomatic condition. He had been on partial disability as recently as March to July of 1998 and was having regular problems with his back restricting him from the type of work he could do.

The Appellant failed to cooperate with MPIC's attempt to obtain chart notes and background information from [Appellant's Psychiatrist #1]. The Appellant, it was submitted, was not labouring under a physical or mental condition that prevented him from making this request of [Appellant's Psychiatrist #1]. When the information was finally obtained, it disclosed the view that the accident involving the Appellant's children was a precipitating factor for all of his somatization complaints.

A review of all of the medical information on file, including the opinions of [MPIC's Psychologist] and [MPIC's Doctor], but also of the Appellant's own psychiatrists and [Independent Psychiatrist], made it clear that the Appellant was not disabled from working, psychologically or physically, for reasons resulting from the motor vehicle accident, had not cooperated in obtaining requested medical information from MPIC, and was not entitled to a permanent impairment benefit arising out of injuries from the motor vehicle accident.

As a result, counsel submitted that the Appellant's appeals should be dismissed.

DISCUSSION

The onus is on the Appellant to show, on a balance of probabilities that the decisions of the Internal Review Officer were in error.

Suspension and Termination of Benefits:

Corporation may refuse or terminate compensation

[160](#) The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

(b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;

The panel has reviewed the testimony of the Appellant and the documentation on the Appellant's file regarding his suspension and termination of benefits for refusing to produce information or provide authorization to obtain the information, as requested by the Corporation.

By February 10, 2006, the Appellant had provided a signed medical information authorization release form to MPIC allowing the case manager to obtain information from [Appellant's

Psychiatrist #1]. This signed medical information authorization was forwarded to [Appellant's Psychiatrist #1] by the case manager on February 10, 2006, and a medical report obtained from [Appellant's Psychiatrist #1] dated February 22, 2006.

The case manager wrote to [Appellant's Psychiatrist #1], on June 7, 2006 thanking him for that February 22nd letter and asking him to provide a copy of his chart notes, again enclosing a signed medical authorization allowing for the release of this information.

The case manager wrote to the Appellant on October 18, 2006 describing the written requests which had been made to [Appellant's Psychiatrist #1] (on February 10, June 7, July 25, and September 15, 2006) without receiving a copy of the file.

“In order to comply with our requirement for information you had previously signed an Authorization for Release of Health Care Information form which allows Manitoba Public Insurance (MPI) to access a copy of our complete medical file as per the Personal Health Information Act (see enclosed). We had hoped to avoid this, however we now require you to gain access to your own file information which [Appellant's Psychiatrist #1] holds entrust for you...

Please provide MPI with a copy of this information on or before November 3, 2006, to avoid jeopardizing your future entitlement to benefits.”

The case manager wrote to the Appellant again on December 1, 2006, describing attempts to obtain information from [Appellant's Psychiatrist #1] and recognizing that the Appellant:

“...had previously authorized Manitoba Public Insurance (MPI) to gain access to a copy of your file...

We have now requested this information in writing to both you and your doctor several times with no success. In addition, although it is not required, we have yet to have been provided with a valid reason by either yourself or your doctor for refusing to comply with the request...

We wish to avoid further conflict and again urge you to comply with the request. If we do not receive the information on or prior to January 1, 2006, we will have no other alternative but to suspend your IRI benefits until the information is received...”

Attachments sent with this December 1, 2006 letter consisted of photocopies of sections of the MPIC Act. No additional authorization was listed as an attachment sent to the Appellant at that time.

The case manager wrote to the Appellant again on January 2, 2007. This letter described the Appellant providing a medical authorization and [Appellant's Psychiatrist #1] providing an initial letter. Then on four separate occasions MPI requested a copy of the entire file from [Appellant's Psychiatrist #1]. It was not received.

“...As you previously authorized Manitoba Public Insurance (MPI) to gain access to a copy of your file, in our letter dated October 18, 2006, we asked you to obtain same from [Appellant's Psychiatrist #1] as he did not seem willing to release it himself. We took your previous signature on our authorization to obtain information from [Appellant's Psychiatrist #1] as your willingness to comply with this request. Since that time you have explained that you do no longer wish to comply with this request...

On December 1, 2006, we sent out a second letter which required your signature to receive which urged you to comply with the request and further explaining your obligations under PIPP. We have now requested this information in writing to both you and your doctor several times with no success...

The January 1, 2007 deadline for you to provide this information has now since past and we have not been provided with the information, nor a valid reason why either you or your doctor is refusing to comply with the request. As you have chosen not to comply with our request prior to the prescribed deadline, we have no other alternative but to suspend your IRI benefits until the information is received.

Should this information not be received on or before March 1, 2007, we will have no other alternative but to terminate your entitlement to PIPP benefits for this claim.”

The file also contained a memorandum from the Appellant's case manager dated February 21, 2007 describing a conversation with the Appellant. The Appellant related his contacts with the Ombudsman's Office and the Privacy Officer in attempts to negotiate a method of providing medical information to MPIC which did not violate his privacy rights. The memo indicates that [text deleted] from the Legal Department said that these suggestions were not acceptable to MPIC. The case manager concluded:

“But suggested to [the Appellant] he could obtain a complete copy of his file from his psychiatrist and then provide the medical file to MPI. [The Appellant] does not feel comfortable requesting a copy of his file from [Appellant’s Psychiatrist #1] and therefore, he will not do this.”

The Internal Review Officer upheld the case manager’s decision to suspend the Appellant’s benefits on April 20, 2007. The Internal Review Officer indicated that she had:

“...reviewed that you had provided an authorization previously so that [Appellant’s Psychiatrist #1] could provide MPI with information and on February 22, 2006 he complied with part of the request. Then, on four separate occasions your entire file was requested from [Appellant’s Psychiatrist #1] but it has not yet been received.

...I understand that you had previously provided your authorization and now your case manager was requesting that you get the information form your doctor which your doctor was refusing to provide. This, of course, you are not required to do as you had already provided an authorization and therefore it was up to MPI at this point to obtain that information from [Appellant’s Psychiatrist #1]. Your case manager was requesting your assistance in getting this information from [Appellant’s Psychiatrist #1] but you were not required to comply with that request. However, in this conversation you also say that you had concerns over the information that would be released to MPI in that you only wanted to release information that was pertinent to the car accident.

...You are not at any time required to obtain information from your physicians if you have provided an authorization to MPIC, but you cannot interfere with the request from MPI as this would be non-compliance. (emphasis added)

After reviewing your file and discussing these issues with you at your Internal Review Hearing it is my decision that your benefits were correctly suspended as you had withdrawn your authorization for MPI to collect documents from [Appellant’s Psychiatrist #1]. As a result, I am confirming [text deleted] decision letter and dismissing your Application for Review.

I strongly encourage you to re-establish your authorization with your case manager...”

On April 25, 2007, the Appellant’s counsel at that time, [text deleted], wrote to the Internal Review Officer enclosing an authorization letter which had been re-executed by the Appellant.

On May 17, 2007 the Appellant’s IRI benefits were reinstated.

In the Appellant’s Notice of Appeal regarding his suspensions (dated June 11, 2007), he stated:

“I have never withdrawn my authorization allowing MPI to obtain relevant medical information. I have never interfered in any way with MPI’s attempts to obtain this information. I have re-established MPI’s authorization. [Appellant’s Psychiatrist #1] has indicated he has provided all the info he has.”

The case manager wrote again on September 17, 2007:

“You have chosen not to comply with our requests (July 19, 2007 and August 10, 2007) to provide a complete copy of your medical file from [Appellant’s Psychiatrist #1] to Manitoba Public Insurance (MPI).”

A 30 day suspension was instituted at that time, with MPIC indicating that if they still had not received the requested information within the 30 day period, they would proceed to terminate the Appellant’s claim as of October 15, 2007.

On October 15, 2007, the Appellant’s benefits were terminated for non-compliance. On December 5, 2007, an Internal Review Decision upheld this termination for non-compliance:

“...You also stated that you have always co-operated with MPIC and have done everything that was asked to do in the past, however, you have not requested the information from [Appellant’s Psychiatrist #1] as was requested of you. If you had requested the information and [Appellant’s Psychiatrist #1] had put in writing to you that there is no further information that he had whether he thinks it is relevant or not, you may have provided that to Manitoba Public Insurance. You did not take this step, nor have you taken any step to provide this information to Manitoba Public Insurance and as a result I am confirming your case manager’s decision that your PIPP benefit are terminated for non-compliance with the request to obtain information in accordance with Section 160(b) and dismissing our Application for Review.

Should you decide to comply with the request to provide [Appellant’s Psychiatrist #1] with full clinical notes to which you are entitled under the law, your benefit may be reinstated.”

The Appellant’s Notice of Appeal stated:

“I have not refused or neglected to provide MPI with all the cooperation and information they have requested. I do not agree with the ending of benefits.”

A review of these documents leads the panel to the conclusion that the Appellant had indeed provided a signed medical authorization release form to MPIC. However, MPIC was having difficulty eliciting the information it wanted from [Appellant's Psychiatrist #1]. They attempted to get the Appellant to assist, by going to [Appellant's Psychiatrist #1] and collecting the information himself. The failure to obtain the information himself (although we find he made some attempts to do this in spite of the deference he felt to the doctor's position and his anxiety in that regard) seems to be the real basis for the suspension and termination.

In the panel's view, MPIC's demands and correspondence to the Appellant in this regard cannot be described as reasonable and we find that they were, at best, confusing. This is particularly evident when considering the comments of the Internal Review Officer in her suspension decision of April 20, 2007, concerning what the Appellant was and was not required to do.

"...I understand that you had previously provided your authorization and now your case manager was requesting that you get the information from your doctor which your doctor was refusing to provide. This, of course, you are not required to do as you had already provided an authorization and therefore it was up to MPI at this point to obtain that information from [Appellant's Psychiatrist #1]. Your case manager, was requesting your assistance in getting this information from [Appellant's Psychiatrist #1], but you were not required to comply with that request..." (emphasis added)

Yet, the Internal Review Officer still suspended the Appellant for interfering with requests or withdrawing his authorization, encouraging him to re-establish his authorization without, it seems even sending a second authorization request. In spite of these comments that the Appellant does not need to assist the case manager in actually collecting the information, the second Internal Review Decision then went on to uphold the termination of the Appellant's benefits for refusing to comply with the request to obtain information from [Appellant's Psychiatrist #1] and provide it to MPIC.

The panel has reviewed the Commission's comments regarding compliance with Section 160(a) and (b) of the MPIC Act in the *[text deleted]* decision, AC-05-96, and the *[text deleted]* decision, AC-04-125.

The first step for the Commission is to determine factually whether the circumstances in any one of Sections 160(a) through (h) have been met. In this case, the Commission must make a determination as to whether or not the Appellant has refused or neglected to produce information, or to provide authorization to obtain the information when requested by the Corporation in writing.

The Commission cannot answer this question in the affirmative, since the material on the Appellant's file and the documentation sent to him by MPIC is so confusing to us that it is not clear whether he refused or neglected to provide information or authorization. This must have been confusing for the Appellant as well. We find that the Appellant was doing his best to comply with MPIC's request for information. He signed the authorization form more than one time and, even tried to ask his doctor for the information directly, in spite of the anxiety which he felt in doing so, in deference to his doctor's authority.

If the Commission finds that any of the factual circumstances under Section 160(b) have been met, then it may go on to consider whether, on the whole, the Commission is satisfied that the overall circumstances warrant a refusal, reduction, suspension or termination of benefits. If the Commission finds that the Appellant has provided a valid reason for the conduct complained of, this is one of the circumstances which the Commission may take into consideration in its deliberations regarding the Appellant's entitlement to benefits.

In considering the overall circumstances in this case, the panel is struck by the lack of clarity in MPIC's position throughout its dealing with the Appellant in this regard. We find that the correspondence from MPIC to the Appellant was too confusing and the Internal Review Officer's comments and decisions too contradictory for the panel to find that the Appellant has refused or neglected to produce information and provide authorizations in a way which would support a suspension or termination of his benefits. We also find as a result that even if he did fail to provide the requested information, the overall circumstances did not warrant a suspension or termination.

Accordingly, the Internal Review Decisions dated April 20, 2007 and December 5, 2007, are overturned and the Appellant's appeals dated June 11, 2007 and December 20, 2007 are allowed.

Income Replacement Indemnity Benefits:

Section 81(1) of the MPIC Act provides:

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;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

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:

(e) the victim holds an employment from which the gross income is equal to or greater than the gross income on which victim's income replacement indemnity is determined;

The onus is on the Appellant to show that he is unable to continue his employment because of a condition arising out of the motor vehicle accident.

Physical Condition/Myofascial Pain:

Pre-motor Vehicle Accident History:

Prior to the motor vehicle accident, the Appellant worked for [TEXT DELETED]. He had approximately nine recorded accidents of mostly muscular pain to his lower back. These incidents were usually minor, caused by either working in an awkward position or having a wrench or other instrument slip with a concurrent twist to his back. The incidents were usually treated with a few days of rest off work and/or some analgesic medication. However, on one occasion, he lost several months from work, and on another occasion he lost six months from work. On these occasions he was treated with physiotherapy.

Past Radiological Investigation:

An X-ray of the Appellant's lumbar sacral region, performed at a chiropractic clinic on April 25, 1985, indicated L5 discopathy, which could be interpreted as mild degeneration. On August 18, 1987, the Appellant underwent a CT scan in [text deleted] (ordered by the Workers Compensation Board of Manitoba) which indicated a bulging inter-vertebral disc at L5-S1. The cause was not stated, but X-ray films of July 25, 1998, indicated lumbar vertebral degeneration and narrowing of the L5-S1 joint space.

Given the short healing time for the majority of the Appellant's WCB work accidents, it is unlikely that the lumbar vertebra were affected in any of these accidents. However, the two accidents which required months for a recuperation may have involved the lumbar vertebra and could have exacerbated the pain and length of time involved for improvement.

In any event, the Appellant was working and without significant symptoms when the motor vehicle accident of October 5, 1998 occurred. As well, we note that there were no cervical X-rays taken prior to the motor vehicle accident, possibly due to the fact that the Appellant did not suffer from symptoms referable to the cervical vertebra at that time.

Subsequent Radiological Investigation:

Following the motor vehicle accident, the Appellant had pain and impaired function in his upper back, shoulder and neck, as well as significant pain in his lower back. A bone scan of October 6, 1999 indicated some lumbar spine degeneration and a CT scan of March 20, 2000 showed what was termed "marked degeneration and a vacuum phenomenon" with subchondral sclerosis in the lumbar spine area. X-rays of the cervical and lumbar spine on April 26, 2000 showed lumbar spine degeneration, but did not mention cervical spine degeneration. An MRI done of the cervical spine on June 15, 2001 indicated a bulging disc which might cause "a mild compression of the left C6 nerve root". Another MRI of the cervical spine on November 12, 2001 showed minor C5-C6 osteofied formation with a disc protrusion previously noted possibly causing C6 nerve root irritation.

Additional Medical Opinion and Investigation

[Appellant's Neurologist #3] performed an electrophysiologic study on the Appellant which he found normal. [Appellant's Orthopaedist #2] reported on November 24, 2004 regarding the pain

and numbness in the Appellant's left leg. He indicated that at the time he saw the Appellant he had some signs of peripheral neuropathy in the left lower limb.

[Appellant's Neurologist #1], another neurologist, described the Appellant's reports of "electric shocks in his chest when he made certain movements and pain and numbness in his left leg". On November 9, 2005, [Appellant's Neurologist #1] found increased tenderness in the paraspinal muscles and a significantly decreased range of motion on flexion and extension movements of the back. He found that although the Appellant had pain radiating throughout his left leg, there was no evidence of significant nerve compression. [Appellant's Neurologist #1] also concluded that the Appellant's symptoms were consistent with mechanical left shoulder, back and neck pain and that he had ulnar neuropathy consistent with carpal tunnel syndrome. He believed the Appellant to also have mechanical low back symptoms with lumbar degeneration but with no root compression.

Another neurologist, [Appellant's Neurologist #2], noted the Appellant's complaints of neck and left shoulder pain and numbness in his legs. He found an anomalous left biceps reflex, although follow-up electrophysiologic testing revealed no abnormality. He treated the Appellant's shoulder pain with botox injections, and some relief was experienced by the Appellant.

[Appellant's Psychiatrist #1] reported on September 25, 2000. He noted that the Appellant's major complaint was in his back with tingling and pain in his leg. He found a lot of tightness in the Appellant's trapezius, with one side more prominent than the other, tightness of the scalene, and limited rotation and lateral flexion of the neck. He stated:

"Impression is that this gentleman probably has some underlying degenerative disc disease in his neck and back with muscle tightness, and since it has been two years

since his accident and he has had a fairly good rehabilitation program I do not think that further rehabilitation intervention is the answer.”

P.S.

“He has had a CT scan done in our institution of which we got the results of, which, actually showed some degenerative changes at the L5-S1 area and this was done on the 20th of March. He also had Bone Scan which also only showed some degenerative changes.”

[Appellant’s Orthopaedist #1] examined the Appellant and provided an opinion on April 26, 2000. He stated:

“In my opinion, he requires no ongoing treatment or medications or manipulations or therapies pertaining to this accident. He has long since recovered from the effects of the accident. I anticipate in the future he will continue to be bothered by his pre-existing conditions and may require treatment for his pre-existing conditions.”

[Appellant’s Physiatrist #3] agreed with [Appellant’s Orthopaedist #1’s] opinions (which were similar to the opinions expressed in a report he submitted in November of 1999) indicating that the Appellant’s symptoms were due to pre-existing degeneration.

[Appellant’s Physiatrist #4], another physiatrist, provided 5 reports between January and September of 1999. He could not find any significant pathology, but noted that he believed the Appellant’s muscular and mechanical strength could be helped by nerve blocks to the symptomatic areas.

[MPIC’s Doctor] provided several reports. On June 14, 2000, he stated:

“It is my opinion that as a result of the medical conditions arising from the motor vehicle collision in question, [the Appellant] developed a partial temporary impairment of physical function. There is no documentation identifying a medical condition arising from the motor vehicle accident that would result in a permanent impairment of physical and/or psychological function.”

Several follow-up reports from [MPIC's Doctor] opined that the Appellant has recovered from the accident and that he was capable of returning to work.

However, the Appellant's general practitioner, as well as [Appellant's Psychiatrist #2] and [Appellant's Anaesthesiologist] from the [text deleted] Clinic put greater weight upon the role of the motor vehicle accident as a cause of the Appellant's condition.

[Appellant's Doctor #1], his general practitioner, provided several reports. He was of the view that:

“In the motor vehicle accident he sustained severe strain to his lower back from which he never recovered.”

and that:

“He sustained permanent impairment as a result of the injuries sustained in the accident of October 5, 1998.”

For example, in March 2003, [Appellant's Doctor #1] described the Appellant as suffering from persistent pain and stiffness in neck and back with pain radiating down both legs. There was spasm of muscles of neck and the movements are restricted. The back extension was restricted as well.

[Appellant's Doctor #1] was of the view that:

“There is no pre-existing condition that delays recovery.

[The Appellant] can sit or stand for 10 minutes. He cannot climb a ladder or repetitive bending, work in bent position or doing lifting. He has to change position frequently.

His condition is not improving and the injuries which he sustained in the motor vehicle accident are permanent.”

[Appellant's Doctor #1] imposed several restrictions upon the Appellant's work duties, such that the Appellant was essentially unable to perform the duties of his employment at [TEXT DELETED].

These restrictions were supported by [Appellant's Employer's Doctor] of [TEXT DELETED]'s Occupational Health Services, in reports dated July 13, 2000, July 27, 2000, and November 21, 2000. He also noted that no restrictions were in place prior to the motor vehicle accident in October of 1998.

On January 7, 2002, [Appellant's Anaesthesiologist], of the [text deleted] Clinic, examined the Appellant and stated:

“He continues to have episodes of severe exacerbation, which has led to emergency room visits on a few occasions. He describes a steady low back and mid thoracic back pain with associated electric shocks in his chest wall. The pain also will radiate into his left hand in the ring and middle fingers...

...There are no areas of hyperesthesia. He had myofascial tenderness in the suprascapular and rhomboid paravertebral muscles. He was tender over the L4-5, L5-S1 facets...

It appears this gentleman is suffering from myofascial pain as well as possible facet joint arthropathy. There may be some degree of degenerative disc disease.”

[Appellant's Physiatrist #2] reported on January 18, 2002. He reviewed the reports [MPIC's Doctor], [Appellant's Physiatrist #3], [Appellant's Orthopaedist #1], and [Appellant's Physiatrist #1], noting that they were of the opinion that the Appellant's pain arose from pre-existing degenerative changes of the lumbar spine. He also noted that [Appellant's Doctor #1] did not agree with these opinions, believing that the Appellant's problems were a direct result of the motor vehicle accident and that he has suffered a permanent disability as a result of this injury.

[Appellant's Psychiatrist #2's] conclusion was that the Appellant was suffering from:

"...Myofascial Pain Syndrome affecting the left neck, shoulder girdle, the buttock and selected spinal ligaments. I feel this condition is related to the motor vehicle collision of October 1998. I believe his condition renders [the Appellant] substantially unable to perform the essential duties as a diesel electrician at [TEXT DELETED].

I feel, as a result of the motor vehicle collision of October 1998, he has suffered a *physical and mental injury caused* by a motor vehicle accident that *renders* the victim substantially *unable* to perform the essential duties of *his* employment...

I feel that [the Appellant] has experienced a combination of problems which certainly have a significant probability of having been caused by his motor vehicle collision..."

[Appellant's Psychiatrist #2] also stated:

"I feel that unless a case can be built for the fact that [the Appellant] suffered a good deal of neck and back pain which prevented him from going to and performing the work of a diesel electrician prior to the collision, the present medical condition with which he is suffering has to be considered as arising from the October 1998 collision. There is no other reason that I can see why he would have more pain while not working than he did when working and why he would not be returning to his pre-collision life style and work. I think his sleep disorder and tendency to depression as discussed by [Appellant's Psychologist] have also originated from the collision of October 1998."

The panel found it challenging to wade through the great volume and diversity of medical opinion in this appeal. We recognize that many of the physicians and caregivers who examined, assessed and treated the Appellant, both for his physical and psychological issues, were of the view that his condition was caused by factors pre-existing the motor vehicle accident. Other doctors and caregivers were of the view that the Appellant's condition was caused by the motor vehicle accident.

A review of the medical evidence and the testimony of the Appellant make it clear that, in the panel's view, the Appellant suffered from the symptoms and condition connected to his lumbar spine before the motor vehicle accident, and that, to a great extent, these were caused by pre-existing degenerative condition.

However, the Appellant's evidence, along with the opinions of [Appellant's Doctor #1], [Appellant's Psychiatrist #2], [Appellant's Anaesthesiologist], [Appellant's Psychiatrist #1], and [Appellant's Psychiatrist #2], led the panel to conclude that the Appellant did not suffer from a condition with his neck, upper back and shoulders prior to the motor vehicle accident and that the difficulties with his neck and upper back were not a result of a pre-existing degenerative condition, but rather, were the result of the injuries he sustained in the motor vehicle accident.

The Appellant had suffered from problems in his lumbar spine in the past, but there was no record of complaints or investigations regarding symptoms in his cervical spine.

We find that it is unlikely that the pain, loss of function and reduced range of motion of the Appellant's shoulder, neck and back movements, as well as the described disturbance of biceps reflex and sensation of electric shocks in the chest, were caused by a pre-existing condition. The Appellant had not suffered from such symptoms prior to the motor vehicle accident, and only one area in the C5-6 cervical vertebra had shown any degeneration.

In our view the motor vehicle accident injuries to his upper back and neck, along with the exacerbation of the Appellant's lower back pain suffered in the motor vehicle accident led to the myofascial pain syndrome diagnosed by [Appellant's Psychiatrist #2] and [Appellant's Anaesthesiologist].

We also find that there was an intermingling of the Appellant's psychological difficulties and his physical symptoms and myofascial pain. The Appellant's depression and psychiatric condition added to his pain, and his pain prevented him from working, thus depriving him of the coping

mechanisms which he had used in the past in the face of his depression, mood disorders and post-traumatic stress.

Psychological Condition:

In the years following the motor vehicle accident the Appellant was treated by [Appellant's Psychologist] and assessed by [Appellant's Psychiatrist #3], at the request of the Commission.

[Appellant's Psychologist] reported, on March 4, 1999, that the Appellant had reported no history of hospitalization or major operations and denied a diagnosis of depression or the use of anti-depression medication prior to the accident of October 8, 1998. He also denied involvement or abuse of alcohol or drugs, childhood abuse, or traumatic experiences. He told [Appellant's Psychologist] that he was well until October 8, 1998, the date of his accident.

[Appellant's Psychologist] found no reports or indication of chronic pain behaviour or magnifications of pain.

The results of his testing indicated a mild level of anxiety and a moderate level of depression, but without sufficient criteria to grant a diagnosis of clinical depression, anxiety disorder, post-traumatic stress disorder or mental disorders. No recommendations for treatment were made.

[Appellant's Psychiatrist #3] reported on December 27, 2001. Again, he reported no prior history of mental disorder, history of substance abuse and no significant absences from work due to mental illness. The Appellant reported that he was well prior to being involved in the motor vehicle accident.

[Appellant's Psychiatrist #3] diagnosed depression, with the cause of the depression being multifactorial and including predisposing, precipitating and sustaining factors. He stated:

"...It is usually not possible to attribute a depressive illness to a single event such as a motor vehicle accident. It is, on the other hand, well known that persistent and chronic pain can exacerbate and sustain depression and that depression in turn can intensify the subjective perception of pain symptomatology. Thus there is somewhat of a 'chicken and egg' dilemma with respect to the concordance of chronic pain and depression.

As the onset of chronic pain symptomatology appears to predate the onset of depression, it appears that chronic pain is a major contributing factor to the onset of depression and to the degree that the pain is attributable to the accident, depression can be viewed as a secondary outcome of the accident."

Therefore, these doctors were of the opinion that the Appellant's depressive symptomatology arose as a result of chronic pain from the motor vehicle accident.

After reviewing this information, [MPIC's Psychologist], in a memorandum dated January 17, 2006, opined that the Appellant's diagnosis of major depressive disorder was, on the balances of probabilities, causally related to the motor vehicle accident.

However, there is no evidence that these doctors were aware of the events surrounding the death of the Appellant's children.

[Independent Psychiatrist] conducted an independent assessment of the Appellant for MPIC. He provided a report dated October 9, 2008. He noted that the Appellant presented as somewhat anxious but with a bright affect, which changed during the interview when they began reviewing the loss of his children. He noted that the Appellant:

"...demonstrated somewhat impaired insight into his physical conditioning and mental status prior to his motor vehicle accident in 1998. There is clear evidence of multiple periods of disability related to back injuries and one period of disability related to anxiety and stress. [The Appellant] continues to report that there were no problems, neither physically nor emotionally prior to the motor vehicle accident of 1998. As

such, his judgment is impaired with regard to his ongoing focus on Manitoba Public Insurance Corporation as the cause for his current difficulties.”

[Independent Psychiatrist] agreed with prior psychiatric assessments that the Appellant suffers from a mood disorder, but believed that the mood difficulties predated the accident, as he was off work for anxiety and stress in the years prior to the accident. He agreed that the Appellant did experience pain and was not malingering and that this pain was a limiting factor in his ability to return to work.

[Independent Psychiatrist] found that there was evidence of a pre-existing psychiatric/psychological condition, and upon a review of [Appellant’s Psychiatrist #1’s] notes, concluded that the Appellant’s difficulties began with the death of his children.

“...Based on the course of events after the motor vehicle accident, it does not appear that the motor vehicle accident, in and of itself, exacerbated those mood symptoms. As evidence by [Appellant’s Psychologist’s] notes and [the Appellant’s] report, there were no problems with his mood or emotions until there was pressure from Manitoba Public Insurance to return to work approximately six months after his motor vehicle accident...

The other factor that has contributed to his mood difficulties is his chronic pain...

Although he does attribute some concentration problems to his mood difficulties, it is my opinion that at this time he is not disabled from work related to a psychiatric illness. In fact, work has, in the past, been one of his main coping strategies...”

[Appellant’s Psychiatrist #1] provided a report dated November 3, 2006 describing the Appellant’s symptoms and noting that while they may be viewed as psychosomatic, nonetheless they are an issue in the Appellant’s life. He indicated:

“The fatal accident in which his two young children died has affected his emotional status which in turn, in my opinion, contributed to psychological overlay and affected his recovery rate.

[The Appellant] shows no evidence of a major psychiatric disorder, in spite of his sensitivity to stress, and tendency to anxiety, his mental status is compatible with some form of light occupation.”

[Appellant's Psychiatrist #1's] clinical notes from October of 2007 reflected similar views. He wrote:

"The accident in which he lost his 2 children had devastating effect on the family. He felt anguish, guilt & depression; withdrew into himself:

- unable to work or function normally
- shortly after had the car accident
- Developed P.T.S.D.

Had pains in his back and many other areas of the body.

In retrospect these wide spread somatizations were likely depressive equivalents especially since his injuries were not that severe (see x-rays).

Recovery was very slow if not at all, in fact some of the symptoms worsened.

It was not malingering, he welcomed every test prescribed & treatments that he felt aggravated his condition.

I have treated him for anxiety with depression."

Another psychiatrist, [Appellant's Psychiatrist #2], was aware of the Appellant's loss of his children. In a report dated April 17, 2008, he stated:

"At the time of the Psychiatric Examination in late 2001, [Appellant's Psychiatrist #3] found that [the Appellant] was suffering from a Clinical Depression which required treatment and that his Depression was causally related to his Road Accident and its sequelae."

[Appellant's Psychiatrist #2] diagnosed the Appellant as suffering from:

"...Post Traumatic Stress Disorder Chronic (Moderately severe). He also suffers from symptoms of Depression (Moderately severe). He is unable to work as a result of his physical injuries and his psychiatric illness."

[Appellant's Psychiatrist #2] opined:

"In my opinion his psychological trauma probably began with the tragic death of his two small children. [The Appellant] was apparently recovered from the grievous loss of his two children and was able to function normally at work and in the Community. However after the Motor Vehicle Accident in 1998 he was physically disabled and this was followed by a Depression and PTSD. His previous ability to cope with the first trauma i.e. to bury himself in his work was gone; and he had to cope with all the new losses.

Despite working one these traumas with [Appellant's Psychiatrist #1] for three years, he still has significant psychological disability stemming from the effects of chronic PTSD and chronic Major Episodes of Depression.

His treatment to date can only be described as partially successful. The difficulties in achieving a satisfactory result are most likely due to Chronic Disability and Pain, and the Chronic Loss of Self Worth and purpose and interest in life due to the loss of his ability to work as an Electrician for [TEXT DELETED]. This had formed the major defences in his recovery from the tragic loss of his two young children.

In my opinion his prognosis for the future remains poor. It may be possible to psychologically support him with further work to help him integrate his losses, but he at present lacks the necessary resilience to do so. So far a combination of medications in adequate doses and a three year course of psychotherapy by a competent therapist have not resulted in a significant reduction in symptoms.”

[Appellant's Psychiatrist #2] seems to view the Appellant as having recovered from the tragic loss of his two young children through the major defence mechanism of his work. Following the motor vehicle accident, having lost his ability to work as an electrician because of his chronic disability and pain, he then lacked the resilience to psychologically support himself and integrate his losses.

Upon review of these psychological and psychiatric reports, the panel concludes that the Appellant did suffer post-traumatic stress following the death of his children, but, through the psychological defence provided by his work, he had the resilience necessary to continue in his work and other activities. However, the injuries he suffered in the motor vehicle accident, which led to chronic disability and pain, contributed to a loss of self-worth and purpose and deprived him of the major defences he had relied upon in his recovery from the tragic loss of his two children.

The panel finds that there was an intermingling of the Appellant's psychological difficulties and physical symptoms. As [Appellant's Psychiatrist #1] noted, his chronic pain was a wide-spread

somatisation with likely depressive equivalents. His depression and psychiatric condition contributed to his pain, his pain prevented him from working and thus deprived him of the coping mechanisms which he had used in the past in the face of his depression, mood disorders and post-traumatic stress.

The evidence of [Appellant's Doctor #1] and [Appellant's Psychiatrist #2], as well as that of [Appellant's Psychiatrist #2] and [Appellant's Psychiatrist #1] was that the Appellant, as a result of these motor vehicle accident related conditions, was unable to work at his pre-motor vehicle accident employment. The panel, based upon these reports, as well as the evidence and submission of the Appellant, finds that he was disabled from his pre-motor vehicle employment as a result of the motor vehicle accident. Accordingly, the Internal Review Decision of April 21, 2009 is hereby overturned. The panel finds that the Appellant was entitled to IRI benefits beyond the termination date of October 15, 2007.

Permanent Impairment Benefits:

Relevant Sections of the MPIC include:

Lump sum indemnity for permanent impairment

[127](#) Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

Evaluation of permanent impairment under schedule

[129\(1\)](#) The corporation shall evaluate a permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

Impairment not listed on schedule

[129\(2\)](#) The corporation shall determine a percentage for any permanent impairment that is not listed in the prescribed schedule, using the schedule as a guideline.

The panel has reviewed the medical evidence on the Appellant's file. As noted by [MPIC's Doctor] and by counsel for MPIC, there is no report on file outlining the results of X-rays taken on the Appellant's ribs. Accordingly we find that the Appellant has failed to meet the onus upon him of establishing on the evidence that he is entitled to a permanent impairment benefit for fractured ribs.

The Internal Review Decision of April 26, 2006 also rejected the Appellant's claim for Permanent Impairment benefits for myofascial pain, facet joint arthropathy and cervical facet joint injury. The Internal Review Officer concluded that the Appellants was "not entitled to a Permanent Impairment award as a result of injuries sustained in the accident".

As well, the Appellant has claimed Permanent Impairment benefits for depression. The Internal Review Officer returned the Appellant's file to the case manager to determine if he had developed some degree of psychological dysfunction arising out of the accident. Following further investigation, MPIC concluded that the Appellant's psychological condition did not prevent him from working and was not related to the motor vehicle accident.

However, the panel has now found that the Appellant's difficulties with his upper back and neck were caused by the motor vehicle accident and resulted in a myofascial pain condition. We do not find this aspect of the Appellant's claim to have been fully explored by MPIC regarding possible Permanent Impairment benefits.

The panel has also found that there was an intermingling of the Appellant's psychological difficulties and physical symptoms, with the injuries he suffered in the motor vehicle accident leading to chronic disability and pain and depriving him of the major psychological defenses he has relied upon in the face of depression, mood disorders and post-traumatic stress.

Accordingly, the Commission will refer the question of Permanent Impairment benefits arising out of the Appellant's upper back and neck condition and myofascial pain, as well as his psychological condition, back to the Appellant's case manager for assessment under the Permanent Impairment provisions of the Act.

Conclusion:

1. The Appellant's appeal from the Internal Review Decision dated April 26, 2006, confirming the decision that the Appellant's condition was not caused by the motor vehicle accident, is allowed. The Appellant's entitlement to a Permanent Impairment award for injuries to his upper back and neck, myofascial pain and psychological condition is referred back to the Appellant's case manager for assessment and determination.
2. The Appellant's appeal from the Internal Review Decision of April 20, 2007, confirming the decision to suspend the Appellant's entitlement to PIPP benefits due to the withdrawal of his authorization to allow his case manager to obtain medical information from [Appellant's Psychiatrist #1], is allowed. The Appellant will be entitled to PIPP benefits for the period of his suspension from January 2, 2007 to May 17, 2007.
3. The Appellant's appeal from the Internal Review Decision of December 5, 2007 (suspending the Appellant's PIPP benefits on September 15, 2007 and terminating them on October 15, 2007), for refusal to comply with the request to obtain information from [Appellant's

Psychiatrist #1] and provide it to MPIC, is allowed. The Appellant will be entitled to PIPP benefits from September 15, 2007 and continuing to date.

4. The Appellant's appeal from the Internal Review Decision of April 21, 2009, is allowed. The panel finds that there is a causal connection between the motor vehicle accident and the Appellant's upper back, neck, myofascial pain, and psychological condition. As a result of injuries sustained in the motor vehicle accident, the Appellant was unable to perform the duties of his pre-motor vehicle accident occupation and is entitled to IRI benefits from October 15, 2007 and continuing to date.

Dated at Winnipeg this 18th day of February, 2010.

LAURA DIAMOND

DR. PATRICK DOYLE

LES MARKS