

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-024**

PANEL: Ms Laura Diamond, Chairperson
Ms Jean Moor
Mr. Robert Malazdrewich

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

HEARING DATE: October 12, 2011

ISSUE(S): Whether or not the Appellant's Personal Injury Protection Plan benefits were properly suspended pursuant to Sections 160(d) and (g) from July 27, 2008 to October 7, 2010.

RELEVANT SECTIONS: Sections 150 and 160(d) and (g) 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 a pedestrian who was injured when she was hit by a motor vehicle on April 27, 2007. The Appellant was hospitalized with a variety of injuries. She was discharged from hospital on May 23, 2007 and was in receipt of a care giver weekly indemnity benefit, personal care assistance benefits, treatment benefits, a reconditioning/work hardening program, and Income Replacement Indemnity (IRI) benefits.

The Appellant's case manager wrote to her on July 17, 2008 advising that the Appellant had failed to supply valid medical reasons for her refusal to undergo a psychological assessment as recommended by an independent psychiatrist, [text deleted] and for absenteeism at a reconditioning program at [Rehabilitation (Rehab) Clinic]. As a result, the Appellant's case manager advised that her Personal Injury Protection Plan ("PIPP") benefits would be suspended, pursuant to Section 160(d) and (g) of the MPIC Act, after one further payment of income replacement up to July 26, 2008.

An Internal Review Officer for MPIC reviewed the Appellant's file and found, on December 9, 2008 that the case manager's decision should be upheld. The Internal Review Officer found that the Appellant had not provided valid reasons for refusing to undergo psychological assessment and not participating in a rehabilitation program and that her file was well documented with issues of non-compliance, uncooperative behaviour and poor attendance. The decision of July 17, 2008 to suspend her PIPP benefits was confirmed.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Preliminary Matters:

At a prehearing case conference held on August 10, 2011, counsel for MPIC agreed that since the Appellant had complied with the request to undergo a psychological assessment and had met with a psychologist ([Appellant's Psychologist]) on October 8, 2010, the Appellant's benefits would be reinstated from that date forward. However, the issue remained as to whether the Appellant's benefits should have been suspended from the date when she agreed to see the psychologist, on June 30, 2010, and whether her suspension from July 27, 2008 should be upheld.

When the appeal hearing commenced on October 12, 2011, counsel for MPIC was advised by the Appellant that she still had not received her benefits retroactive to October 8, 2010. Counsel for MPIC indicated that he would make inquiries in this regard. The Commission has now been advised that the Appellant's benefits have been paid for the period October 8, 2010 to October 6, 2011 and accordingly, the issue remaining before the panel was whether or not the Appellant's PIPP benefits were properly suspended pursuant to Sections 160(d) and (g) of the MPIC Act from July 27, 2008 to October 7, 2010.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal. She described an active life before the motor vehicle accident as a single parent with two children. She helped to take care of her mother, [text deleted]. She explained that she was energetic and active. She took care of her children, preparing meals, helping with homework, taking them to school, cleaning her house and doing laundry and shopping. She was outgoing, visiting extended family in [text deleted] by car or by bus, and had no problems answering the phone or opening her mail and socializing. She was studying in a [text deleted] course and participated in a working practicum.

The Appellant described the motor vehicle accident when she was a pedestrian hit by a car. She felt a great deal of pain and shock.

The Appellant described her physical injuries as including a permanent scar on her wrist, a fractured knee, road rash, injuries to her jaw, headaches, facial scars, injuries to her teeth and lower back pain.

She also described psychological effects which occurred as a result of the accident, explaining that it became difficult for her to leave the house, answer the phone or open her mail. She feels panicky and nervous, with low energy and depression. It is very hard to leave her house and although she wants to go out and do things, she cannot. She explained that all these things now take her longer.

The Appellant explained that she cannot sit in the back of a car as it makes her feel panicky, nervous, uncomfortable and sweaty. She sometimes suffers from panic attacks when she is on the bus and has to get off, wait at the stop and find the courage to get back on the next bus.

The Appellant gave evidence regarding the work hardening and reconditioning program in which she participated at [Rehab Clinic]. She reviewed weekly progress summaries prepared by the facility which illustrated that she was progressing physically. Many of her scores indicated increases in independence, strength and flexibility, with corresponding increases in pain.

The Appellant acknowledged that there were times when she was late at attending [Rehab Clinic], because of the psychological problems which made it difficult for her to get ready and get out of the house in the morning. However, she explained that she always made up this time during her lunch hour.

The Appellant also gave evidence regarding her history of suffering from an asthmatic condition. She explained that she had difficulties at the [Rehab Clinic] facility because the air fresheners which were used in the washrooms and around the building triggered asthma attacks. Although a staff member tried to assist her by removing the air freshener, the resulting residue continued to

irritate the Appellant's asthma. She testified that she was using her inhaler between exercises but still felt tightness and wheezing in her chest.

Finally, on Friday, July 11, 2008 the Appellant's asthma was bothering her so much that she called a taxi and went to see her doctor.

She testified that her doctor prescribed medication to assist with the condition and, the Commission was provided with a copy of a letter dated July 11, 2008 from [Appellant's Doctor #1], indicating that the Appellant suffers asthma secondary due to allergies to scents and perfumes, which worsen her asthma. He asked that sensitivity be utilized regarding this potentially life threatening condition.

Her doctor also provided a handwritten note dated July 12, 2008 indicating that:

“This patient cannot continue to exercise until her asthma is better controlled.”

Records from [Rehab Clinic] dated July 14, 2008 and July 15, 2008 indicated that the Appellant did not attend for rehab on those dates, due to unknown reasons. However, the Appellant testified that she did not attend because of the problems she was experiencing with her asthma and her doctor's advice not to exercise until this was under control. She indicated that she telephoned her case manager to report this to her and to tell her about the doctor's note, but that the case manager was not happy with her and hung up the phone.

After that, the Appellant testified that MPIC closed her file.

The Appellant also testified regarding her failure to attend at a psychological assessment. She acknowledged that she had requested a medical assessment from her doctor and that [Independent Psychiatrist] had also recommended this assessment, because of her reported depression, anxiety and irritability.

However, the Appellant pointed to a handwritten statement she had provided, dated May 22, 2008, which set out her objection to meeting with a male psychologist at [Rehab Clinic]. She explained that in her religion, she could not feel comfortable with a male psychologist but that, in her belief, a woman psychologist would be acceptable. The Appellant explained why she did not feel comfortable discussing personal matters behind closed doors with a male psychologist, or with any man. When counsel for MPIC, upon cross-examination, challenged her regarding her religious beliefs and regarding whether or not these beliefs were supported by specific provisions contained in the [text deleted], the Appellant reiterated her cultural and religious difficulties with treatment by a male psychologist. She expressed her willingness to meet with a female psychologist for assessment and/or treatment.

The Appellant's case manager wrote to her on May 27, 2008 acknowledging MPIC's receipt of her statement as to why she refused to meet with the psychologist at [Rehab Clinic]. The case manager then stated:

“Should you wish to attend a female psychologist, please provide the name of the person you wish to see and I will contact them about authorization for an assessment.”

The Appellant testified that she did not, as a result of this letter, refuse to choose a female psychologist. However, she explained that because of her psychological difficulties she was struggling and found it difficult to help herself by finding a psychologist. She explained that there were days she had trouble leaving her own house and that she needed help in finding a

female psychologist. In her view, MPIC knew about this and should have been helping her. It was because she had a psychological problem, she explained, that she needed help in finding a psychologist.

She explained that she had talked to her family physician, [Appellant's Doctor #2], explaining that she was anxious and depressed and asking to see a psychologist. However, her doctor was of the view that she should sort out her physical problems before her psychological problems. The Appellant explained that, in accordance with her religious background, she did not wish to challenge a respected male elder such as her doctor.

The panel was referred [Appellant's Doctor #2's] report of December 20, 2007 which indicated that the Appellant appeared fairly anxious, and had stopped going for physiotherapy as she felt depressed. He indicated:

“...[The Appellant] is also requesting to see a psychologist for her ongoing emotional issues, however, first and foremost we have to sort out her main physical complaints which are multiple, the main one being her persistent pain in her right knee and persistent use of her crutches.”

The Appellant testified that she would still like to receive psychological treatment and she would like to live the normal life she lived before the motor vehicle accident. She wants help with psychological treatment and exercise to get her strength back.

Counsel for the Appellant submitted that the Appellant had provided clear and consistent evidence of the active life she lived prior to the motor vehicle accident, the trauma of the motor vehicle accident and the physical and psychological injuries which resulted. She suffered from various physical injuries and pain, as well as a debilitating psychological condition, which was identified early on but left untreated.

These are the main reasons that the Appellant encountered difficulty in complying with MPIC's rehabilitation program and the directives regarding psychological assessment.

The Appellant spoke to her family doctor regarding the psychological assessment, but as was seen in the doctor's letter of December 20, 2007, he recommended that she deal with her physical issues first, in spite of her anxiety and depression.

It was submitted that MPIC was also aware of these issues.

In his report of March 18, 2008, [Independent Psychiatrist] identified psychological issues which required assessment. He identified a variety of psychological symptoms.

“She reported that she does feel depressed.

She rated her current anxiety, irritability and depression on a scale of 0 – 10 (where 10 is severe). She rated her current depression, anxiety, and irritability as all being 10 / 10. She reported not having any counseling (sic) or therapy related to this.

With respect to appetite, she notes that she at times she does not feel like she wants to eat.

She reports some decreased interest in activities, and reports that she frequently does not feel like opening a book as she has decreased energy. She reports that daily she feels emotional, feels like crying and teary. She reports that she usually takes 2 -3 hours to get to sleep. She reports that she frequently has a choking feeling / tightness in her throat. She did not report any past history of depression. She reports at times feeling panicky as well, with panic episodes.”

He indicated that the Appellant could merit a psychological evaluation regarding these depressive symptoms.

[Rehab Clinic's] multi-disciplinary assessment, set out in a report dated May 13, 2008 listed barriers to the Appellant's recovery:

1. “Elevated concerns regarding pain, activity and work.

2. Possible Depression.
3. Revised Oswestry score rating of Bed-ridden or Exaggerating symptoms...”

The report also noted high levels of depression which were clinically significant as well as mild to moderate levels of anxiety, high levels of distress with panic symptoms and a mild to moderate level of traumatic stress. The possibility of agoraphobia was also noted. This assessment also suggested a psychological referral to a general psychologist.

Counsel for the Appellant noted that the Appellant had explained to MPIC the issues which she had with the idea of a male psychologist. However, in spite of all the difficulties identified, her case manager’s only response was to ask her to provide the name of a female psychologist she wished to attend. While that might sound helpful, counsel noted the Appellant’s testimony that it was not an easy thing for her to find a female psychologist when she had trouble answering the phone, opening her mail and going out and had no knowledge of the psychological community.

Counsel submitted that it was clearly a recipe for disaster to impose that sort of responsibility on someone who is having psychological difficulties. Further, to engage a psychologist at that time, contrary to what she perceived as the wishes of her family doctor, would involve challenging his opinion, which she was hesitant to do.

Counsel referred to a report prepared by [Appellant’s Psychologist] on October 20, 2010. This report concluded that the Appellant appears to meet the DSM – IV criteria for Post Traumatic Stress Disorder including:

- “Experiencing a life threatening event
- Intense fear as a result of the accident
- Physiological reactivity
- Intrusive thoughts or images

- Nightmares or distressing dreams
- Avoidance of stimuli associated with the event such as cars.
- Hypervigilance”

She also found that the Appellant appeared to meet the DSM – IV criteria for a major Depressive Disorder, including:

- “Feelings of worthlessness or excessive guilt
- Markedly diminished interest or pleasure in all aspects of the day.
- Fatigue and loss of energy
- Depressed mood
- Changes in appetite”

[Appellant’s Psychologist] concluded that the Appellant requires treatment for this condition as her difficulties permeate her life, which seems to be restricted. She recommended psychological treatment using a cognitive behavioural approach with a goal of reducing and/or eliminating her post traumatic stress symptoms as well as to elevate her mood.

Counsel for the Appellant also reviewed the progress reports made on a weekly basis at [Rehab Clinic] for the Appellant’s physical treatment. She submitted that the weekly progress summaries showed that although it was often accompanied by an increase in pain, the Appellant completed her activities and showed increases in flexibility and strength. Her difficulties with her asthma had been well documented throughout her medical file. She submitted that the Appellant did not quit the program at [Rehab Clinic], but rather was unable to continue due to the failure of [Rehab Clinic] and MPIC to accommodate such factors as her religion, cultural differences, psychological difficulties, language barriers and pain.

Counsel for the Appellant also reviewed a memorandum completed by the Appellant's case manager on July 16, 2008 following a discussion with [Rehab Clinic's Doctor] of [Rehab Clinic], where [Rehab Clinic's Doctor] described difficulties with the Appellant:

“...She is very vocal and bossy – she does not provide any effort in her program and wants everything done for her.

She ALWAYS asks for help – she does not strive to get better, but has a high degree of investment to be cared for.

I asked if he thought it was her culture or personality that had to do with her issues and he thought it may be both.

She is a great burden on his staff and the therapists are reaching their limits with her.”

Counsel for the Appellant submitted that it was not appropriate for MPIC to terminate or suspend an Appellant's benefits simply because she may be a burden on the staff and a difficult patient, either as a result of different culture, or difficult personality.

Counsel cited a previous decision of the Commission in *[text deleted]* (AC-97-64), which recognized that slow progress does not of itself signify non-cooperation. In that case, in spite of a pattern of non-compliance, it was held that the Appellant should be given one more opportunity to regain her pre-motor vehicle accident condition.

Counsel also cited the Commission's decision in *[text deleted]* (AC-06-35) and the Appellant's testimony in that case that she was overwhelmed by the traumatic motor vehicle accident which had changed her life.

Counsel submitted that the Appellant had not refused to comply with the rehabilitation program and psychological assessments, but rather that she was unable to respond. It was difficult, if not impossible for the Appellant to be compliant in the manner which MPIC demanded, due to her fears of leaving home, the length of time it took her to get ready, her fears of the phone and of

travel by bus or car. Her asthma, religious beliefs, language barriers, physical injuries, conflicting medical opinion and advice and the psychological condition resulting from the accident (diagnosed by [Appellant's Psychologist]) all acted to establish a valid reason for the Appellant's failure to participate fully in the rehabilitation program and undergo psychological assessment.

Counsel requested that the Commission overturn the Internal Review Decision rescinding the Appellant's PIPP benefits and reinstate her benefits from July 27, 2008, until October 7, 2010 with interest.

Evidence and Submission for MPIC:

MPIC provided various reports from the staff and caregivers at [Rehab Clinic], which contained evidence regarding the Appellant's assessment, progress and discharge. These reports illustrated many of the challenges which were encountered, including "lack of progress, excessive demands on rehab staff, and increasingly resistant behaviour in the clinical setting".

A report dated April 11, 2011 was also filed from MPIC's psychological consultant. This report reviewed other reports on the Appellant's file and concluded the diagnoses contained in [Appellant's Psychologist's] report may be related to the motor vehicle accident, but that further information and evaluation comparing the Appellant's pre and post accident status would be required, as well as another independent psychological examination.

MPIC also filed [Independent Psychiatrist's] report dated March 18, 2008, which set out a list of physical diagnoses, noted some inconsistencies and recommended evaluation for depressive symptoms.

Counsel for MPIC submitted that MPIC had fully complied with its duties under Section 150 of the MPIC Act. The Appellant was provided with a treatment and rehabilitation program. Accommodations were made at [Rehab Clinic] based upon the Appellant's complaints regarding the effect the air fresheners may have had on her asthma. When the Appellant indicated that she preferred a female psychologist, her case manager wrote to her, on May 27, 2008, asking the Appellant to provide the name of a female psychologist who would then be contacted about authorization for an assessment. Counsel submitted that the Appellant was savvy in terms of attending at doctors and capable of requesting any given doctor for a recommendation or referral to a female psychologist. However, she clearly did not ask for that referral until much later in the process.

Counsel further submitted that the reports from [Rehab Clinic] do not bear out the Appellant's reasons for not attending at her sessions on time or completing her exercises. Although the Appellant now argues that this was due to psychological problems, reports made by [Rehab Clinic] at the time do not set that out as an explanation. At the time, the Appellant did not attribute her failure to comply with the program as being due to psychological problems and, he submitted, this was now simply a spin on what actually transpired.

Counsel for MPIC urged the panel to compare the subjectiveness of the Appellant's testimony with the observations and forms completed at [Rehab Clinic] over an eight week period and the observations and comments of [Independent Psychiatrist]. He indicated that these stand in stark contrast to the subjective explanations given by the Appellant. There are very few pre-motor vehicle accident notations on the Appellant's file regarding her asthma. Rather, the majority of medical reports deal with the Appellant's lack of commitment to her rehabilitation program. Her complaints regarding the pain in her fractured right knee were exaggerated, he submitted, as she

had not suffered a major injury to her right knee, and it had been conservatively treated, without surgery.

Counsel submitted that the Appellant's motivation for failure to comply with both the [Rehab Clinic] program and the psychological assessment was her desire to obtain secondary gain from her motor vehicle accident. He submitted that the evidence clearly showed that the Appellant was not committed to her rehabilitation program. She told [Independent Psychiatrist] that her symptoms would not resolve, and behavioural observations made by [Independent Psychiatrist] suggested that the Appellant was exaggerating her condition. He noted inconsistencies between formal and informal testing, suggesting that the Appellant's functional abilities were better than what she had demonstrated or reported.

Counsel submitted that the Appellant's interest in prolonging her condition and treatment was also noted in assessments conducted at [Rehab Clinic]. Symptom magnification was noted in the report dated May 13, 2008, as well as inconsistencies in range of motion and walking speeds.

Counsel for MPIC also submitted that [Rehab Clinic's Doctor], at [Rehab Clinic], clearly expressed the view to the Appellant that by one year after the accident, both her physical and psychological condition should be treated at the same time. Now, counsel submitted, the Appellant is saying that it was her religion which prevented her from doing this. Yet, given the opportunity to see a female psychologist as far back as May 2008, she did not seize upon that proposal. He submitted that the reason for this was that she wished to prolong her IRI benefits. Although MPIC did ultimately recognize the validity of her request to see a female psychologist, when the Appellant was given the opportunity to see whatever psychologist she chose, she failed to do so for two years.

Progress summary reports from [Rehab Clinic] showed that when the staff there became more insistent upon the Appellant becoming more self-sufficient, her degree of approval of her caregivers dropped. The reports are replete with observations that she failed to put out the expected effort and her tardiness and lackadaisical attitude towards attendance bolstered these observations regarding her commitment to the program and to the improvement of her condition. The Appellant was a burden on [Rehab Clinic's Doctor] and his staff, due to her increasingly resistant behaviours in the clinical setting. This constituted a failure to fully participate in the rehabilitation program which had been made available to her.

The discharge report which [Rehab Clinic] provided on July 29, 2008 set out the difficulties the rehabilitation team had with the Appellant:

“...She was very demanding of staff members and argumentative towards them when they did not comply to her requests. When staff remained insistent that [the Appellant] was capable of getting the equipment (tubing, hot packs) she required by herself, she asked other program participants to get the equipment for her. She would become very upset with staff members when she did not have someone by her side at all times...

...As noted above, [the Appellant] created barriers in order to limit her participation in her program...

...[The Appellant's] program was cancelled on July 16, 2008 due to lack of progress, excessive demand on rehab staff, and increasingly resistant behaviours in the clinical setting.”

When asked why MPIC had decided to reinstate the Appellant's benefits back to October, 2010 when she went to see the female psychologist, and not in June, 2010 when she expressed a willingness to see the psychologist, counsel for MPIC indicated that this was because at the time she agreed to attend, there had been no guarantee that she would actually go for the assessment. Two years had elapsed since she had originally been asked to see a psychologist in 2008, so, he submitted, until she actually went and saw one, it would be mere conjecture to assume that she would actually do it.

Therefore, counsel for MPIC submitted that the suspension of the Appellant's PIPP benefits from July 27, 2008 to October 7, 2010 should be upheld by the Commission and the Appellant's appeal dismissed.

Discussion:

The MPIC Act provides:

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.

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

(d) without valid reason, neglects or refuses to undergo a medical examination, or interferes with a medical examination, requested by the corporation;

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

The onus is on the Appellant to show, on a balance of probabilities, that she did not refuse to undergo psychological assessment or participate in a rehabilitation program, or in the alternative, that she had provided valid reasons for refusing to do so. The panel has reviewed the information on the Appellant's indexed file as well as the testimony of the Appellant and the submissions of counsel.

The panel agrees with the submission of counsel for the Appellant that MPIC failed in its duty to advise and assist the Appellant and to ensure that she was informed of and received the compensation to which she was entitled under the MPIC Act. Further, we find that MPIC erred

in concluding that the Appellant had, without valid reason, refused to undergo a medical examination and that she had, without valid reason, not followed or participated in a rehabilitation program made available by the corporation.

The panel has found a number of deficiencies in the management of the Appellant's claim.

It appears from a review of the documentation and the Appellant's evidence, that MPIC's case manager delegated a significant portion of management of the Appellant's rehabilitation to [Rehab Clinic]. [Rehab Clinic] then identified psychological issues and problems. The matter was referred to [Independent Physiatrist] for independent assessment. He also noted possible psychological issues. Good case management would have picked up on all of these signs of psychological issues in numerous reports and followed through to assist the Appellant.

Other recommendations made by [Rehab Clinic] and [Independent Physiatrist], such as the provision of a knee brace, and assistance with transitioning from crutches to cane, were not implemented by the Appellant's case manager.

Rather, when [Rehab Clinic] found the Appellant difficult to deal with, for reasons which included cultural and personality differences, [Rehab Clinic] discontinued treatment. While the panel notes that the Appellant's progress may have been slower than [Rehab Clinic] or MPIC may have wished, the Appellant was still progressing in her rehabilitation. As she testified, and as it can be seen from her weekly progress notes at [Rehab Clinic], her flexibility and strength were increasing, although her pain was increasing at the same time. The Appellant's recovery was plagued by these pain complaints, her asthma condition, psychological difficulties, and

cultural, language and religious differences. Yet until July 11, 2008, she continued to attend at [Rehab Clinic], participate in the rehabilitation program and progress with her exercises.

After her difficulties with her asthma on July 11, 2008, the Appellant attended at her general practitioner. He reported twice on her asthma problem and she did not attend at [Rehab Clinic] on July 14, when she had a conversation with her case manager, who, she testified, hung up on her. She was then absent on July 15, 2008 and her program was cancelled on July 16, followed by a discharge report on July 29, 2008.

The Appellant's case manager then discontinued her benefits for failing to comply with her rehabilitation program and attend a psychologist, without trying to help her find a female psychologist or another rehabilitation program which could accommodate her asthmatic condition. No attempt whatsoever was made to continue with rehabilitation of her physical injuries at another facility which would not compromise her asthmatic condition.

The panel finds that Section 150 of the MPIC Act obligates MPIC to help the Appellant with these matters. We agree with counsel for the Appellant that the Appellant's psychological issues, arising out of the motor vehicle accident, were a significant barrier to her ability to help herself. Yet MPIC failed to assist her in finding a female psychologist, even though psychological issues had been identified by many caregivers and assessors, and factors such as depression, anxiety, and agoraphobia, in addition to cultural and religious issues, had been identified as possible barriers to the Appellant's effective management of her own recovery. Our conclusions in this regard are confirmed by [Appellant's Psychologist's] report of October 20, 2010, and the diagnoses and recommendations for treatment provided in this report.

Accordingly, the panel finds that the Appellant's appeal should be upheld and the decision of the Internal Review Officer dated December 9, 2008 overturned.

Although MPIC agreed to reinstate the Appellant's benefits effective October 7, 2010, the Commission finds that this was inadequate.

Counsel for MPIC maintained that the Appellant's benefits should only be reinstated back to October, 2010, when she actually saw a psychologist, and not to June, 2010 when she agreed to see one, because there was no guarantee she would actually go to the appointment. In the view of the Commission, this is not a reasonable position. The decision to reinstate these benefits to the Appellant was made following a case conference hearing with the Commission on August 12, 2011, when all the parties were fully aware that the Appellant had already in fact attended for an assessment in October of 2010. [Appellant's Psychologist] had provided a report dated October 20, 2010. Since the decision to reinstate some benefits was made a full year after the Appellant attended for the appointment with the psychologist, the Commission does not agree that it was reasonable for MPIC to take the position that it had no way of knowing at that time whether she would attend, as she clearly had already done so many months earlier.

This failure to reinstate benefits, even after the Appellant agreed to see a psychologist in June 2010 and actually went to see the psychologist in October 2010, is also consistent with MPIC's failure to comply with Section 150 of the MPIC Act.

The panel finds that the Appellant is entitled to reinstatement of all PIPP benefits to which she was and is entitled from July 27, 2008 to date, with interest from the date of termination to the date of payment, pursuant to Section 163 of the MPIC Act. As the Commission has been

advised that the Appellant's benefits were reinstated as of October 8, 2010 and that she has now received such payment, we find that the Appellant shall be paid all PIPP benefits to which she was entitled from July 27, 2008 to October 7, 2010, with interest.

The panel will retain jurisdiction in the event that the parties are unable to agree regarding the payment of the appropriate amounts.

Dated at Winnipeg this 8th day of December, 2011.

LAURA DIAMOND

ROBERT MALAZDREWICH

JEAN MOOR